STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1247

Wendell A. Jokela,
Appellant,

vs.

Karol Jokela, et al.,
Respondents.

Filed August 20, 2012
Affirmed
Johnson, Chief Judge

Becker County District Court
File No. 03-CV-10-2016

Malcolm Whynott, Kennedy, Nervig, Carlson & Van Bruggen, LLP, Wadena, Minnesota (for appellant)

Robert P. Cunningham, Kenneth H. Bayliss, W. Benjamin Winger, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Chief Judge

Harry Jokela died 30 years ago without a will. His three adult children never sought to determine ownership of the farmland that he left behind. Twenty-eight years

after Harry's death, and after two of his children also had died, the heirs of Harry's deceased children petitioned the Becker County District Court for a determination of descent to establish that Harry's property passed to his three children in equal shares. The sole surviving child opposed the petition and asserted a claim of adverse possession to establish that he is the sole owner of the property. The district court rejected the adverse-possession claim on cross-motions for summary judgment, granted the petition for a determination of descent, and decreed that the surviving child and the deceased children's heirs hold undivided one-third interests in the farmland. We affirm.

FACTS

Harry Jokela died intestate in 1982 at the age of 82. He was the father of three children: Wesley, Wendell, and Arlene. Two of his children have since passed away. Arlene died in 2005 at the age of 58 and is survived by her husband, Elmer Schoenborn, and their three children. Wesley died in 2006 at the age of 68 and is survived by his wife, Karol Jokela, and their four children.

When Harry died, he owned several parcels of agricultural land in Becker County, totaling approximately 600 acres. Harry's younger son, Wendell Jokela, assumed responsibility for managing the farm in 1965 and has lived on the farm for his entire life. Harry's other two children left the farm as young adults but remained in the Becker County area.

The three siblings generally had a harmonious relationship with each other after Harry's death. Wendell, Wesley, and Arlene and their respective families often visited with each other at the homestead, where Wendell and his wife lived. Wesley, his wife,

Karol Jokela, and their children often hunted on the farm, as did Arlene's husband, Elmer Schoenborn. Wendell erected "No Trespassing" signs on the property, but he did not intend for the signs to exclude his siblings, and there is no evidence that Wendell's siblings or their families needed permission to hunt on the property. Wesley harvested windfallen trees on the property, and he also built a hunting shack on one parcel of land that formerly belonged to Harry. Arlene and Wendell's wife partnered to sell household and farming products out of the homestead.

Despite their harmonious relationships, the three siblings never settled Harry Jokela's estate and, specifically, never sought to determine ownership of Harry's farmland. At various points in time, Wesley and Arlene occasionally requested a settling of the estate. But Wendell never took any action to do so. In the course of this lawsuit, Wendell explained that it was Harry's "intention that I inherit the farm and continue the farming operation he established." Wendell concedes that this purported agreement with his father never was expressed in writing. Wendell also explained that "[b]oth Wesley and Arlene understood that I considered the farm to be mine." But Karol and Elmer testified in their depositions that Wesley and Arlene regarded the land to be jointly owned and that the matter never was resolved because of "Wendell's unwillingness to cooperate with the rest of the family members." Wendell testified in his deposition that he never settled the issue of ownership of the farmland because he "[j]ust didn't get to it" and "[j]ust didn't take the time to do it."

In 2010, Karol Jokela and Elmer Schoenborn petitioned the district court for a determination of descent of the farmland. Karol and Elmer claimed undivided one-third

interests in the farmland through their deceased spouses' estates. Wendell filed an objection to the petition on the ground that Harry had given the farmland to him "in consideration for [his] decision to stay on the farm and to take care of their father." Wendell also commenced an independent action against Karol, Elmer, and their respective children to obtain ownership of the farmland. Wendell's complaint alleged four theories of relief: adverse possession, breach of contract, promissory estoppel, and "general grounds of equity."

The district court consolidated the two cases in September 2010. The parties filed cross-motions for summary judgment. In May 2011, the district court granted the summary judgment motion filed by Karol and Elmer and their respective children and denied the summary judgment motion filed by Wendell. At the same time, the district court granted the petition for determination of descent filed by Karol and Elmer. The district court concluded that Harry's farmland passed to his three children in equal shares after Harry died intestate in 1982. *See* Minn. Stat. § 525.16(4)(a) (1980) (repealed 1985). The district court also concluded that, when Arlene and Wesley died intestate in 2005 and 2006, respectively, their one-third interests in the farmland passed to their spouses, Elmer and Karol. *See* Minn. Stat. § 524.2-102(1) (2004). Accordingly, in July 2011, the district court issued a decree of descent that awarded undivided one-third interests in the farmland to Wendell, Karol, and Elmer. Wendell appeals.

D E C I S I O N

A district court must grant a motion for summary judgment if the evidence demonstrates "that there is no genuine issue as to any material fact and that either party is

entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to a grant of summary judgment, and we view the evidence in the light most favorable to the non-moving party. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

I. Adverse Possession

Wendell's primary argument on appeal is that the district court erred by granting summary judgment to Elmer and Karol on his adverse-possession claim. The district court's resolution of that claim and Wendell's other claims naturally led to the district court's granting of the petition for determination of descent and its decree that Elmer and Karol hold undivided one-third interests in the farmland.

To prove a claim of adverse possession, a plaintiff "must show, by clear and convincing evidence, an actual, open, hostile, continuous, and exclusive possession for the requisite period of time which, under our statute, is 15 years." *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972); *see also* Minn. Stat. § 541.02 (2010). In most situations, the requirement that possession be "hostile" requires proof of "the adverse possessor's intention to claim exclusive ownership of the property against all others." *Denman v. Gans*, 607 N.W.2d 788, 794 (Minn. App. 2000), *review denied* (Minn. June 27, 2000). But this general rule does not apply to the situation in which the plaintiff and the defendants are co-tenants. In that situation, "it is presumed that the disseizor possesses the lands with the implicit permission of his cotenants." *Id.* at 795.

This presumption may be rebutted but only by evidence of hostility that is contrary to the rights of a co-tenant:

> In order to overcome this presumption, not only must possession be open and notorious so that the owners may know of it, *there must be an express or implicit ouster of them, such ouster consisting of acts or declarations of hostility sufficient to indicate a truly adverse possession* and to start the statute of limitations running. An express notice is not necessary; an intention to hold the land adversely to the owners may be derived from all the circumstances of the case, especially the amount and nature of control exercised by the cotenant over the property.

Adams v. Johnson, 271 Minn. 439, 442, 136 N.W.2d 78, 81 (1965) (emphasis added) (footnote omitted). The plaintiff in such a case "must present clear and unequivocal proof of the inception of hostile possession." *Denman*, 607 N.W.2d at 795.

The evidence in the summary judgment record does not satisfy this standard. Wendell's evidence shows that he did not agree to settle the estate, but that evidence does not show that he "ousted" his siblings, either expressly or implicitly. Wendell testified in deposition about his understanding that he was or should be the sole owner of the farmland. But Wendell never testified that he communicated his understanding to his siblings, by words or actions, such that they might be on notice of Wendell's belief that they did not have an ownership interest in the farmland. As far as the summary judgment record shows, whenever Wesley or Arlene requested a settling of the estate, Wendell took no action simply because he "[j]ust didn't get to it" and "[j]ust didn't take the time to do it." Meanwhile, Wendell permitted his siblings and their families to use the property on

which he lived, consistent with co-tenancy. Wendell's inaction, and his apparent lack of explanation for his inaction, does not rise to the level of ouster.

The summary judgment record also includes an affidavit that Wendell executed two months after his deposition, which gets closer to evidence of an ouster but still does not achieve his goal. He states in that affidavit that Arlene and Wesley "understood that I would never split up the farm voluntarily." We are mindful of the rule that a "self-serving affidavit that contradicts earlier damaging deposition testimony is not sufficient to create a genuine issue of material fact." *Banbury v. Omnitrition Int'l, Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995). But it is unnecessary to apply the *Banbury* rule because the affidavit does not state that Wendell engaged in "acts or declarations of hostility sufficient to indicate a truly adverse possession." *Adams*, 271 Minn. at 442, 136 N.W.2d at 81. Specifically, Wendell's affidavit does not explain how Arlene and Wesley acquired the understanding they supposedly held. Wendell could have stated that they had such an understanding because he told them so, or that they had such an understanding because of certain actions he had taken, but he conspicuously refrained from such statements. Wendell's post-deposition affidavit is not capable of proving "acts or declarations of hostility sufficient to indicate a truly adverse possession," *see id.*, by clear and convincing evidence, *see Ehle*, 293 Minn. at 189, 197 N.W.2d. at 462.

Wendell relies on several supreme court opinions to support his argument that he rebutted the presumption of a co-tenant's permissive occupancy. He cites *Beitz v. Buendiger*, 144 Minn. 52, 174 N.W. 440 (1919), a dispute between three sisters in which the supreme court affirmed the district court's award of title by adverse possession. *Id.* at

53-54, 174 N.W. at 440-41. The case is distinguishable, however, because the supreme court deemed it "significant" that the sisters were "estranged" and "not always on friendly terms," *id.* at 55, 174 N.W. at 441, and it appears that the two out-of-possession sisters did not make any use of the property, or even visit, for approximately three decades, *id.* at 53-55, 174 N.W. at 440-41. Wendell also cites *Sawbridge v. City of Fergus Falls*, 101 Minn. 378, 112 N.W. 385 (1907), and *Kelly v. Palmer*, 91 Minn. 133, 97 N.W. 578 (1903). In both cases, the district court granted title by adverse possession, and the supreme court affirmed. *Sawbridge*, 101 Minn. at 379-80, 112 N.W. at 385-86; *Kelly*, 91 Minn. at 134-35, 137, 97 N.W. at 578-79. But neither case applies here because neither case involves co-tenants or the presumption that a co-tenant's occupancy is permissive. *See Sawbridge*, 101 Minn. at 379-80, 112 N.W. at 385-86; *Kelly*, 91 Minn. at 134-35, 97 N.W. at 578-79.

In their responsive arguments, Wesley and Arlene cite to *Hoverson v. Hoverson*, 216 Minn. 228, 12 N.W.2d 501 (1943), an opinion that the district court cited in rejecting Wendell's adverse-possession claim. In that case, Thron Hoverson died intestate in 1903. *Id.* at 229-30, 12 N.W.2d at 502-03. His son Benjamin began living on and working the farm the following year and continued to farm the land until the early 1940s, with only a brief interruption in 1909. *Id.* at 230-31, 12 N.W.2d at 503. Benjamin made needed improvements and paid taxes on the farm in the name of the "T. Hoverson Estate," and a sister occasionally assisted with the payments. *Id.* The district court denied Benjamin's claim of adverse possession after determining that he was a co-tenant with his siblings and that his possession was not hostile. *Id.* at 229, 231, 12 N.W.2d at 502-03. The

supreme court affirmed, holding that Benjamin did not rebut the presumption that his occupancy as a co-tenant was permissive because "there was nothing in these circumstances inherently hostile to the former family ownership and relationship; nothing to indicate hostility to or an assertion of adverse claims against his own brothers and sisters and the children of those who have died." *Id.* at 233, 237, 12 N.W.2d at 504, 506. Likewise, in this case, the circumstances of Wendell's possession of the farmland, his siblings' use of the farmland, and their generally harmonious relationships do not indicate the type of hostility necessary to rebut the presumption that the three siblings were co-tenants with equal rights to the property.

For these reasons, the district court did not err when it granted the summary judgment motion filed by Elmer and Karol and denied the summary judgment motion filed by Wendell on Wendell's adverse-possession claim.

II. Equity

Wendell's secondary argument on appeal is that the district court erred by granting summary judgment against him on his claim based on general principles of equity. Specifically, he argues that it is unjust and unfair to divide the farm because he worked for decades to maintain the farm while his siblings offered no assistance.

"Equity follows the law, and a court of equity will not disregard statutory law or grant relief prohibited thereby." *Kingery v. Kingery*, 185 Minn. 467, 470, 241 N.W. 583, 584 (1932). In other words, a district court "cannot invoke equitable theories to circumvent the plain language" of a statute. *Superior Shores Lakehome Ass'n v. Jensen–Re Partners*, 792 N.W.2d 865, 869 (Minn. App. 2011); *see also United States Fire Ins.*

Co. v. Minnesota State Zoological Bd., 307 N.W.2d 490, 497 (Minn. 1981) (denying equitable relief that would circumvent statutory restrictions); *McBride v. McBride (In re McBride's Estate)*, 195 Minn. 319, 324, 263 N.W. 105, 107 (1935) (stating that equity "cannot change the law" and that "statute [that] clearly governs" must be followed).

The district court determined the parties' respective interests in Harry's farmland by applying the well-established law of adverse possession and the probate statutes. As discussed above in part I, the district court properly determined that Wendell did not acquire the farmland by adverse possession. In light of that conclusion, the district court properly determined that Arlene and Wesley received undivided one-third interests in the farmland by operation of the intestacy statute, *see* Minn. Stat. § 525.16(4)(a) (1980), and that their interests passed to Elmer and Karol after their deaths in 2005 and 2006, *see* Minn. Stat. § 524.2-102(1) (2004). In light of those rulings, the district court properly did not award equitable relief to Wendell.

Affirmed.