

STATE OF MICHIGAN
COURT OF APPEALS

TROY D. WOOD,

Plaintiff-Appellee,

v

KEVIN F. LOVELAND and DEBORAH A.
LOVELAND,

Defendants-Appellants.

UNPUBLISHED

July 10, 2001

No. 221542

Lenawee Circuit Court

LC No. 98-008100-CH

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiff quieting title to a disputed strip of real property following a bench trial. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Actions to quiet title are equitable and therefore reviewed de novo on appeal. However, the circuit court's factual findings are reviewed for clear error. MCR 2.163(C); *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993). A factual finding is clearly erroneous when, although there is evidence to support it, this Court in reviewing the entire record is left with the definite and firm conviction that a mistake has been made. *Gumma v D & T Constr Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999). This Court "must give regard to the trial court's superior ability to judge the credibility of the witnesses who appeared before it." *Brooks v Rose*, 191 Mich App 565, 570; 478 NW2d 731 (1991).

The disputed strip of land fronted plaintiff's property but belonged to defendants. Plaintiff acquired his property from a couple named Stock, who had lived there from 1938 until 1997. Defendants acquired their property from Mr. Loveland's parents, who had lived next door to the Stocks from 1981 until 1998. The court found that the Stocks acquired the disputed strip of land by adverse possession by using it for at least fifteen years before the elder Lovelands acquired their property and that plaintiff acquired the land when he purchased the Stocks' property. Assuming without deciding that the trial court correctly concluded that the Stocks had acquired the land by adverse possession, that does not in itself entitle plaintiff to judgment.

"To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or 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; 534 NW2d 212 (1995).

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. [*Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976).]

The claimant’s hostile use must be known to the landowner or must be so open and notorious as to give the owner notice of the use. *Burns v Foster*, 348 Mich 8, 15; 81 NW2d 386 (1957). “Acts of ownership which openly and publicly indicate an assumed control or use consistent with the character of the premises are sufficient.” *Caywood v Dep’t of Natural Resources*, 71 Mich App 322, 331; 248 NW2d 253 (1976), lv den 399 Mich 845 (1977). “A mere permissive possession or one consistent with the title of another can never ripen into a title by adverse possession.” *Burns, supra* at 15.

“An adverse claimant is permitted to add his predecessors’ periods of possession if he can establish privity of estate either by mention of the disputed lands in instruments of conveyance or orally at the time of transfer.” *Caywood, supra* at 332. Thus, even if one’s grantor held the disputed land for the statutory period, the grantor’s right to claim the land does not pass to the grantee unless the grantor specifically transfers the disputed land verbally or in writing at the time title to the remainder of the land is transferred. *Killmaster v Zeidler*, 269 Mich 377, 381; 257 NW 721 (1934); *Hanlon v Ten Hove*, 235 Mich 227, 229-230; 209 NW2d 169 (1926).

It is undisputed that plaintiff’s deed did not include a description of the disputed land and that the Stocks never said anything about the disputed land when plaintiff purchased their property. Plaintiff attempted to remedy the problem by having the Stocks specifically convey the disputed land to him by quitclaim deed during trial. However, any “disputed questions must be determined by the state of facts existing when suit was commenced.” *Zemon v Netzorg*, 247 Mich 563, 564; 226 NW 242 (1929). Moreover, plaintiff has not shown that after the Stocks sold their own property, they maintained title to the disputed land such that they had a right to convey it when defendant held record title. Therefore, the trial court erred when it ruled that plaintiff was entitled to the land by virtue of the Stocks’ adverse possession.

Reversed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy