IN THE COURT OF APPEALS OF IOWA

No. 2-193 / 11-0201
Filed June 13, 2012

JACK R. CROWLEY and
VERONICA CROWLEY,
Plaintiffs-Appellees,

vs.

JOHN CROWLEY and
CAROL CROWLEY,
Defendants-Appellants.

Appeal from the Iowa District Court for Cedar County, Mark J. Smith, Judge.

John Crowley appeals the district court's ruling denying his claim of adverse possession to certain property and awarding a writ of possession to the property to his brother, Jack Crowley. **AFFIRMED.**

Eddie R. Broders and Douglas W. Simkin, Tipton, for appellants.

Gregg Geerdes, Iowa City, for appellees.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

MULLINS, J.

John Crowley appeals the district court's decision denying his adverse possession claim, and granting his brother's, Jack Crowley's, petition for a writ of possession to property in Cedar County. John asserts the district court erred in interpreting certain evidence submitted at trial, erred in interpreting the exclusivity requirement of adverse possession, erred in failing to consider whether he had color of title under Iowa Code section 560.2(2) (2009), and erred in failing to consider the ten-year statute of limitations in Iowa Code section 614.1(5). For the reasons stated below, we affirm.

I. BACKGROUND AND PROCEEDINGS.

This appeal involves a family dispute over property. The disputed land is an approximate four-acre section of a larger nineteen-acre parcel located in Cedar County. In 1981 the same section of land was the subject of a lawsuit filed by the title owner, B.L. Anderson, against Jack and his then wife, and John T. and Patricia Crowley, Jack and John's parents. The district court ruled in 1983 that B.L. Anderson was the rightful owner of the entire nineteen-acre parcel. B.L. Anderson subsequently brought a forcible entry and detainer action against Jack and his father in 1984 to have them removed from the land in question. The district court denied the request as it was filed more than thirty days after the prior court order. The action was dismissed, but the court acknowledged B.L. Anderson did have other options available in order to remove the Crowleys from the land. No other action was taken and the Crowley family continued to occupy and use an approximate four-acre portion of the property. Jack eventually

purchased the entire nineteen-acre parcel in December of 2001 from the then title owner.[1]

John, along with his father, was the title owner to a 4.5-acre piece of property located immediately east and adjacent to the property in dispute.[2] This land was referred to at trial as Lot A. John rented the land to Jack at various times from 1989 until 2009. Jack lived on Lot A in a mobile home with his second wife, Veronica. Lot A is land-locked and only accessible through a driveway across the property in dispute in this case.

Jack filed the lawsuit giving rise to this appeal on July 17, 2009, after John refused to renew the lease to Lot A and placed concrete barricades blocking the driveways on the disputed property leading to Lot A. John also erected a fence to the south of the driveway, which prevented Jack from gaining access to livestock he kept to the south and east of the disputed property. Jack's petition sought for the court to issue an order that the defendants had no right of possession of the disputed property, and to issue him a writ of possession. John filed a counterclaim asserting he owned the property based on adverse possession.[3]

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[1] B.L. Anderson deeded the property to Mercy Hospital Endowment Foundation in 1984. The Foundation deeded the property to Michael and Sheryl Koch in 1986, who then deeded the property to John Kuehnle three months later. Kuehnle owned the property from 1986 until he sold it to Jack Crowley in 2001 for $20,000.

[2] Jack initially owned this property until his divorce from his first wife in 1988, when he deeded the property to his father. The father then deeded the property to John and himself as joint tenants with the right of survivorship in 1995. When the father died in 2007, John became the sole owner of Lot A.

[3] The counterclaim was asserted by all defendants to the action, which included Patricia Crowley; John and Jack's mother; John, as trustee of the Patricia Crowley Revocable Trust; and John and Carol Crowley. The district court granted partial summary judgment

The case proceeded to a bench trial on October 25, 2010. The court issued its decision December 15, 2010, finding Jack and Veronica were the proper owners of the entire nineteen-acre parcel, and denying John and Carol's adverse possession counterclaim. The district court found the entire Crowley family used the disputed land since 1981, and therefore, the adverse possession counterclaim "fails for failure to prove exclusive use for at least ten years by the defendants." The court found an easement by acquiescence across the disputed property in favor of titleowner John so that he could gain entry to Lot A. The district court also awarded Jack and Veronica $1500 in damages it found Jack incurred when John blocked the driveway and erected a fence, preventing Jack and Veronica from accessing their livestock and necessitated the reopening of another entrance to the property. John appeals.

II. SCOPE OF REVIEW.

As this case was tried in equity, our review is de novo. *Mitchell v. Daniels*, 509 N.W.2d 497, 499 (Iowa Ct. App. 1993). We examine all the facts and the law to decide the issues anew. *Brede v. Koop*, 706 N.W.2d 824, 826 (Iowa 2005). However, we give weight to the district court's findings, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g).

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to Jack with respect to his claim against Patricia Crowley. The court found because Patricia had been a party to the previous 1983 lawsuit, she was not able to now claim adverse possession of the property in good faith. Also at the close of trial, John dismissed the counterclaim with respect to the Trust. Thus, the only parties remaining after trial were John and his wife, Carol, and Jack and his wife, Veronica.

III. ADVERSE POSSESSION.

To establish adverse possession one must establish "hostile, actual, open, exclusive and continuous possession, under a claim of right or color of title, for at least ten years, by clear and positive proof." *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982). The law presumes possession of land under regular tile, so the doctrine of adverse possession is strictly construed. *Mitchell*, 509 N.W.2d at 499.

The district court in this case concluded John could not prove he had exclusive use of the property for at least ten years. The district court found the entire Crowley family has made use of the land in question for various purposes. Jack and Veronica used the land by creating trails, hunting, planting various plant species, cutting and selling firewood, and operating four-wheeled vehicles. John and his father used the land to pasture their livestock, and to grow crops.

John asserts on appeal the district court erred in interpreting the exclusivity requirement of adverse possession to mean "exclusive use," when in fact it means "exclusive possession." He cites *Huebner v. Kuberski*, 387 N.W.2d 144 (Iowa Ct. App. 1986), in support of his assertion. In *Huebner*, two adjoining landowners disputed where the boundary line was located. 387 N.W.2d at 145–46. One landowner, Kuberski, enclosed a portion of the disputed property with a fence and planted a garden inside. *Id*. at 146. The adjoining landowner, Condon, believed he owned the land enclosed by the fence, so he told his children to climb the fence and pick the strawberries that Kuberski had planted. *Id*. Kuberski would shout at the children to leave the land when he discovered

them. *Id*. In concluding Kuberski had acquired title of the land inside the fence by adverse possession, the court stated "a claimant's possession need not be absolutely exclusive; it need only be of a type of possession which would characterize an owner's use." *Id*. "[M]ere casual intrusion by others on property occupied by the adverse claimant does not deprive his possession of its exclusive character." *Id*. The court concluded the children's intrusion was occasional and did not deprive Kuberski of the exclusive nature of his possession. *Id*.

While John attempts to analogize Jack's use of the disputed property with that of the children in *Huebner*, we agree with the district court that John has failed to prove he had exclusive use or possession of the property. The evidence produced at trial showed Jack, Veronica, and other friends and family routinely used the disputed property for recreational purposes such as hiking, four-wheeling, hunting, and sledding. In addition, Jack used the property to generate income as he would cut and sell wood from the property. This use of the property by Jack and others is far more significant than the occasional intrusion by the children analyzed in *Huebner*.

This case is also distinguishable from *Huebner* in that Kuberski would yell at the neighbor children to get off his land when the children were discovered in his garden picking berries. *Id*. In contrast, John never told Jack or anyone else to stop using the property until he blocked Jack's entrance onto the property in June of 2009. "[A] claimant's exclusive possession must be such as to operate as an ouster or disseisin of the owner of the legal title, and the owner must be

wholly excluded from possession by claimant." 2 C.J.S. *Adverse Possession* § 59 (2003).

There was testimony from Jack and his sister, Patricia Bielema, that John asked Jack for permission to erect a fence north of the driveway in order to graze his sheep. *See Council Bluffs Sav. Bank v. Simmons*, 243 N.W.2d 634, 637 (Iowa 1976) (finding the use of property with owner's permission can never ripen into title by adverse possession). In addition, John testified he considered the land to belong to his father until his father's death and also belong to the Crowley family as a sort of family compound where no permission to use the land was needed. This joint or common possession of the land by John, Jack, and the rest of the Crowley family, prevents John's possession "from having the requisite quality of exclusiveness." 2 C.J.S. *Adverse Possession* § 59.

John also claims the district court erred in considering only whether he had a "claim of right," and thereby, failing to consider whether he had "color of title" under Iowa Code section 560.2. Section 560.2 defines the term "color of title" for the purposes of chapter 560 to include "A person who has alone or together with those under whom the person claims, occupied the premises for a period of five year continuously." First, we find the definition of color of title in section 560.2 inapplicable to this case as that definition only applies to actions brought pursuant to chapter 560. "Color of title," when used in the adverse possession context, means "that which in appearance is title but in reality is not title." *Grosvenor v. Olson*, 199 N.W.2d 50, 52 (Iowa 1972); *Goulding v.*

Shonquist, 141 N.W. 24, 25 (Iowa 1913) ("To constitute color of title there must be a paper or record title of some kind, ...").

Not only is section 560.2 not applicable to adverse possession claims, John also fails to point us to where the district court made any finding at all with respect to whether John had "color of title" or "claim of right." The district court restricted its decision to the exclusive use element of adverse possession. Since it found no exclusivity, it did not need to, nor did it, address the issue of "color of title" or "claim of right" in its decision. We therefore fail to see how the district court erred in not considering section 560.2 in this case.

Next, John faults the district court for failing to consider and for misinterpreting certain evidence. He asserts the district court incorrectly considered the entire nineteen acres instead of only the small section of the property in dispute. He claims the district court erred in finding Jack had continuously been on the property from 1982 to 2009 where it was established John's sister and her ex-husband lived on Lot A from 1987 until 1991. He asserts the district court incorrectly interpreted Jack's use of the driveway and incorrectly determined Jack had no other access to reach his livestock when John barricaded the driveway in 2009. He also claims the district court failed to consider evidence that he had been occupying the land for more than ten years prior to Jack purchasing the property in 2001. Finally, he claims the court misinterpreted the testimony regarding John's movement of the livestock at Jack's request and the construction of the fence south of the driveway. Having reviewed each of these claims of error and the trial transcript, we find no error

that affects our determination that John did not have exclusive use or possession of the property for the requisite length of time.

Finally, John claims the district court erred when it failed to consider the ten-year statute of limitations imposed by section 614.1(5)[4] for the recovery of real property. John asserts the undisputed testimony established he has occupied and farmed the land in dispute since 1984, and thus, the statute of limitations for the current action would have run in 1994.

We note the ten-year statute of limitations does not begin to run until one claiming adverse possession has disseized or ousted the title owner. *Robinson v. Lake*, 14 Iowa 421, 424 (1863). Only when the adverse claimant proves adverse possession for the statutory period will an action by the title owner be barred by the statute of limitations. *Burgess v. Leverett & Assocs.*, 105 N.W.2d 703, 706 (Iowa 1960). This is because one cannot bring an action to vindicate his rights to real estate until such time as his possession is disturbed or his title is attacked. *Fulton v. McCullough*, 7 N.W.2d 910, 913 (Iowa 1943). As stated above, John has failed to establish the exclusivity requirement for the property in question. Thus, the statute of limitations did not begin to run until such time as exclusive possession was established. It was not until June of 2009 that John

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[4] Iowa Code section 614.1 provides in part:

> Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:
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> . . . .
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> 5. Written contracts—judgments of courts not of record—recovery of real property. Those founded on written contracts, or on judgments of any courts except those provided for in subsection 6, and those brought for the recovery of real property, within ten years.

took affirmative steps to prevent Jack's access to or use of the property in question. Jack subsequently filed the lawsuit on July 17, 2009. Thus, we find the ten-year statute of limitations does not bar this action.

As we find the district court correctly determined John failed to prove exclusive use of the property in dispute for the requisite period of time, we affirm the district court's ruling.

AFFIRMED.