

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOSEPH CASASSA and ELSIE CASASSA,

Plaintiffs/Counter-Defendants-  
Appellants,

v

JAMES C. CASASSA, individually and as trustee  
of the JAMES C. CASASSA REVOCABLE  
LIVING TRUST,

Defendants/Counter-Plaintiffs-  
Appellee.

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UNPUBLISHED

January 27, 2009

No. 281053

Saginaw Circuit Court

LC No. 05-058891-CZ

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

PER CURIAM.

Plaintiffs/counter-defendants-appellants (appellants) appeal as of right following a bench trial and subsequent order quieting title by adverse possession in defendant/counter-plaintiff-appellee (appellee) and dismissing appellants' complaint. We affirm.

**I. Facts**

This case arises out of a dispute between two brothers over ownership of property (85 acres) in St. Charles, Michigan, which was originally owned by their father. Appellee has lived at the subject property since 1954. He testified that he purchased the property from his father by land contract in the amount of \$15,000.

Appellee built a house and two pole barns on the subject property. Appellee had been farming this land since 1954, and at the time of trial, had a man that farmed the property on a crop-share basis. The only people that lived on the subject property were appellee, his father, and his mother before she died in 1967. Appellee had been living alone on this property since 1967. Appellee had been paying the taxes and insurance on this property since 1954. Appellee cleared eight acres of woods on the property to turn it into farmable land and did not ask anyone for permission to do so.

Appellee testified that his father died in 1974 and the court entered an order giving each of the five siblings an undivided 20 percent interest in the property. Appellee did not contest the court order. However, even after the order was entered, appellee continued to live on the

property and pay the taxes and bills—nothing changed for him. Appellee stated that around 2002 or 2003, he began asking his siblings to sign off on their interest in his property because he was 80 years old and wanted to get his estate in order in case anything happened to him. All of appellee’s siblings signed their interest in the property over to appellee with the exception of appellants. At the time of trial, appellee’s trust had clear legal title to an undivided 80 percent interest in the property.

After a bench trial, the trial court quieted title to the subject property in appellee and dismissed appellants’ complaint. This appeal followed.

## II. Analysis

Appellants first argue that appellee did not give appellants notice that he was claiming acquisition by adverse possession of appellants’ 20 percent interest. Further, appellants assert that because appellee and appellants held this property as tenants in common, appellee did not meet the heightened burden of proof required to establish adverse possession. We disagree.

We review equitable actions, including actions to quiet title, de novo, *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996), and we review the trial court’s findings of fact in a bench trial for clear error. MCR 2.613(C); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). “A finding is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been made.” *American Federation of State, Co & Muni Employees v Bank One, NA*, 267 Mich App 281, 283; 705 NW2d 355 (2005).

To have a valid claim of adverse possession, a party must demonstrate possession of land in a manner that was “‘actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years.’” *Wengel v Wengel*, 270 Mich App 86, 92; 714 NW2d 371 (2006) (citation omitted). The possession must also be hostile. *Id.*

“The term ‘hostile’ as employed in the law of adverse possession is a term of art and does not imply ill will”; rather, hostile use is that which is “inconsistent with the right of the owner, without permission asked or given,” and which “would entitle the owner to a cause of action against the intruder.” [*Id.* at 92-93, quoting *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976).]

A party claiming adverse possession must prove that the statute of limitations has expired, and must show that the owner of record had a cause of action against that party for more than the statutory period. *Id.* at 92.

From the evidence presented, the trial court concluded that appellee occupied the subject property in a manner that was actual, visible, open, notorious, exclusive, continuous, and

uninterrupted for a period of 15 years. The trial court later confirmed that its ruling concluded that the adverse possession took place well before the probate matter was decided.<sup>1</sup>

There is undisputed evidence that appellee occupied the property from 1954 until 1974, the date of his father's death, or a total span of 20 years. During his occupancy, appellee had actual possession of the property and performed all activities that a true owner of property would perform. Appellee maintained the property exclusively, started building a home on the property in 1957, built two barns, and had farmed the land since 1954. Appellee paid the property taxes and insurance on the property from 1954 until the time of trial.

Moreover, as the parties' father had legal title to the property during that time period, appellee presented sufficient evidence to demonstrate that his father had a cause of action against him for the statutory period of 15 years.<sup>2</sup> Further, the actions of appellee in living on the subject property during the time period between 1954 and 1974 were hostile, as that term is used in adverse possession actions, because they were inconsistent with the rights of the legal owner, without permission asked or given. There is ample evidence to support the trial court's conclusion that appellee maintained the property in a manner that was actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the required statutory period.

Appellants next present the issues of (1) whether appellant and appellee were tenants in common, (2) whether the subject property should have been partitioned or sold, and (3) whether appellant was entitled to an accounting based on the subject property. More specifically, appellants argue that the trial court incorrectly concluded that appellants and appellee did not have a tenancy in common. Appellants contend that if the trial court had correctly found that there was a tenancy in common, then it would be required to recognize appellee's elevated burden of proof to demonstrate that he acquired title through adverse possession. Again, we disagree.

A party with rightful possession of real estate through adverse possession cannot be removed by a party asserting an interest, or statutory right, to the claimed property once the elements of adverse possession have been met. In *Gorte v Dep't of Transportation*, 202 Mich App 161, 164; 507 NW2d 797 (1993), the plaintiffs argued that they and their predecessors had adversely possessed the disputed acreage, which had previously been owned by the state-defendant. Conversely, the defendant argued that a newly enacted law that stated that one cannot acquire title to state-owned property through adverse possession prevented plaintiff from claiming title to the disputed acreage.

The Court held that plaintiffs' claim to the disputed acreage was established by adverse possession for the statutory period before the effective date of the newly enacted law and

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<sup>1</sup> The evidence presented established that the parties' father's probate estate was closed in 1976.

<sup>2</sup> It is manifest that either the parties' father owned the property during that period or it had been purchased by appellee. Thus, it is appropriate to assume ownership in the parties' father for present purposes because the only alternative would be that appellee already owned the property.

therefore plaintiffs held clear title. *Id.* at 169. The Court reasoned that “plaintiffs’ failure to earlier assert the claim in a legal action does not preclude them from now asserting title by virtue of adverse possession.” *Id.* Moreover, “the expiration of the period of limitation terminates the title of those who slept on their rights and vests title in the party claiming adverse possession.” *Id.* at 168.

Here, the trial court correctly found that appellee adversely possessed the subject property well before the probate matter was decided, and therefore there was no valid cotenancy created by the probate judgment. Admittedly, the probate order appeared to create a cotenancy between the parties and their siblings. However, because appellee held title through adverse possession before the probate ruling, the record title was not valid and could not be enforced against appellee as the rightful owner of the subject property. See *Gorte, supra* at 168-169.

Because appellee held title by adverse possession as of 1974, the trial court correctly ruled that appellants’ request for an accounting, or for sale or partition, were moot.

Affirmed.

/s/ Donald S. Owens  
/s/ David H. Sawyer  
/s/ Jane E. Markey