

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT A. HAMEL, Personal Representative of the
Estate of SHIRLEY A. HAMEL, a/k/a SHIRLEY
SANFORD HAMEL, f/k/a SHIRLEY A. TAYLOR,
Deceased,

UNPUBLISHED
July 7, 2000

Plaintiff/Cross-Defendant-Appellant,

v

No. 219646
Jackson Circuit Court
LC No. 96-077355-CH

DONALD WOODWARD and BLANCHE
WOODWARD,

Defendants-Appellees,

and

GERALD WOODWARD,

Defendant/Cross-Plaintiff-Appellee.

Before: Jansen, P.J., and Hood and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment in favor of defendant Gerald Woodward. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1973 plaintiff's decedent acquired title to certain property. In 1995 Spartan Corporation transferred title to property adjacent to that held by decedent to Donald and Blanche Woodward. The Woodwards transferred a portion of their property to Gerald Woodward. A survey indicated that the deeds held by decedent and Gerald Woodward overlapped at one point, and that decedent also made use of land immediately south of the overlap area and within Gerald Woodward's description.

In 1996 decedent filed suit claiming title to the whole of the disputed area by virtue of adverse possession. Gerald Woodward counter claimed, and sought removal of a barn that he contended encroached upon his property. Upon decedent's death, plaintiff, personal representative of her estate, was substituted into the case.

At trial, plaintiff testified that his property boundary included the disputed area, and that he had maintained the area since 1976. He had constructed a barn on an existing foundation located in the disputed area. Plaintiff could not recall if he had told anyone that he knew that his barn was located in part on the property now belonging to Gerald Woodward, but that Spartan Corporation had given him permission to build the barn in its present location. Gerald Woodward testified that he had had such a conversation with plaintiff. A former Spartan employee who worked at a nearby test site in 1977-1978 testified that Spartan mowed the disputed area and posted no trespassing signs.

In its findings of fact and conclusions of law, the trial court found that plaintiff established ownership by adverse possession of the land within the deed overlap, but not of the land immediately south of the overlap area. The court found credible Gerald Woodward's testimony that plaintiff related that he was aware that his barn was located partly on Woodward's property. The court concluded that the land immediately south of the overlap area was the property of Gerald Woodward, and ordered plaintiff to remove any part of his barn located on that property.

We review a trial court's findings of fact in an equity action under the clearly erroneous standard. *Ypsilanti Twp v General Motors Corp*, 201 Mich App 128, 133; 506 NW2d 556 (1993).

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 claim must be proven by clear and cogent evidence. *Walters v Snyder*, 225 Mich App 219, 223; 570 NW2d 301 (1997).

We affirm the judgment of the trial court. Use of property with permission cannot support a claim of adverse possession. *De Hollander v Holwerda Greenhouses*, 45 Mich App 564, 570; 207 NW2d 187 (1973). Gerald Woodward testified that plaintiff admitted that he knew that his barn was located on property belonging to Woodward, but that he had been given permission to locate his barn on that spot by Spartan, a predecessor in interest to Woodward. Plaintiff was unable to deny that such a conversation took place. The trial court, as the trier of fact, was entitled to find that Woodward's testimony was credible and to accept it. The trial court did not clearly err in finding that plaintiff occupied the disputed area with permission. MCR 2.613(C). Under the circumstances, plaintiff could not establish the requisite hostile possession of the area immediately south of the overlap area for the statutory period of fifteen years. MCL 600.5801(4); MSA 27A.5801(4). Judgment was properly entered in favor of defendant.

Affirmed.

/s/ Kathleen Jansen
/s/ Harold Hood
/s/ Henry William Saad