STATE OF MICHIGAN

COURT OF APPEALS

FENTON LAKES SPORTSMEN CLUB, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED May 25, 2001
v	No. 220603 Genesee Circuit Court
MCCULLY LAKE ESTATES, INC., Defendant/Counterplaintiff-Appellant,	LC No. 97-057733-CH
and	
LOUIS KNAIA, GEORGE KNAIA, NAJY JABORO, and CATHERINE JABORO, Defendants-Appellants.	

Before: K. F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Defendants[1] appeal as of right from an order of the trial court declaring plaintiff[2] the owner of the disputed property by adverse possession. We affirm.

This case arises out of a dispute over a 4.16 acre parcel of land located in Fenton Township.[3] In 1957, a representative of the club negotiated a conveyance of land between the club and an individual named Bert Beveridge, who is now deceased.

[1] By defendants, we refer collectively to defendant McCully Lake Estates, Inc., as well as the Knaia and Jaboro defendants.

[2] Plaintiff will be referred to in this opinion as "the club."

[3] In the lower court, the parties and the trial court referred to the disputed property as parcel B. For purposes of this appeal, we shall also refer to the disputed property as parcel B.

A review of the record reveals that the club already owned land adjacent to Beveridge's property, but sought to acquire more property for the use of its members. The lone testimony at trial concerning the specifics of the conveyance between the club and Beveridge was that of Clifton Cross. According to Cross, Beveridge agreed to convey to the club a parcel of land that extended from the club's existing boundary line westerly to a wire fence. However, it appears from the record that Beveridge and Cross did not agree on a specified acreage of land to be conveyed.

Following the conversation between Cross and Beveridge, the club surveyed the property it believed Beveridge had conveyed, marking the western boundary along the existing wire fence. However, a 1959 deed executed by Beveridge and his wife conveying land to the club did not include the four acres of property known as parcel B.[4] Unaware of this omission, the club prepared parcel B for use as an archery range. Further complicating matters, the Beveridges in 1972 conveyed parcel B to defendants' predecessors in interest.[5] The instant dispute arose after defendants took steps in 1995 and 1996 to develop the land for residential subdivisions.[6]

As relevant to this appeal, the club filed suit in 1997, asserting that it owned the land free and clear because it adversely possessed the property for the requisite statutory period. After a two-day bench trial in 1999, the trial court initially determined that the club's adverse possession claim was deficient because it's use of the land was not hostile with regard to Beveridge. However, after the club filed a motion requesting that the trial court amend its judgment, the trial court reversed its earlier ruling, concluding that the club's use of the land was hostile with regard to defendants for the requisite statutory period. See MCL 600.5801(4); MSA 27A.5801(4).

Actions to quiet title are equitable in nature; consequently we review de novo the trial court's ultimate disposition. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993). However, we review the trial court's factual findings in this case for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001); *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). A factual finding is clearly erroneous if, after a review of the record, we are left with a definite and firm conviction

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[4] From our review of the record, it appears the 1959 deed from the Beveridges to the club conveyed a 2.83 parcel of land referred to in the lower court as parcel A, on which the club later erected a clubhouse. However, the deed did not convey parcel B. A review of a map included in the lower court file reveals that parcel B extended west to the wire fence.

[5] The following facts reveal how defendants obtained record title of parcel B. In 1965, Jiryis and Vera Farah purchased from Edward J. Khouri a vendee interest in property Beveridge conveyed to Khouri by way of a land contract. The parties do not dispute that this initial conveyance included parcel B. In 1969, the Farahs sold their respective interest in the land to four individuals, including defendants Louis Kinaia and Najy Jaboro. After Beveridge deeded the property to the Farahs in 1972, the Farahs in turn deeded the property to defendants Kinaia and Jaboro and two others in 1977. In 1995, Louis Kinaia and his wife Georgia conveyed their one-quarter interest in the property to defendant McCully Lake Estates, Inc. by way of a quitclaim deed.

[6] Parcel B is part of a 117 acre parcel of land owned by defendants.

that the trial court made a mistake. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000).

To establish adverse possession, the claimant must demonstrate by clear and cogent evidence[7] that its possession of the disputed land was actual, visible, open, notorious, exclusive, hostile, under claim of right, and continuous and uninterrupted for the statutory period of fifteen years. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 535 NW2d 212 (1995); *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993). On appeal, defendant first challenges the trial court's finding with respect to the requirement of hostile possession. According to defendant, plaintiff's possession was not adverse to defendants' interests because plaintiff believed that it was respecting the true boundary line of the adjacent property.

As defendants correctly observe, when a landowner possesses the land of an adjacent owner intending to respect the dividing line between the parcels, the possession is not viewed as hostile, and a claim of adverse possession will not succeed. *Gorte*, *supra* at 170. On the other hand, where a landowner possesses adjacent land with the intention "to hold to a particular recognizable boundary regardless of the true boundary line, the possession is hostile and adverse possession may be established." *Id*., citing *Connelly v Buckingham*, 136 Mich App 462, 468; 357 NW2d 70 (1984).

As a panel of this Court observed in *DeGroot v Barber*, 198 Mich App 48, 52; 497 NW2d 530 (1993), the distinction between these two principles is "subtle:"

> [T]he distinction is between (1) failing to respect the true line, while attempting to do so, and (2) respecting the line believed to be the boundary, but which proves not to be the true line. [*Id.* (footnote omitted).]

In addition, this Court has recently articulated the definition of the term hostile.

> "The term 'hostile' as employed in the law of adverse possession is a term of art and does not imply ill will. Nor is the claimant required to make express declarations of adverse intent during the prescriptive period. Adverse or hostile use is use inconsistent with the right of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder [for trespassing]. See *Rose v Fuller*, 21 Mich App 172; 175 NW2d 344 (1970); also 25 Am Jur 2d, Easements and Licenses, § 51, pp 460-461." [*Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 681; 619 NW2d 725 (2000), quoting *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 646; 528 NW2d 221 (1995), in turn quoting *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976).]

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[7] This Court has previously described the clear and cogent evidence standard as "more than a preponderance of the evidence, approaching the level of proof beyond a reasonable doubt." *Walters v Snyder*, 225 Mich App 219, 223; 570 NW2d 301 (1997), citing *McQueen v Black*, 168 Mich App 641, 645 n 2; 425 NW2d 203 (1988).

With the foregoing principles in mind, we conclude that the trial court did not clearly err in finding that the club's possession of parcel B was hostile. When the club surveyed the land approximately one year after Cross' conversation with Beveridge, the western boundary of the land was set according to the existing wire fence. The club subsequently prepared the land for use as an archery range. Specifically, the club bulldozed paths, set bricks in the ground, cut trees and erected five-foot target berms. A review of a map of parcel B reveals that the club erected the target berms to the east of the fence line. In our view, this action manifests the club's intention to respect the fence line as the western boundary of the land conveyed by Beveridge.

Consequently, we are satisfied that the club, by marking a boundary parallel to the existing fence line, and conducting archery activities solely to the east of the fence line, is akin to the second group of possessors delineated in *DeGroot, supra.* In our opinion, these actions clearly reflect plaintiff's intention to respect a "line believed to be the boundary, but which prove[d] not to be the true line." *DeGroot, supra* at 52 (footnote omitted).[8]

Similarly, we reject defendants' assertion that the club did not exercise a claim of right over the disputed property because it did not pay taxes on the land. We recognize that the payment of taxes is persuasive evidence of a claim of right in an adverse possession action. See *Davids v Davis*, 179 Mich App 72, 83, 85; 445 NW2d 460 (1989); *Burns v Foster*, 348 Mich 8, 15; 81 NW2d 386 (1957); *Gardner v Gardner*, 257 Mich 172, 176; 241 NW2d 179 (1932). However, that the claimant paid taxes is but one of many factors that may support a claim of adverse possession, and is not itself conclusive. See e.g. *Monroe v Rawlings*, 331 Mich 49, 51-52; 49 NW2d 55 (1951); *Corby v Thompson*, 196 Mich 706, 711; 163 NW2d 80 (1917).[9]

Defendants also argue that the trial court clearly erred in finding that the club's possession of parcel B was visible, open, and notorious. We disagree.

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[8] Likewise, we reject defendants' assertion that the trial court erred in considering whether the club's possession of the land was hostile after Beveridge conveyed it to defendants' predecessors in interest in 1972. Even if we were to accept defendants' contention that the club's possession of the land was permitted by Beveridge when he owned it, the club's possession of the land was clearly adverse to defendants' predecessors in interest after the land was conveyed to them in 1972 because it "was inconsistent with the right of the owner, without permission asked or given." *Plymouth, supra* at 681, quoting *Goodall, supra*.

[9] In the context of an adverse possession claim, "claim of right" contemplates that the claimant possess the land "with [the] intent to claim the land as his or her own, and not in recognition or subordination to [the] record title owner." Black's Law Dictionary, (6th ed.), p 170. Here, plaintiff's actions in developing the land for an archery range for its members clearly demonstrates its intention to claim the land as its own. Defendants' reliance on *McVannel v Pure Oil Co*, 262 Mich 518, 528; 247 NW2d 735 (1933) for the proposition that a claim of title requires the payment of taxes is erroneous. Although our Supreme Court in *McVannel*, *supra* at 528, stated that "[o]ne in possession of land, claiming title, is bound to pay the taxes upon it" (citation omitted), the Court did so in the context of affirming the lower court's ruling that the plaintiff had to reimburse the defendants' predecessors for the taxes paid on the land. We do not interpret this statement to suggest that payment of taxes is necessary in every instance to support a claim of title.

It is well-settled in Michigan that the nature of the acts necessary to satisfy a claim of adverse possession are contingent on the character of the property at issue. *Davids, supra* at 82-83; *Burns, supra* at 14. A review of the record indicates that parcel B was an undeveloped, heavily wooded parcel of land with swampy areas. Testimony revealed that the club developed the area for an archery range by clearing paths, cutting timber, erecting target berms, setting bricks in the ground to measure distance, and releasing wild game. In our view, "[t]hese acts are consistent with the wild, undeveloped character of the premises and constitute the actual possession of the land." *Davids, supra* at 83.[10]

We also share the trial court's view that the club's possession, viewed against the backdrop of the character of the property, was visible, notorious and open to the extent that it "raise[d] the presumption of notice to the world that the right of the true owner had been intentionally invaded." *Id.*, citing *Burns, supra*. For more than thirty years, defendants and their predecessors in interest failed to take steps to ensure that trespassers were not encroaching on their land. Had defendants kept informed about the use of their property as the law requires, *Gardner, supra* at 176, they would have been aware of the club's adverse possession.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper

[10] As the trial court observed, a review of minutes taken at the club's regular meetings demonstrates that parcel B was used consistently as an archery range from 1957 until the mid-1990s when defendants first questioned plaintiff's use of the property.