

STATE OF MICHIGAN
COURT OF APPEALS

GENE ARNTSEN, Trustee of the GENE R.
ARNTSEN TRUST,

UNPUBLISHED
June 28, 2012

Plaintiff/Counter Defendant-
Appellant,

v

CARL W. LAITILA, JANET D. LAITILA,
CLYDE I. MAKI, and CAROLYN M. MAKI,

No. 300418
Houghton Circuit Court
LC No. 2008-014032-CH

Defendants/Counter Plaintiffs-
Appellees.

Before: MARKEY, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In this real property dispute, plaintiff Gene Arntsen, as the trustee of the Gene R. Arntsen Trust, appeals by right the trial court's judgment granting title in the disputed property to defendants Carl W. Laitila, Janet D. Laitila, Clyde I. Maki, and Carolyn M. Maki. The primary issues on appeal are whether there were sufficient facts for the trial court to determine that defendants had adversely possessed the disputed tract of land and whether the trial court's findings on this matter were sufficient. We agree that the trial court's findings were inadequate, but, for the reasons stated below, we nevertheless conclude that the trial court's decision should be affirmed.

I. BASIC FACTS

In 1982, Arntsen purchased a parcel that is directly west of a parcel that Carl Laitila works for farming and which is owned by defendants collectively. Arntsen testified at trial that he surveyed the land at issue sometime prior to 1992 and noticed that someone had encroached onto his land by growing crops—specifically, he noticed that someone had built a fence, which was then dilapidated, across his property and was growing hay in the fields on the other side of the fence line. Arntsen said the area at issue encompassed “maybe . . . fourteen acres.”

Arntsen sent a letter to Carl Laitila¹ addressing the encroachment; the letter was dated February 5, 1992. In the letter, Arntsen noted that Laitila had a “cornfield” on his property and was “removing hay” from the same area. He stated that he did not “mind that you are apparently using a portion of my land for your farming endeavors.” However, he stated that if Laitila wanted “to continue to use this property” he would have to sign a “lease form” and pay a “nominal cost of \$10 per year to cover the cost of the paperwork.” Laitila’s lawyer responded with a letter to Arntsen, which was dated March 13, 1992. In the letter, Laitila’s lawyer stated that the “cleared property [to] which you are referring . . . has been used by the [Laitila] family as part of their farm since the early 1900’s.”²

The undisputed evidence showed that defendants did not sign a lease, did not pay Arntsen the requested \$10 per year, and continued to use the disputed property after February 1992. Further, Arntsen testified that he took no further steps to prevent defendants from using the disputed property until 2004. In 2004, Arntsen tried to sell the parcel that contained the disputed tract. However, according to Arntsen, the buyers refused to close after Laitila told them that Arntsen did not own the disputed tract. Arntsen sent Laitila another letter dated June 20, 2004. In that letter he noted that Laitila had “turned them [the buyers] against the purchase of his property” and warned that he could be “liable for damages.” He also wrote: “I told you in writing about 14 years ago that I did not care that you cut the hay on my property, but I do now. As of this date, you are no longer permitted to harvest hay from my land and any such action will be deemed a trespass and appropriate action will be taken.”

Although he threatened otherwise, Arntsen did not take steps to prevent Laitila from using the land until 2008. In about May 2008, Arntsen had a ditch dug from north to south along his side of the boundary line using a bulldozer. Thomas Puuri testified that he operated the bulldozer and that he used it to make a “furrow” about a foot and a half deep along the property line. He said that he went through freshly planted crops. Puuri said that Laitila had warned him to stay off the property. Puuri stated that, in addition to the old fencing, there were sporadic rock piles along the fence line that show that someone had piled rocks.

Laitila testified that he lived on the farm from his birth in 1936. Because the property had been used as a dairy farm, his family erected a fence around it to contain the cows. He claimed that his family had always treated the fence line as the true boundary line and denied that his prior neighbors had ever disputed the boundary line. Laitila said that his parents operated the farm as a dairy farm until they retired between 1968 and 1970. After that, they stopped maintaining the fence. Laitila stated that he has used the area to grow hay and oats. He also testified that he had planted corn in the area. After Arntsen had Puuri dig the ditch, Laitila filled the ditch at the area where it crossed through his crop.

¹ For ease of reference we shall use Laitila to refer to Carl Laitila alone.

² Laitila claimed that he never received the 1992 letter from Arntsen.

In October 2008, Arntsen sued defendants to quiet title to the tract at issue. In answer, defendants asserted that they had title to the disputed tract through adverse possession or through acquiescence to the boundary. After a bench trial, the trial court determined that defendants had established title to the disputed tract through adverse possession. The trial court entered judgment in defendants' favor in September 2010.

II. ADVERSE POSSESSION

A. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision to grant equitable relief. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008). This Court will, however, defer to the trial court's resolution of factual disputes unless those findings are clearly erroneous. *Id.*

B. ANALYSIS

To acquire title to real property through adverse possession, a party must establish that its possession of the property was "actual, visible, open, notorious, exclusive, hostile, under cover of a claim of right, continuous, and uninterrupted for the statutory period of 15 years." *Beach v Lima Twp*, 283 Mich App 504, 512; 770 NW2d 386 (2009); MCL 600.5801. Hostile possession under claim of right requires possession and use of the property that conflicts with the true owner's rights in the property, is performed without the permission of the true owner, and would create a legal cause of action against the invader by the true owner. *Canjar v Cole*, 283 Mich App 723, 731-732; 770 NW2d 449 (2009). Although an adjacent owner's possession of land is not hostile if he or she intended only to hold to the true boundary line, the possession is hostile if the adjacent owner intended to keep to a particular recognizable boundary line; this is true even if the possession to the recognized boundary is in mistaken belief that it is the true line. *Gorte v Dept of Transportation*, 202 Mich App 161, 170-171; 507 NW2d 797 (1993).

Regarding the continuity of use and the limitations period, the true owner's reentry does not interrupt the possessor's continuous use unless the true owner maintains peaceable ownership and use of the property for at least one year, or the true owner files suit within one year after being ousted by the adverse possessor. MCL 600.5868; *Taggart v Tiska*, 465 Mich 665, 672-673; 641 NW2d 240 (2002). In order to be open and notorious, the adverse possessor's possession of the disputed property must, at a minimum, be so obvious as to "raise the presumption of notice to the world that the right of the true owner is invaded intentionally." *Ennis v Stanley*, 346 Mich 296, 301; 78 NW2d 114 (1956). The limitations period does not start until the record owner is displaced or deprived of possession by the party claiming ownership. MCL 600.5829; *Wengel v Wengel*, 270 Mich App 86, 92; 714 NW2d 371 (2006). The trespasser takes legal title to the property after the statutory period ends. *Beach v Lima Twp*, 489 Mich 99, 106-107; 802 NW2d 1 (2011). To prevail, the adverse possessor must establish each of the elements by "clear and cogent" proof. *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993). Clear and cogent evidence has been described as more than a preponderance and approaching the level of proof beyond a reasonable doubt. *McQueen v Black*, 168 Mich App 641, 645 n 2; 425 NW2d 203 (1988).

In a bench trial, the trial court must make factual findings sufficient to support its ultimate ruling, although it need not elaborate. MCR 2.517(A)(1), (2). “Findings of fact regarding matters contested at a bench trial are sufficient if they are ‘[b]rief, definite, and pertinent,’ and it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation.” *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995) (citations omitted). We agree that the trial court failed to make specific findings of fact on each of the elements of adverse possession. Nevertheless, we do not agree with Arntsen’s contention that we must remand this matter for more definite findings and we do not agree that there was insufficient evidence to establish the elements of adverse possession. We reach these conclusions because the undisputed evidence showed that, at the very least, defendants—through Laitila—had “actual, visible, open, notorious, exclusive, hostile, under cover of a claim of right, continuous, and uninterrupted” use of the property at issue for the statutory period. See *Beach*, 283 Mich App at 512.

Arntsen admitted that he came to realize that Laitila was using the property up to the dilapidated fence line in around February 1992, and possibly earlier. Indeed, he sent Laitila a letter noting that Laitila was using the land to grow hay and corn. And, although he purported to give Laitila permission to use the property, he conditioned that permission on Laitila signing a lease and making a nominal payment. Defendants did not sign the lease and did not make the required payments. There was also evidence that Laitila’s lawyer responded by asserting that the land had been used by Laitila’s family for farming since the early 1900’s—that is, Laitila’s lawyer essentially rejected the contention that Arntsen had the right to stop Laitila from using the land. Thus, the undisputed evidence showed that Arntsen had actual notice of defendants’ use and that defendants did not have Arntsen’s permission to use the land to grow crops.

Arntsen presented no evidence to contradict Laitila’s testimony that he used the disputed property after 1992 to grow hay, oats, corn, and to raise pigs and cattle. There was also undisputed evidence that Laitila had warned Arntsen’s agent, Puuri, to stay off the land and there was evidence—albeit disputed—that Laitila had warned Arntsen’s prospective buyers that the disputed land belonged to defendants. There was also no evidence that anyone other than defendants had used the disputed property since 1992.³ In 2004, Arntsen again tried to assert his rights to the property by ordering Laitila to stay off the property in a letter, but he did not

³ Plaintiff argues that this case closely resembles circumstances discussed in *Ennis*, where the Supreme Court held that “[c]asual hay cutting, amounting to a little more than an annual trespass, is not sufficient to warn the owner of the record title of a claim of adverse possession.” *Ennis*, 346 Mich at 301. However, the record contains evidence that Laitila used the disputed property for more than mere hay cutting. Specifically, Laitila testified that he used the property to grow corn, oats, and occasionally to raise cattle and pigs. It also appears that the adverse possessors in *Ennis* frequently left portions of the disputed property unused for years at a time. *Id.* at 302-303. Although Laitila admitted to allowing the fields to occasionally lie fallow, defendants appear to have used the fields more regularly and frequently than the adverse possessors in *Ennis*. *Id.* at 303.

physically interfere with defendants' use. Finally, Arntsen did not sue defendants until October 2008, which was more than 15 years from the date that Arntsen first became aware that defendants—through Laitila—were using the disputed tract without his permission.

The evidence plainly showed that Laitila made actual, visible, and open use of the property up to the old fence line and that he did so exclusively, continuously, and under a claim of right that was hostile to Arntsen's title for more than 15 years. Because the undisputed evidence plainly showed that defendants had established title to the disputed property through adverse possession, we conclude that any error occasioned by the trial court's failure to make sufficient findings does not warrant relief.

There were no errors warranting relief.

Affirmed.

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Michael J. Kelly