COURT OF APPEALS
DECISION
DATED AND FILED

July 19, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2010AP1184 **Cir. Ct. No. 2008CV293**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

VERYL ORCUTT AND NORMA ORCUTT,

PLAINTIFFS-RESPONDENTS,

V.

RALPH BLUM AND MARY L. BLUM,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Grant County: ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Vergeront, Higginbotham and Blanchard, JJ.

¶1 HIGGINBOTHAM, J. Ralph C. and Mary Blum (the Blums) appeal a judgment entered following a trial to the court based on findings that:

(1) Veryl and Norma Orcutt (the Orcutts)[1] own by adverse possession a seven-acre strip of land contiguous to and overlapping property owned by both parties; and (2) the Blums did not reacquire possession of the seven-acre strip by adverse possession because they did not enter into the deed taken from Blum's father based on a "good faith claim of title." *See* WIS. STAT. § 893.26(2)(a) (2009-10).[2] The Blums contend that the court's construction of the phrase "good faith claim of title" within the meaning of the statute is contrary to the legislature's clear intent in adding this language to the statute in 1979, as reflected by the 1979 Judicial Council Committee's Note to the amendment. They also argue that, under their construction of the phrase, and applying that construction to the facts of record, they entered into possession of the seven-acre strip of land under a "good faith claim of title."

¶2 We conclude that, assuming without deciding that the Blums' construction of the phrase "good faith claim of title," as explained in the 1979 Judicial Council Committee's Note, is the proper construction of the phrase, the court properly applied this construction to its findings of fact to conclude that the Blums did not enter into the deed under a "good faith claim of title." We therefore affirm the judgment granting title in fee simple of the disputed seven-acre strip of land to the Orcutts.[3]

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[1] When referred to in the singular, Blum refers to Ralph Blum and Orcutt means Veryl Orcutt.

[2] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[3] The following is the legal description of the property the court awarded to the Orcutts:

Part of Government Lot One (1) of Section Three (3), Town Two (2) North, Range Four (4) West of the 4th P.M.,

(continued)

BACKGROUND

¶3 In May 2008, Veryl and Norma Orcutt filed suit against Ralph C. and Mary Blum to quiet title of a seven-acre strip of land. The case was tried to the court and the court found that the Orcutts, under the doctrine of acquiescence, possessed the disputed seven-acre strip of land.

¶4 The land in dispute has been in the Blum family since 1872. In February 1894, Grant County issued a tax deed to a relative of the Orcutts which matched the legal description of property already described in Grant County 1894 tax rolls as owned by the Blum family. It is undisputed that the 1894 tax deed mistakenly included the Blum property and listed the parcel as being owned by both the Blums and the Orcutts. Not until 1928 was action taken to correct the erroneous description in the 1894 tax deed and the corrected description of the property was included in the 1957 deed when the Orcutts acquired the property. It is undisputed that both the Blums and the Orcutts paid taxes on this overlapping parcel.

> Waterloo Township, Grant County, Wisconsin, containing 7.05 acres, more or less, and being described as follows:
>
> Commencing at the Northeast corner of said Section Three (3); thence South 01° 44' 39" East 1320.00' along the East line of said Section Three (3) to the Southwest corner of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section Two of said Town Two (2) North, Range Four (4) West, said corner being the point of beginning; thence South 01° 44' 39' East 221.41' along the East line of said Section Three (3); thence South 89° 32' 09" West 1384.54' to the West line of said Government Lot One (1); thence North 00° 23' 13" East 222.41' along said West line; thence North 89° 32' 15" East 1376.27' to the point of beginning.

¶5 A fence was constructed in 1969, purportedly for the purpose of identifying the property line based upon the 1928 deed and the Orcutts' 1957 deed; however, the fence was "not built in reliance on a survey." In November 1969, the Orcutts received payment from Blum's father, Ralph D. Blum, to cover one-half the cost of the fence.

¶6 The Blums purchased the property in July 1997 on a land contract from Blum's father. Before purchasing the property, the Blums had the property surveyed "for the purpose of identifying a metes and bounds description to use in the land contract." The legal description of the Blums' property includes the seven-acre strip of land in dispute.

¶7 Blum testified that he knew the Orcutts had a part in installing the 1969 fence. Soon after purchasing the land from his father on land contract, Blum removed the fence because, in his opinion, it was not on the boundary line and it was hazardous to be around. Blum admitted that he did not ask the Orcutts' permission to remove the fence.

¶8 On September 30, 1999, counsel for the Orcutts wrote the Blums addressing the removal of the fence and their failure to assure the Orcutts that the Blums would assume full responsibility for replacing it. By letter of October 2, 1999, the Blums replied. The letter stated:

> In response to your letter of September 30, 1999, it is correct that I did remove the old fence on my end of the joint line fence. The fence was in bad shape due to tree limbs having fallen on it, further it was crooked and not on the line. It is not correct that there has been no activity to replace it. I have set several of the new corner posts. I intend to continue the work of replacing this portion of the line fence in the late fall and next spring. I expect it will be nearly done by late spring.

> I did not remove the portion of the fence that would be Mr. Orcutt's responsibility to maintain, i.e., I removed my half but I did not remove his half. His half is also in poor shape due to fallen limbs and it is not on the surveyed line. If my time table is not acceptable then maybe we should have the town replace the entire fence at our joint cost.
>
> There are steel survey monuments on the property corners and along the line should Mr. Orcutt have need to identify the exact location of the property line.

¶9 Blum testified that he believed the letter from the Orcutts was sent because the Orcutts were concerned about having paid for the fence and wanted the fence to be replaced but were "not necessarily [concerned about] the location of it." Recognizing Blum to be an experienced surveyor for the Wisconsin Department of Transportation, the court questioned him about the significance of the fence stating:

> THE COURT: … Back when you wrote the letter, the fence that you admitted ripping out, was that the property line fence you were referring to? Because you indicated it is in the wrong position.
>
> [BLUM]: Yes.
>
> THE COURT: And at that time, based upon your work, were you aware of the significance of a property line fence that had been there for more than 20 years?
>
> [BLUM]: My understanding was that it wasn't a property line fence, that it was a fence of convenience to keep horses on our property.
>
> THE COURT. Right. But to answer the question then, yes, you knew the significance of it if it had been a property line fence, what that would have meant for the owners on each side of that fence? I mean you would have known back in 1997 that if that had been a property line fence and it had been there for more than 20 years that the title goes out the window and the property ownership is determined by the fence?
>
> [BLUM]: Well, um, I am aware of adverse possession under that scenario or a similar scenario to that.

> I guess I didn't view this necessarily as somebody claiming ownership by virtue of adverse possession. Nobody had notified my dad or myself of that.

¶10 At the conclusion of the trial, the court concluded that the facts demonstrated that the Orcutts adversely possessed the disputed parcel by acquiescence and that the Blums did not reacquire possession of the property under a "good faith claim of title."

¶11 At the trial court's invitation, the Blums filed a motion for reconsideration. As grounds for reconsideration, the Blums argued that the trial court erred in finding that they did not enter into possession of the disputed property under a good-faith claim. The court denied the motion for reconsideration. In denying the motion, the court reaffirmed its oral ruling issued at the conclusion of the trial, that the Orcutts succeeded in proving their claim to the disputed property under the doctrine of acquiescence, and that the Blums' act of taking possession of the disputed property was not made under a good-faith claim. The court found that the Blums were aware of the Orcutts' claim of title to the disputed property due to the construction and maintenance of the 1969 boundary fence. The court also found that Blum had extensive knowledge of real estate law as a result of his long-term employment as a surveyor for the Department of Transportation, "including knowledge of claims of adverse possession based upon the location of property line fences." Given that knowledge, the court concluded that Blum knew that by removing the fence he was "staking his claim" to the disputed property.

¶12 The trial court further found that after the Blums had the property surveyed, it should have become clear that Blum's father had agreed to the construction of the fence thereby decreasing seven acres from their property. The

court also found that, by removing the 1969 fence[4] and installing a new fence on the bluff of the disputed property, the Blums demonstrated an awareness of the legal significance of the location of the fence and a need to demonstrate ownership rights. The Blums appealed. Additional facts will be provided in the discussion section where necessary.

DISCUSSION

¶13 This case requires us to construe WIS. STAT. § 893.26(2)(a)[5] and surrounding statutes. Statutory interpretation is a question of law, subject to de

[4] Blum testified he removed the fence soon after acquiring the property from his father in 1997.

[5] WISCONSIN STAT. § 893.26 provides, in full:

> **Adverse possession, founded on recorded written instrument.** **(1)** An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 10 years, except as provided by s. 893.14 and 893.29. A person who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 10 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.
>
> **(2)** Real estate is held adversely under this section or s. 893.27 only if:
>
> (a) The person possessing the real estate or his or her predecessor in interest, originally entered into possession of the real estate under a good faith claim of title, exclusive of any other right, founded upon a written instrument as a conveyance of the real estate or upon a judgment of a competent court;
>
> (b) The written instrument or judgment under which entry was made is recorded within 30 days of entry with the register of deeds of the county where the real estate lies; and
>
> (c) The person possessing the real estate, in connection with his or her predecessors in interest, is in actual continued occupation of all or a material portion of the real estate described

(continued)

novo review. ***Harnischfeger Corp. v. LIRC***, 196 Wis. 2d 650, 659, 539 N.W.2d 98 (1995).

¶14 When interpreting a statute, we begin with the statutory language. ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. If the meaning of the statute is plain, we ordinarily stop the inquiry and apply that meaning. ***Id.*** We interpret statutory language "in the context in which it is used; not in isolation but as part of a whole; in relation to the

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> in the written instrument or judgment after the original entry as provided by par. (a), under claim of title, exclusive of any other right.
>
> **(3)** If sub. (2) is satisfied all real estate included in the written instrument or judgment upon which the entry is based is adversely possessed and occupied under this section, except if the real estate consists of a tract divided into lots the possession of one lot does not constitute the possession of any other lot of the same tract.
>
> **(4)** Facts which constitute possession and occupation of real estate under this section and s. 893.27 include, but are not limited to, the following:
>
> (a) Where it has been usually cultivated or improved;
>
> (b) Where it has been protected by a substantial enclosure;
>
> (c) Where, although not enclosed, it has been used for the supply of fuel or of fencing timber for the purpose of husbandry or for the ordinary use of the occupant; or
>
> (d) Where a known farm or single lot has been partly improved the portion of the farm or lot that is left not cleared or not enclosed, according to the usual course and custom of the adjoining country, is considered to have been occupied for the same length of time as the part improved or cultivated.
>
> **(5)** For the purpose of this section and s. 893.27 it is presumed, unless rebutted, that entry and claim of title are made in good faith.

language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." ***Id***., ¶46. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." ***Id***. (citation omitted). A statute is ambiguous only if reasonably well-informed persons could interpret its meaning in two or more senses. ***Id***., ¶47. When the statutory language is ambiguous, we may consult extrinsic sources of interpretation, such as legislative history. ***Id***., ¶48. The purpose of statutory interpretation is to give full effect to the policy choices of the legislature. *See* ***id***., ¶44.

¶15 There are two issues on appeal: (1) what is the meaning of "good faith claim of title" in WIS. STAT. § 893.26(2)(a); and (2) did the Blums enter into original possession of the disputed seven-acre strip of land under a "good faith claim of title."

¶16 As we indicated, the trial court awarded legal title to the disputed parcel under the doctrine of acquiescence to the Orcutts and dismissed the Blums' counterclaim seeking title to the parcel by adverse possession under WIS. STAT. § 893.27.[6] Section 893.27 provides for adverse possession founded on a recorded

[6] WISCONSIN STAT. § 893.27 states:

> **Adverse possession; founded on recorded title claim and payment of taxes. (1)** An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 7 years, except as provided by s. 893.14 or 893.29. A person who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 7 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.
>
> **(2)** Real estate is possessed adversely under this section as provided by s. 893.26(2) to (5) and only if:

(continued)

title claim and payment of taxes, and incorporates by reference the requirements under WIS. STAT. § 893.26 for obtaining title by adverse possession founded on a written instrument. On appeal, the Blums do not appear to challenge the trial court's conclusion that the Orcutts adversely possessed the seven-acre strip of land by acquiescence.[7] Rather, the Blums challenge the dismissal of their counterclaim seeking a declaration of title to them on the ground that they reacquired title to the disputed parcel under §§ 893.27 and 893.26. We therefore must first determine the meaning of "good faith claim of title" as provided in § 893.26(2)(a) and whether under that meaning, the facts support the Blums' contention that they originally entered into possession of the disputed seven-acre strip of land under a "good faith claim of title."

¶17 WISCONSIN STAT. § 893.27(2)(a) and (b) permits a person to acquire title to real property by adverse possession after an uninterrupted period of seven

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> (a) Any conveyance of the interest evidenced by the written instrument or judgment under which the original entry was made is recorded with the register of deeds of the county in which the real estate lies within 30 days after execution; and
>
> (b) The person possessing it or his or her predecessor in interest pays all real estate taxes, or other taxes levied, or payments required, in lieu of real estate taxes for the 7-year period after the original entry.

[7] In the Statement of The Facts section of their brief-in-chief, the Blums state the following: "Blum contends Orcutt cannot establish adverse possession and that even if Orcutt can, Blum reacquired title to the disputed seven acres by adverse possession under § 893.27 … or § 893.26 …." However, the Blums do not develop an argument in the argument section of their brief that Orcutt did not establish adverse possession by acquiescence. We therefore consider this argument to be abandoned and do not address it. ***State v. T. J. McQuay, Inc.***, 2008 WI App 177, ¶14 n.5, 315 Wis. 2d 214, 763 N.W.2d 148 (an appellate court need not consider an argument that is undeveloped in the briefs); *see also* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (inadequately briefed and undeveloped arguments need not be addressed on appeal).

years if the written instrument of the conveyance is duly recorded with the register of deeds within thirty days after execution and the person possessing the disputed parcel pays the real estate taxes for the parcel for the seven-year period after original entry. Real estate is adversely possessed under § 893.27(2)(a) and (b) only if the requirements of WIS. STAT. § 893.26 are also met.

¶18 WISCONSIN STAT. § 893.26 permits a person to acquire title to real property by adverse possession for an uninterrupted period of ten years when the claimant "originally entered into possession of the real estate under *a good faith claim of title*, exclusive of any other right, founded upon a written instrument as a conveyance of the real estate or upon a judgment of a competent court" and the instrument is duly recorded with the register of deeds within thirty days. WIS. STAT. § 893.26(1) and (2) (emphasis added). There is a rebuttable statutory presumption that entry and claim of title are made in good faith. WIS. STAT. § 893.26(5).

¶19 The Blums argue that "good faith claim of title" within the meaning of WIS. STAT. § 893.26(2)(a) means the absence of fraud or coercion in the acquisition of the claim of title and that the trial court's construction of "good faith" as meaning the absence of knowledge or notice of adverse claims is unreasonable. In support, the Blums rely on the Judicial Council Committee's Note to § 893.26(2)(a), which explains in relevant part:

> Subsection (2)(a) requires original entry on the adversely possessed premises to be 'in good faith,' language not included in the previous s. 893.06. The addition is designed to make clear that one who enters under a deed, for example, knowing it to be forged or given by one not the owner, should not have the benefit of the 10-year statute. Some Wisconsin case law (contrary to the nationwide weight of authority) suggests otherwise, and the change is intended to reverse these cases. *See* ***Polanski v. Town of Eagle Point***, 30 Wis. 2d 507, 141 N.W.2d 281

> (1966); ***Peters v. Kell***, 12 Wis. 2d 32, 106 N.W.2d 407 (1960); ***McCann v. Welch***, 106 Wis. 142, 81 N.W. 996 (1900).

¶20 Referring to the Judicial Council Committee's Note, the Blums argue that the clear intent of the legislature in adding the good faith requirement to WIS. STAT. § 893.26(2)(a) was to reverse certain cases referred to in the Note that allowed adverse possession claims to ripen, based on the ten-year statute, despite the existence of what the legislature identified as bad faith.[8]

¶21 The Orcutts argue that the trial court correctly defined good faith and correctly determined that the Blums did not act with good faith when they took possession of the disputed seven-acre strip of land. The Orcutts ask this court to adopt the following definition of "good faith" provided in Black's Law Dictionary:

> an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own mind and inner spirit and, therefore may not conclusively be determined by his protestations alone.… Honesty of intention, and freedom from

[8] *See* ***Polanski v. Town of Eagle Point***, 30 Wis. 2d 507, 515, 518, 141 N.W.2d 281 (1966) (Town conditioned the admission of the decedent into the county hospital on the conveyance of property owned by the decedent to the Town, which, although an illegal condition, was nonetheless immaterial to the determination of when the property had been adversely possessed); ***Peters v. Kell***, 12 Wis. 2d 32, 40, 106 N.W.2d 407 (1960) (in an action to set aside a deed procured through fraud, the court held that it was immaterial whether the deed was obtained by the decedent's son, who was the plaintiff's step-brother, by fraud with respect to obtaining adverse possession after ten years based on a written instrument duly recorded); ***McCann v. Welch***, 106 Wis. 142, 143-44, 81 N.W. 996 (1900) (immaterial to the ten-year adverse possession statute of limitations that the husband of the decedent obtained the deed by fraud or that the deed was executed by his dying wife while she was not mentally competent).

> knowledge of circumstances which ought to put the holder upon inquiry.

BLACK'S LAW DICTIONARY 693 (6th ed. 1995).

¶22 The Orcutts maintain, however, that even if the Blums' definition of "good faith" is in keeping with the legislature's intent as expressed in the Judicial Council Committee's Note, it is still true that the Blums did not act in good faith. In making this argument, the Orcutts rely on the trial court's findings that the 1969 fence line was a property fence line and that Blum had sufficient knowledge—from his experience as a surveyor for the Wisconsin Department of Transportation—to know the significance of it being a property fence line, i.e., that it constituted the boundary line between the properties. The Orcutts also rely on Blum's testimony that he had the property surveyed prior to purchasing it from his father and from that survey he became aware that there was an issue concerning the legal descriptions in the Orcutts' and Blums' titles.[9]

¶23 As already noted, in construing a statute, we are to begin with the statutory language and if the language is plain, we construe the statute in accordance with its plain meaning. *See* ***Kalal***, 271 Wis. 2d 633, ¶45. We observe that the Blums do not construe the language of WIS. STAT. § 893.26(2)(a) to ascertain the meaning of "good faith claim of title." Rather, they rely solely on extrinsic sources to define the meaning of this phrase, which usually occurs only when a statute's language is ambiguous. *See* ***id.***, ¶47. Here, the Blums rely on the

[9] The Orcutts argue, in the alternative, that the Blums are not entitled to take possession of the disputed parcel because they failed to record their Warranty Deed within thirty days of its execution, as required under the recordation statute, WIS. STAT. § 893.27(2)(a). Because we conclude that the trial court correctly concluded that, under the facts of this case, the Blums did not enter into possession of the disputed parcel under a "good faith claim of title," we need not address this argument.

Judicial Council Committee's Note to support their construction of "good faith" as meaning the absence of fraud or coercion in the acquisition of a claim to title. For the sake of argument, we too look to the Note to understand what it means to enter into possession of property under a "good faith claim of title."

¶24 As we indicated, the Judicial Council Committee's Note to WIS. STAT. § 893.26(2)(a) states that the addition of the phrase "good faith" to the ten-year adverse possession statute was "designed to make clear that one who enters under a deed, for example, knowing it to be forged or *given by one not the owner*," does not benefit from the shortened period to establish adverse possession. Judicial Council Committee Note, 1979, WIS. STAT. § 893.26 (emphasis added). We read this part of the Note as saying that, by adding the phrase "good faith claim of title" to the statute, the legislature intended to deprive persons who enter into a deed knowing the deed to be forged, or knowing that the person transferring the deed is not the owner of the property being deeded, the "benefit from the shortened period to establish adverse possession."

¶25 We observe that the Blums focus only on the forgery aspect of the Note for the definition of "good faith." We, instead, focus on the "given by one not the owner" part of the Note, because that part is more pertinent to the facts of this case. Thus, if the court found that Blum's father was not the owner of the disputed parcel when Blum entered into possession under the deed, and that Blum was aware of this fact, then, based on the explanation in the Note of the legislature's intent in adding the language "good faith claim of title" to the statute, the Blums did not take original entry of the property under a "good faith claim of title." We therefore turn to the trial court's findings to determine whether they

support a conclusion that the Blums did not enter into the deed to the disputed strip of land under a "good faith claim of title."[10]

¶26 When a court bases its decision on credibility determinations and factual findings, we defer to the court's findings and determinations on review unless they are clearly erroneous. *See* ***Fidelity & Deposit Co. of Md. v. First Nat'l Bank of Kenosha***, 98 Wis. 2d 474, 485, 297 N.W.2d 46 (Ct. App. 1980) (where the trial court is the finder of fact, the trial court is the ultimate arbiter of witness credibility); ***State v. Pitsch***, 124 Wis. 2d 628, 634, 369 N.W.2d 711 (1985) (appellate court will affirm trial court's findings of fact unless clearly erroneous).

¶27 At the conclusion of the bench trial, the court found that the Orcutts had taken possession of the disputed parcel by acquiescence, based on the 1969 property line fence erected on the property line described in the Orcutts' 1928 and 1957 deeds. In reaching this finding, the court relied on evidence that, in 1969, Blum's father paid the Orcutts for one-half the cost of constructing the fence. From this fact, the court then inferred that the fence was not only for convenience and to keep the horses out, but also to establish the property line of the adjoining

[10] We note that the transcripts filed with this court contain only Blum's testimony. It is apparent from the court's oral ruling at the conclusion of the bench trial, and its written decision on the Blums' motion for reconsideration, that other witnesses testified, including one of Blum's brothers and certain neighbors. We cannot tell from the record whether Veryl or Norma Orcutt testified. The appellant bears the responsibility of ensuring that the record includes all documents pertinent to the issues raised on appeal. *See* ***Schaidler v. Mercy Med. Ctr. of Oshkosh, Inc.***, 209 Wis. 2d 457, 469, 563 N.W.2d 554 (Ct. App. 1997). Because the appellate record is incomplete, we must assume the missing parts of the record support the trial court's ruling. ***Id.*** at 470.

We also note that, early in the trial, the court explained to the parties that, although it would allow into evidence testimony regarding statements Blum's father made to him about the issue in dispute, the court would not consider that evidence in reaching its decision because those statements are inadmissible under what is referred to as "the dead man statute," WIS. STAT. § 885.16. Blum does not appeal the exclusion of his testimony regarding his father's statements to him under this statute.

parcels. The court reasoned that it was unreasonable for the Orcutts to pay one-half of the cost to put up the fence if it was not a property line fence. The court also considered it significant that the fence was placed on the property line as Orcutt understood it to be, based on Orcutt's reading of the 1928 and 1957 deeds, a reading which the court found to be reasonable. Nevertheless, the court then allowed the Blums to file a motion for reconsideration on the issue of whether they entered into possession of the disputed parcel under a "good faith claim of title."

¶28 The Blums filed their motion for reconsideration and the court held a hearing on the motion. In a written decision, the court reaffirmed its initial decision in favor of the Orcutts. The court also reaffirmed its finding that the Blums lacked good faith "in light of Ralph Blum's testimony that he had extensive knowledge of real estate law as a result of his long-term employment as a Department of Transportation surveyor, including knowledge of claims of adverse possession based upon the location of property fences." The court also wrote: "Given that it was the commonly accepted belief by the property owners in the area that the 1969 fence was the property line, the court concluded that Mr. Blum knew that by ripping out that fence he was staking claim to property which was subject to an ownership claim of the plaintiffs."

¶29 More to the point, the trial court went on to say that after Blum had the property surveyed, he should have known that his father "had acquiesced to the construction of a property line fence in a location that shorted him seven acres," and that "[h]is attempt to remedy the situation by taking out the fence substantiates his awareness of the legal significance of the location of the fence." The court also noted that aside from Blum's testimony, "there was little practical reason to rip out the remnants of the 1969 fence and no practical reason to construct a new fence on the bluff along the disputed parcel," which, in the court's view, indicated

that the Blums were simply attempting to demonstrate their right to ownership of the disputed parcel by acting to extinguish the Orcutts' claim to title.

¶30 Based on these findings, the trial court concluded that the Orcutts had acquired fee simple title in the disputed seven-acre strip of land by acquiescence. The court also concluded that the Blums failed to reacquire possession of the disputed strip of land by adverse possession based on WIS. STAT. §§ 893.26 and 893.27 because Blum knew of the Orcutts' claim to the property at the time the Blums acquired title to the parcel, thus the Blums did not enter into possession of the property under a "good faith claim of title exclusive of any other right."

¶31 Assuming without deciding that the legislature's purpose for adding the "good faith" element to the ten-year adverse possession statute was to deprive a person the benefit of the shortened period to adversely possess property only in circumstances where the person enters under a deed, knowing that the deed is given by someone who is not the owner, *see* Judicial Council Committee's Note to WIS. STAT. § 893.26(2)(a), we conclude that the record supports the trial court's conclusion that the Blums did not enter into possession of the disputed parcel under a "good faith claim of title."[11]

¶32 Blum testified to his extensive background in surveying and his understanding of how one takes property under adverse possession, including the significance of a property line fence, which he agreed is to designate the line

[11] We may affirm the circuit court on an alternative ground so long as the record is adequate and the parties have the opportunity to brief the issue on appeal. *See* ***Doe v. General Motors Acceptance Corp.***, 2001 WI App 199, ¶7, 247 Wis. 2d 564, 635 N.W.2d 7.

separating two parcels. Blum testified that he had the property surveyed prior to purchasing it from his father and from that survey he was aware that something was "wrong" with the placement of the property line fence. Although he testified that he believed the 1969 fence was a fence of convenience and not a property line fence, it was reasonable for the court to infer from Blum's own testimony and the testimony of other witnesses that the Blums intended to reacquire possession of the parcel by moving the property fence line soon after taking possession of the property. Moreover, the court did not credit Blum's testimony or his brother's testimony, finding their testimony to be "self-serving and contrary to that of other disinterested witnesses."

¶33 The Blums argue that the facts establish that they entered into possession of the seven-acre strip of land under a "good faith claim of title." Most of the facts they point to in support of their argument concern the description in each party's deed to their respective properties. The Blums miss the point. First, the trial court's conclusion that the Orcutts adversely possessed the property was based on the doctrine of acquiescence, which is a determination that the Orcutts and Blum's father agreed that the property line of their respective parcels was reflected by the fence for which each of them paid one-half the expense to erect. The undisputed evidence is that the 1969 fence was erected without the assistance of a survey. Thus, the description in each family's deed is immaterial to the determination of the property line as it existed when the Blums first came into possession of the property in 1997.

¶34 Second, as we have explained, the record contains facts from which the trial court could reasonably find that the Blums did not enter into possession of the disputed seven-acre strip of land under a "good faith claim of title." Those findings are not clearly erroneous. Moreover, the evidence the Blums rely on in

support of their argument come solely from Blum's testimony, which, as we have indicated, the trial court clearly discredited.

CONCLUSION

¶35 Based on the trial court's findings and applying the Blums' construction of "good faith claim of title" as explained in the Judicial Council Committee's Note to WIS. STAT. § 893.26(2)(a), we conclude that Blum's father, Ralph D. Blum, was not the owner of the disputed seven-acre strip of land when the Blums took title to the property from him, and that the trial court correctly concluded that the Blums did not acquire possession of the seven-acre strip of land under a "good faith claim of title," within the meaning of WIS. STAT. § 893.26(2)(a). We therefore affirm.

By the Court.—Judgment affirmed.

Not Recommended for publication in the official reports.