STATE OF MICHIGAN

COURT OF APPEALS

IN RE PERIPOLI ESTATES.

ESTATE OF EMILIO PERIPOLI, by its Personal Representative, JOAN SHELINE, and ESTATE OF JOSEPH PERIPOLI, by its Personal Representative, BONNIE MOORE,

Appellees,

v

ESTATE OF MARIE PERIPOLI, by its Personal Representative, DEBORAH PERIPOLI,

Appellant.

UNPUBLISHED
January 20, 2011

No. 295022
Dickinson Probate Court
LC No. 71-024249

Before: FORT HOOD, P.J., and MURRAY and SERVITTO, JJ.

PER CURIAM.

Appellant appeals as of right from the probate court order denying appellant's claim of adverse possession. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. FACTS AND PROCEEDINGS

The dispute in this case revolves around who possesses an approximately 40-acre tract of land located in Dickinson County. The testimony presented to the probate court was largely undisputed, but subject to varying interpretations. Briefly, in 1961, Joseph Peripoli died intestate. Among his possessions was a farm in Norway Township. In 1963, that property was divided between Joseph's four siblings, only one of whom, Emilio Peripoli, resided in the United States; the other three resided in Italy. Emilio moved onto the land and lived there throughout the early and mid-1960s with his son, Mario, and later Mario's wife, Marie, and their daughter, appellant Deborah Peripoli. The arrival of Mario, Marie, and appellant onto the land was initially peaceable. In 1967 or 1968, Mario and Marie pressured Emilio to move from the land because of inappropriate actions by Emilio toward Marie and appellant. The probate court concluded that Emilio moved into a house in town owned by Mario, and thus he was not "kicked to the curb." Emilio's grandson, Robert Blacklund, testified that Emilio never again lived on the farm.

Maria, Mario, and appellant kept the taxes up to date from the time Emilio left the property to the present. They did not change the character of the home or exclude anyone from the land other than Emilio. Backlund testified that Mario and Marie told him that they did not own the land and that was why they declined to invest in improvements. According to Backlund, Marie said she did not own the land and so was not concerned that she could lose the farm in a lawsuit when Backlund was injured on the land. Backlund also testified that his parents told him that Mario and Marie were allowed stay on the land so long as they paid the taxes. Finally, Backlund testified that Marie stated that she did not want the land to go to appellant, but took no actions to will or otherwise convey the property to anyone else.

After Mario's death, Marie leased the farm property from 1992 to 2006 to neighbors to bail hay. She never shared the rent money with Emilio. Appellant testified that her parents never spoke of living on the land by permission or other agreement, but she also did not testify that her parents ever spoke of owning the land.

After hearing the evidence and receiving post-hearing briefs from the parties, the probate court ruled that appellant had not proven her counter-claim of adverse possession. Specifically, the court ruled that appellant had not established that Marie and Mario had held the property under a notorious and hostile possession under a claim of right, because: (1) Marie had directly or indirectly indicated several times that she did not think she owned the land; (2) Emilio was not removed from the property as a sign of ownership by Mario and Marie, but for personal reasons; and (3) Emilio had told Mario and Marie that they could remain on the property as long as they paid the taxes (which they did). The trial court summarized its conclusion as follows:

> It does not appear to this Court that at any time during her lifetime did she [Marie] change her position to one of a claim of ownership. I believe that for the most part the possession was peaceable, was in character with a family understanding that Mario and Marie had farmed the land and that they should be able to stay there as long as they paid the taxes and as long as they wanted to but that it would revert to the rightful owner or owners.

II. ANALYSIS

On appeal, appellant argues that reversal is required because she established all of the elements of adverse possession. Specifically, she argues that the ousting of Emilio and then remaining on the land established notorious and hostile possession under claim of right.

This Court reviews "de novo actions that are equitable in nature, such as quiet title actions, but the trial court's factual findings are reviewed for clear error." *Canjar v Cole*, 283 Mich App 723, 727; 770 NW2d 449 (2009). The trial court's conclusions of law are also reviewed de novo. *Id.*

To establish a valid claim of adverse possession, the person claiming title must show that that person's possession was actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years. *Id*. at 731, citing *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993); MCL 600.5829. In addition, the claimant must demonstrate that the use of the land was hostile and under claim of right, meaning "'inconsistent with the right of the owner, without permission asked or given, and which use would entitle the

owner to a cause of action against the intruder.'" *Canjar*, 283 Mich App at 731-732, quoting *Wengel v Wengel*, 270 Mich App 86, 92-93; 714 NW2d 371 (2006).

In the present case, appellee Sheline concedes that Marie Peripoli's actions fulfilled the elements of actual, visible, open, exclusive, continuous, and uninterrupted possession. Therefore, at issue is whether the elements of notorious and hostile possession under claim of right were fulfilled.

Establishing hostile possession does not require a showing of ill will toward the original owner. *Wengel*, 270 Mich App at 92. Rather, to satisfy that element, the claimant must use the property without permission and otherwise in a manner inconsistent with the rights of the true owner. *Id*. Consequently, and importantly for this case, using land with the permission of its owner never ripens into title by way of adverse possession. *Kipka*, 198 Mich App at 438. However, prior permissive use of real property does not itself defeat later open and hostile possession. *Id*. For a permissive use to become an adverse one, "there must be a distinct and positive assertion of a right hostile to the rights of the owner and such assertion must be brought to [the owner's] attention." *Taylor v SS Kresge Co*, 326 Mich 580, 589; 40 NW2d 636 (1950). When making this determination, the court must make all presumptions in favor of the record titleholder. *Rozmarek v Plamondon*, 419 Mich 287, 292; 351 NW2d 558 (1984).

Here, the trial court accurately characterized this as a family situation where the facts and circumstances did not demonstrate that the family members were occupying the subject property in a way adverse to the rights of the original owner. Although Emilio left the land in 1967 or 1968, he thereafter resided in a house owned by Mario, thus showing that the family relationship continued and suggesting a mutuality of permissive living arrangements. Additionally, the evidence that Marie told appellant that she had to pay the taxes to remain on the land, that Marie and Mario declined to make improvements on the land because they did not own it, and that Marie said she was not concerned about losing the land as a result of a possible personal injury lawsuit because she did not own it, demonstrates that Marie considered her possession of the land to be permissive and not as an owner through adverse possession. Accordingly, Marie did not demonstrate that she was occupying the farm under a claim of right adverse to the interests of the original owner. Consequently, her possession cannot be characterized as hostile or under claim of right, two necessary elements of adverse possession.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Deborah A. Servitto