

STATE OF MICHIGAN
COURT OF APPEALS

CAROLYN SIDERS,

Plaintiff-Appellant,

v

EDWIN L. DEYOUNG, LISA DEYOUNG and
DENNY L. JORDAN also known as DENNIS
JORDAN,

Defendants-Appellees.

UNPUBLISHED

February 26, 1999

No. 207559

Newaygo Circuit Court

LC No. 96-016506 CH

Before: Whitbeck, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except with regard to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997).

To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years. MCL 600.5801; MSA 27A.5801; *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Where a person possesses the land of another intending to hold to a particular, recognizable boundary regardless of the true boundary line, the possession is hostile and adverse possession may be established. *Gorte v Dep't of Transportation*, 202 Mich App 161, 170; 507 NW2d 797 (1993). To claim by adverse possession, one must show that the property owner of record has had a cause of action for recovery of

the land for more than the statutory period. *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993).

After carefully reviewing the record, we conclude that the trial court did not err in granting defendants' motion for summary disposition and denying plaintiff's motion for summary disposition. Even assuming that plaintiff satisfied all the other requirements for obtaining title by adverse possession, plaintiff did not establish that she possessed the property at issue for the necessary fifteen-year period.

Plaintiff acquired an interest in the land in 1983. Because she filed this lawsuit in 1996, plaintiff could establish that the land had been held adversely for the requisite period only if she tacked on her predecessors' periods of holding. However, the statutory period of possession necessary for obtaining title by adverse possession is not fulfilled by tacking successive periods of possession by different persons in the absence of privity between those persons. Privity is established by inclusion by reference to the claimed property in the instruments of conveyance or by parol references at time of conveyances. *Siegel v Renkiewicz Estate*, 373 Mich 421, 425; 129 NW2d 876 (1964); see *Connelly v Buckingham*, 136 Mich App 462, 474; 357 NW2d 70 (1984).

In her deposition, plaintiff admitted that neither the deed conveying ownership to her husband nor the deed conveying ownership to both of them contained any reference to the disputed strip of land. She also admitted that there had been no oral reference to the property at the time of the conveyances. In addition, plaintiff's counsel stipulated that there was no separate writing in existence conveying the disputed land to plaintiff.¹ Plaintiff has therefore not demonstrated privity of estate with her predecessors in title. *Siegel, supra*. Her claim of adverse possession fails because she has not shown actual, continuous, open, notorious possession of the property for the statutory period of fifteen years. *West Michigan Dock & Market Corp, supra*.

Plaintiff argues that the intention of the parties was to convey the disputed land as part of the property to which they held title. She contends that no oral or written statements were needed because of this knowledge. However, unstated intent to include the disputed property is insufficient. See *Siegel, supra*.

Plaintiff also argues that she is entitled to a prescriptive right to the use of a road across defendants' land. However, because this issue was neither raised before nor addressed by the trial court, we decline to address it. See *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Affirmed.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin

¹ The transcript of plaintiff's deposition contains the following:

Q. I would like you to examine these two deeds and I want you to tell me whether, in fact, you find any reference in these deeds to property which you now claim by adverse possession. Let's assume for the purposes of the record that the property that you claim by adverse possession is described as property which is located in government lot 10 of section 34 of Garfield Township.

MR. NEWMAN: I'm going to object to the form of the question because I believe it calls for a legal conclusion or a conclusion by a surveyor, and this witness is not qualified to answer.

MR. SCHUITMAN: All I'm asking her to do is state whether, in fact, she finds any reference in either of these deeds to government lot 10 of section 34, Garfield Township.

MR. NEWMAN: If she knows.

A. I honestly don't know.

Q. (BY MR. SCHUITMAN) Can you read the deed?

A. I can read the deed. I don't see any reference to lot 10, but I do not know legal descriptions.

Q. So these deeds make no reference to this property that you are claiming by adverse possession; is that correct?

A. In my mind they do because I considered that part of our lots.

Q. But if it is in lot 10, it is not described in here; is that correct?

A. Apparently not.

Q. So if I were a guy going to the Newaygo County Register of Deeds and I wanted to find out if you made any claim to lot 10, I wouldn't find that out by looking at these two deeds, would I?

A. That's correct.

Q. At the time when these deeds were made or at any time from your prior testimony nothing was stated to you orally that, in fact, the Siders were conveying that to you?

A. Not at that point in time.

Q. And, in fact, when Charles made out this deed in 1983, he didn't say anything about it then either, did he?

A. About what?

Q. This adversely possessed property being claimed?

A. We didn't call it adverse possession. He definitely said that was our land, yes.

Q. I understand that. But when this deed was made out nothing was said about that, was there?

A. There was no dispute at that time. I don't know how I can answer that. The property at that time was ours. It was never questioned to us.

Q. Do you have in your possession or is there recorded anyplace any document, whether it is recorded or not, any written claim that you make to this particular piece of property that you are now claiming in this lawsuit?

MR. NEWMAN: I'm going to object. I think the question is vague.

MR. SCHUITMAN: I will reword it.

MR. NEWMAN: Okay. Thank you.

Q. (MR. SCHUITMAN) Have you ever had prepared or have you ever put in writing any kind of a document that would indicate that you or any of your predecessors claimed any of this property that you are now claiming by adverse possession?

A. I don't know how to answer that because it was never disputed. You can't --

Q. Either you did or you didn't.

A. It wasn't disputed.

Q. Listen to me. Did you ever put it in writing?

A. Put what in writing? I don't understand what you are saying. We have got a disputed line, but it wasn't disputed --

Q. I will ask you a question just like the last one. Did you ever put any kind of writing in place in which you said that you owned part of lot 10 -- of government lot 10, section 34, Garfield Township?

A. It was never in question.

Q. That is not what my question was. Either you did or you didn't.

MR. NEWMAN: I think that is the best she can answer.

MR. SCHUITEMAN: No, it isn't.

A. I don't know the lot numbers. I am not going to say a lot number when I don't even know them.

Q. (BY MR. SCHUITEMAN) Let's assume --

A. I knew the property line --

Q. Please assume for the purpose of this question that the property that you are claiming in this action falls in government lot 10, section 34, Garfield Township. Let's just assume it for this purpose. Okay?

A. I don't know that.

Q. I know that you don't know that.

My question to you is, have you ever put anything in writing that says that you claim any part of that land as yours? That's easy. It is yes or no.

A. I don't see how I can answer that --

Q. Yes or no.

A. -- because I didn't have --

Q. Mrs. Siders, yes or no.

MR. NEWMAN: I will stipulate that we cannot produce any sort of writing, Mr. Schuiteman.

MR. SCHUITEMAN: Thank you.

A. I don't have a writing on any of it.

Q. (BY MR. SCHUITEMAN) Very good.

MR. NEWMAN: I will stipulate we cannot produce a writing conveying any part of government lot 10 to Mrs. Siders --

MR. SCHUITEMAN: Very good.

MR. NEWMAN: -- other than our Complaint.