

STATE OF MICHIGAN
COURT OF APPEALS

JOHN M. FINDLEY and LOIS S. FINDLEY,

UNPUBLISHED
October 26, 1999

Plaintiffs/Counterdefendants-
Appellants,

v

No. 213208
Mackinac Circuit Court
LC No. 94-003767 CH

MISSION POINT RESORT,

Defendant/Counterplaintiff-Appellee.

Before: Griffin, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiffs,¹ in this action arising out of a property dispute, appeal as of right from a judgment in favor of defendant entered following a bench trial. The trial court found that plaintiffs had not acquired title to a forty-four foot strip of land pursuant to the doctrine of adverse possession because plaintiffs' use of this property was with permission. We affirm.

On appeal, plaintiffs first contend that the trial court's findings of fact were clearly erroneous. Actions to quiet title are equitable; therefore, the trial court's holdings are reviewed de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993); *Michigan National Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). The factual findings of the trial court are reviewed for clear error. *Grand Rapids v Green*, 187 Mich App 131, 135; 466 NW2d 388 (1991). The trial court did not err in finding that plaintiffs used the side property with permission. The permissive nature of plaintiffs' use defeats their claim.

The doctrine of adverse possession is based on the policy that a party loses rights that the party fails to assert. *McGee v Eriksen*, 51 Mich App 551, 559; 215 NW2d 571 (1974). Therefore, when a claimant can demonstrate possession of land that is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years, the true title owner loses the ability to seek the claimant's ejection. MCL 600.5801(4); MSA 27A.5801(4); *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995); *Thomas v Rex A Wilcox Trust*, 185 Mich App 733, 736-737; 463

NW2d 190 (1990). A claim of adverse possession must be proven by clear and cogent evidence. *Walters v Snyder*, 225 Mich App 219, 223; 570 NW2d 301 (1997).

Mutual use or occupation of property with the owner's permission is insufficient to establish adverse possession. *Rozmarek v Plamondon*, 419 Mich 287, 294; 351 NW2d 558 (1984). In this case, the trial court found that plaintiffs had received permission to use the side property from Robert Werra, Mission Point's former owner. Evidence at trial demonstrated that the trial court did not clearly err in finding plaintiffs' use of the side property was permissive. Werra testified that he allowed plaintiffs to use the side property. Mission Point's current owner testified that he was told by Werra that he gave plaintiffs permission to use the side property. Plaintiff admitted that he had never placed anything permanent on the side property. The resort's current owner, Shufelt, testified that he never discussed the side property with plaintiffs until 1992 but was aware that Werra had given plaintiffs permission to use the side property. This evidence is sufficient to establish permissive use and defeats plaintiffs' claim of adverse possession. See *West Michigan Dock & Market Corp*, *supra* at 505.

Plaintiffs also argue that the trial court's rulings regarding adverse possession were against the great weight of the evidence. However, they have not preserved any arguments regarding the weight of the evidence since they failed to move for a new trial below. *Buckeye Marketers, Inc v Finishing Services, Inc*, 213 Mich App 615, 617; 540 NW2d 757 (1995); *DeGroot v Barber*, 198 Mich App 48, 54; 497 NW2d 530 (1993).

Next, plaintiffs argue that the trial court erred in ruling that their adverse possession claim must fail because they did not give express notice of the claim to defendant. While the trial court noted this absence of express notice, this was not the basis of the court's finding of no adverse possession.

In order to establish adverse possession, the true owner must have actual knowledge of the adverse possession, or alternatively, the possession must be so notorious as to raise the presumption to the world that the possessor claims ownership. *Rozmarek*, *supra* at 293. A claimant's possession of property may be so open, visible, and notorious that it would raise the presumption of notice to the world that the right of the true owner had been intentionally invaded. *Davids v Davis*, 179 Mich App 72, 83; 445 NW2d 460 (1989), citing *Burns v Foster*, 348 Mich 8, 15; 81 NW2d 386 (1957). In the instant case, the trial court noted that plaintiffs did not provide express notice of their claim of adverse possession to defendant until the initiation of this lawsuit. However, the court in the same opinion noted that defendant and its predecessors in title had been aware of plaintiffs' use and control of the side property since 1974. Therefore, in light of the trial court's finding that plaintiffs' use of the side property was with permission, this long-time, open use did not place the world on notice that plaintiffs claimed title to the lot.

Finally, plaintiffs argue that the trial court erred in not finding that they acquired title to the side property by virtue of the doctrine of acquiescence. While plaintiffs' complaint alleges a cause of action arising out of acquiescence to a boundary line, plaintiffs did not argue that claim at trial and the trial court did not address acquiescence in its opinion. The acquiescence issue is therefore not preserved for review. This Court does not review issues not addressed by the trial court. *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995); *Adam v Sylvan Glynn Golf Course*, 197

Mich App 95, 98; 494 NW2d 791 (1992). Further, no manifest injustice will result from the Court's failure to review the issue. *Kratze v Independent Order of Oddfellows, Garden City Lodge No. 11*, 442 Mich 136, 141, n 5; 500 NW2d 115 (1993).

Affirmed.

/s/ Richard Allen Griffin

/s/ David H. Sawyer

/s/ Michael R. Smolenski

¹ While this action is brought in the name of Mr. and Mrs. Findley, only Mr. Findley testified at trial. Therefore, the singular use of the word "plaintiff" shall refer to Mr. Findley.