

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN WAUN and GALE WAUN,

Plaintiffs-Appellees,

v

GORDON SNOWDEN and WYNNWOOD, LLC,

Defendants-Appellants.

UNPUBLISHED

August 27, 2002

No. 232640

Lapeer Circuit Court

LC No. 00-028720-CH

Before: White, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a judgment in favor of plaintiffs, quieting title to a 27½- foot wide strip of property adjacent to plaintiffs' property. The trial court found that plaintiffs were entitled to ownership by either acquiescence or adverse possession. Defendants appeal as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1971, plaintiff Gale Waun and her late husband bought a house on Reamer Road in Lapeer County. According to Waun, she was told at that time that the western boundary of the property was located a few feet past the end of a split rail fence, ran parallel to a grass lane, and continued to the property's southern end. In actuality, the split rail fence extended approximately twenty-four feet past the actual western boundary. In 1998, that fence was removed. Between 1971 and 1999, plaintiffs maintained and improved the disputed property, which extended from the actual boundary westward to the lane. Until 1999, neither defendants nor their predecessors in title contested plaintiffs' ownership of the property even though a 1980 survey revealed the true property lines. Plaintiffs did not realize there was a boundary dispute until defendants bought the property and conducted a survey in 1999.

In July 2000, plaintiffs filed an action to quiet title, alleging that they had acquired title to the property in dispute by either acquiescence or adverse possession. After a bench trial, the trial court agreed with plaintiffs and entered a judgment in their favor.

On appeal, defendants argue, in essence, that the trial court erred in quieting title in favor of plaintiffs because plaintiffs failed to prove either acquiescence or adverse possession. Actions to quiet title are equitable in nature and a trial court's decision on such a claim is reviewed de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993); *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

However, we will not reverse a trial court's factual findings unless they are clearly erroneous. *Gorte, supra* at 171; *Morren, supra*.

On appeal, defendants argue that trial court erred in finding adverse possession. Specifically, defendants question "only the boundary and whether or not it was adverse and hostile." We find no merit in defendants' arguments.

One of the necessary elements of adverse possession is adverse or hostile use of the property at issue. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995) ("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.") "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).

Here, the trial court concluded that plaintiffs' use of the strip of land was hostile to the rights of defendants and defendants' predecessor in title. The trial court did not clearly err in concluding that the possession was hostile because plaintiffs' were not the true owners of the property and their maintenance and improvements of the property, including installation of a septic field and a well, and the planting of trees, vines, and a garden, were inconsistent with the owners' rights. Defendants' attempt to negate this element fails because "[a] mistake regarding the true boundary line does not defeat a claim of adverse possession." *DeGroot v Barber*, 198 Mich App 48, 53; 497 NW2d 530 (1993). Rather, plaintiffs respected the line believed to be the boundary, although that line proved not to be such. *Id.* To the extent that defendants argue that the boundary must be manifested by a visible or physical boundary or "monument," we note that both the lane and the end of the fence served as that manifestation.

Defendants also argue that plaintiffs failed to establish an asserted element of acquiescence and take issue with the trial court's findings and conclusions with regard to the acquiescence claim. Because defendants fail to cite any supporting legal authority for their position, they have abandoned this issue on appeal. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999); *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 116; 593 NW2d 595 (1999) ("This Court will not search for authority to sustain or reject a party's position.").

Affirmed.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell