

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOVEMBER 21, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1005

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

ANDREW J. KOJIS,
and MARGARET A. MUNDIGLER,

Plaintiffs-Respondents,

v.

JERRY ROSNOW,
and GWEN ROSNOW

Defendants-Appellants.

APPEAL from a judgment of the circuit court for Shawano County: EARL W. SCHMIDT, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Jerry and Gwen Rosnow appeal a judgment awarding Andrew Kojis and Margaret Mundigler disputed property by adverse possession. They argue that the trial court's decision does not specifically rule on the statutory elements for adverse possession, that the evidence does not

support the findings and that the property line chosen by the court is unclear, arbitrary and clearly erroneous. We reject these arguments and affirm the judgment.

The Rosnows are the owners of Lot 2 of a plat located on Shawano Lake. They bought the property in 1971 from Ed and Betty Kurtz. Andrew Kojis and his sister, Margaret Mundigler, acquired Lot 3 as tenants in common from their father, Andrew Kojis, Sr., who had owned Lot 3 since 1948. A survey determined that the Kojis cabin was partially located on Rosnows' lot. The trial court redrew the boundary between Lots 2 and 3, awarding the Kojises a part of Lot 2 based on adverse possession. The Rosnows concede that the part where the cabin was located was adversely possessed, but challenged the findings as to the additional property awarded in the judgment.

While the trial court did not make specific findings as to all of the elements of adverse possession, it heard argument regarding all of the elements and found that adverse possession had occurred. This court will therefore assume that the trial court has determined all issues in favor of adverse possession. See *Sohns v. Jensen*, 11 Wis.2d 449, 453, 105 N.W.2d 818, 820 (1960).

The Kojises presented adequate evidence to support their claim of adverse possession. To constitute adverse possession, physical possession of the property must be hostile, open and notorious, exclusive and continuous for twenty years. *Leciejewski v. Sedlak*, 116 Wis.2d 629, 636, 342 N.W.2d 734, 737 (1984). The Kojises presented evidence that their father and the Kurtz family considered a line of trees to be the boarder between Lots 2 and 3. In 1949 or 1950, the predecessors in title placed outhouses back-to-back along this line. The outhouses remained in those positions until the early 1970s. The Kojis family planted trees and placed a one-inch metal stake along that line. The Kojises also placed a sandbox on what they believed was their side of the tree line and at times stored items in that area. Kurtz put up a no trespassing sign on a chain across a private road at a point that would indicate his belief that the tree line separated the two lots.

The record shows that the Kojises' occupation of the disputed land was hostile, open and notorious, exclusive and continuous. "Hostile intent" does not mean deliberate, wilful, unfriendly animus. *Burkhardt v. Smith*, 17

Wis.2d 132, 139, 115 N.W.2d 540, 544 (1962). Even one who takes possession innocently through mistake satisfies the hostile intent element if he occupies the land to the exclusion of the true owner. *Northwoods Dev. Corp. v. Klement*, 24 Wis.2d 387, 393, 129 N.W.2d 121, 123 (1964). "Open and notorious" use of the land means that the adverse claim is open and obvious both as to the fact of possession and its real adverse character so as to apprise the owner of the possessor's intent to usurp control. See *Allie v. Russo*, 88 Wis.2d 334, 343-44, 276 N.W.2d 730, 735 (1979). "Exclusive use" must be of such a nature as to give notice of the adverse possessor's exclusive dominion to the owner or the public. *Id.* at 336, 276 N.W.2d at 736. "Continuous physical possession" for the statutory twenty years may be met by activities that are seasonal in character and that correspond with the natural uses of the particular property. *Laabs v. Bolger*, 25 Wis.2d 17, 23, 130 N.W.2d 270, 274 (1964). Here, the Kojis family occupied the disputed strip with a part of their cottage and an outhouse, planted and maintained a row of trees and placed a marker that sufficiently showed the Kurtz family and the Rosnows that they believed they owned the property up to the tree line.

The Rosnows argue that they engaged in activities that are inconsistent with the Kojises' ownership of the disputed property. They placed fieldstone in the disputed area, trimmed trees, and installed sewer pipe in the disputed area. All of these activities occurred after the twenty-year limitation set out in § 893.25, STATS., had expired. The Rosnows presented no witnesses to counter the Kojises' evidence of adverse possession from approximately 1950 to 1970. Even after the Rosnows purchased Lot 2, but before the survey disclosed the true boundary, the activities of the Rosnows in the disputed area were not sufficient to interrupt the Kojis family's continuous exclusive use of the property. The explanations of Gwen Rosnow's mowing habits are consistent with common sense and reasonable neighborliness and do not indicate any belief that the boundary to Lot 2 extended beyond the tree line.

Finally, the boundary line chosen by the trial court is sufficiently clear and supported by the record. The court accepted a line drawn by a witness on a map demonstrating the witness's understanding of the boundary from the time he was a child. Because the line of trees was not perfectly straight, any line drawn by the court would have been subject to the same criticism. The finding that the red line drawn on exhibit 1 is "very close to where everybody thought [the boundary] was" is supported by adequate evidence and constitutes an equitable resolution of this boundary dispute.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.