

STATE OF MICHIGAN
COURT OF APPEALS

STUART SPRAGUE, BETTY JEAN CROTEAY,
JOYCE MARIE THOR, and DONNA FARR,

UNPUBLISHED
April 21, 2000

Plaintiffs-Appellants,

v

No. 207428
Oakland Circuit Court
LC No. 96-511049-CH

ANTONIO GOQUIOLAY,

Defendant-Appellee.

Before: Collins, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal by delayed leave granted the trial court's order granting defendant's motion for summary disposition. We reverse and remand for further proceedings.

In 1948 plaintiffs' predecessors acquired a parcel of property in Oxford, Michigan. A survey indicated that the property was lakefront property. Plaintiffs and their predecessors remained in continuous and exclusive possession of the property after 1948, and made various improvements thereon. The property was both occupied and used for recreational purposes.

After a potential purchaser discovered that defendant owned a portion of the property claimed by plaintiffs, plaintiffs filed suit seeking to obtain title to defendant's property by adverse possession. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiffs' use of the property was not sufficient to establish title by adverse possession, and that he had no knowledge of plaintiffs' claim. The trial court granted defendant's motion, finding that plaintiffs could not establish the elements of adverse possession, including continuous use and defendant's actual knowledge of the claim.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this

subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). [*Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).]

To establish adverse possession, a claimant must show that his or her possession has been “actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years.” *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). The doctrine of adverse possession is strictly construed, and a party claiming title by adverse possession must establish the claim by clear and positive proof. *Strong v Detroit & Mackinac R Co*, 167 Mich App 562, 568; 423 NW2d 266 (1988).

Plaintiffs argue that the trial court erred by granting defendant’s motion for summary disposition. We agree, reverse the trial court’s decision, and remand for further proceedings. The trial court based its decision on its findings that plaintiffs could not establish continuous use of defendant’s property for the statutory period, and that defendant had no actual knowledge of plaintiffs’ claim. The evidence submitted by plaintiffs established that the property was used both as a home and for recreational purposes continuously from 1948 through 1994. Regular use of property as a summer home and for recreational purposes is sufficient for a claim of adverse possession. *Nechtow v Brown*, 369 Mich 460, 462; 120 NW2d 251 (1963). The record evidence established an issue of fact regarding plaintiffs’ continuous use of the property to which defendant held title.

Moreover, to sustain a claim of adverse possession, the claimant must establish either actual knowledge of the claim by the true owner, or show that the possession of the property was so open, visible, and notorious as to raise the presumption of notice to the world that the right of the true owner has been intentionally invaded with the purpose of asserting a claim of title. *Ennis v Stanley*, 346 Mich 296, 301; 78 NW2d 114 (1956). The evidence showed that plaintiffs made numerous improvements to their property and that to which defendant held title, including constructing a driveway, installing landscaping, building steps to the lake, maintaining a dock at the shoreline, and fencing a portion of the property. Such acts are of a kind sufficient to amount to open, visible, and notorious possession of land, and to put the true owner on notice of a claim. *Robbins v Eotoff*, 39 Mich App 589, 591-592; 197 NW2d 912 (1972). At a minimum, an issue of fact existed regarding defendant’s notice of plaintiffs’ claim.

The trial court’s order granting defendant’s motion for summary disposition is reversed, and this case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski