

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS M. KOOPMANS,

Plaintiff/Counter-Defendant-
Appellant,

v

WASTE MANAGEMENT OF MICHIGAN, INC.,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

June 17, 2004

No. 246852

Kent Circuit Court

LC No. 02-006076-CH

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting defendant's motion for summary disposition and denying his motion for reconsideration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant is the titled owner of a 251-acre site containing a closed and capped landfill and four groundwater monitoring wells. Plaintiff, who owns property located immediately south of defendant's property, filed suit claiming ownership of a portion of defendant's property by adverse possession or acquiescence. Defendant filed a counterclaim for damages allegedly resulting from plaintiff's activities on a portion of its site.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff's claim of adverse possession failed because he could not show exclusive or hostile possession of the disputed property for the statutory period of fifteen years. The trial court granted the motion pursuant to MCR 2.116(C)(10), finding that plaintiff could not establish the element of exclusivity. The trial court also dismissed plaintiff's claim of acquiescence. Subsequently, the trial court denied plaintiff's motion for reconsideration.¹

¹ In a final order and judgment the trial court granted in part and denied in part defendant's motion for summary disposition of its counterclaim.

We review a trial court's decision on a motion for summary disposition de novo, *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001), and a decision to grant or deny a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

An action to quiet title is equitable in nature. We review the trial court's findings of fact for clear error and its conclusions of law de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

To establish adverse possession, a claimant must show that his possession has been "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); MCL 600.5801(4). The doctrine of adverse possession is strictly construed, and a party claiming title by adverse possession must establish the claim by clear and cogent evidence. *Strong v Detroit & Mackinac Ry Co*, 167 Mich App 562, 568; 423 NW2d 266 (1988). This level of proof is much like clear and convincing evidence. *McQueen v Black*, 168 Mich App 641, 645 n 2; 425 NW2d 203 (1988).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition and abused its discretion by denying his motion for reconsideration. We disagree and affirm. A claim of adverse possession must be hostile to the title of the true owner. *Gorte v Dep't of Transportation*, 202 Mich App 161, 170; 507 NW2d 797 (1993). Plaintiff did not submit sufficient evidence to create a question of fact as to whether his use of the disputed property was hostile and exclusive. Plaintiff's affidavit established that defendant crossed over his titled property, which he referred to as property he purchased, to reach a well, and paid him \$200 for the privilege of doing so. Contrary to plaintiff's assertion, this evidence did not establish that defendant acknowledged that he was claiming the disputed property as his own. The documents plaintiff submitted in support of his motion for reconsideration established only that the Department of Natural Resources (DNR) (now known as the Department of Environmental Quality) requested that defendant undertake an investigation of the landfill on the property. The DNR can mandate that a private party investigate a contaminated site only by issuing an administrative order. See MCL 324.20119(2). No evidence established that the DNR issued any such order to defendant. The element of exclusivity is undermined by evidence that a party other than the claimant used the property and was not prevented from trespassing. *Dunlop v Twin Beach Park Ass'n, Inc*, 111 Mich App 261, 267; 314 NW2d 578 (1981). The evidence showed that during the statutory fifteen-year period defendant entered onto the land on several occasions to drill groundwater wells, and also entered onto the land at regular intervals to take samples from the wells. The evidence did not create a question of fact as to whether plaintiff's use of the disputed property was exclusive; therefore, plaintiff could not meet his burden of proving adverse possession. *West Michigan Dock, supra*.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens