

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JANUARY 30, 1996

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. 95-1649-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**ARTHUR L. STEVENS,
PETER S. BENGSTON
and TERRY M. BENGSTON,**

Plaintiffs,

v.

**FRED GENRICH,
ELLEN GENRICH,
WILLIAM F. GENRICH
and ELLEN GENRICH,**

Defendants.

**CORT A. ESENTHER
and DEBBIE A. ESENTHER,**

Plaintiffs-Appellants,

v.

**MILO JONES
and ANNA JONES,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Washburn County: NORMAN L. YACKEL, Judge. *Affirmed.*

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

PER CURIAM. Cort and Debbie Esenther appeal a judgment awarding disputed property to Milo and Anna Jones.¹ They argue that the Joneses failed to establish all of the elements of adverse possession for twenty years. We reject that argument and affirm the judgment.

The Esenthers own Lots 16 and 17, block two of Rockford Park. The Joneses own Lots 14 and 15. They bought Lot 14 in 1975 from Joe Raiolo, mistakenly believing the cabin was on Lot 14. It was actually on Lot 15. They also believed the outhouse and retaining wall associated with the cabin were on Lot 14. In 1976, the Joneses bought Lot 15 from Margaret Burdick, believing they were buying the lot to the west of the outhouse. In 1987, the Joneses made improvements to their cabin. A subsequent survey shows that the cabin is located on Lot 15 and some of the improvements that are located in the area where the outhouse and retaining wall had been are located on Lot 16. The trial court awarded the Joneses a portion of Lot 16 where these improvements are located.

The trial court's findings of fact must be affirmed unless they are clearly erroneous. See § 805.17(2), STATS. The trial court is the ultimate arbiter of the credibility of witnesses. When more than one reasonable inference can be drawn from the credible evidence, this court must accept the inference drawn by the trier of fact. *Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 249-50, 274 N.W.2d 647, 650 (1979). The legal significance of the facts found by the trial court is a question of law that this court reviews *de novo*. See *Klinefelter v. Dutch*, 161 Wis.2d 28, 33, 467 N.W.2d 192, 194 (Ct. App. 1991).

The Joneses presented sufficient evidence to support their adverse possession claim. The area in question is immediately adjacent to their cabin which replaced another cabin that sat on the same spot since the 1950's. The concrete retaining wall in front of the old cabin existed throughout this time. The wall had steps in it leading to the cabin porch. A path led from the front of the old cabin to the outhouse. There have been no dwellings on the adjacent

¹ This is an expedited appeal under RULE 809.17, STATS.

lots. The only cabin structure to which the outhouse could be associated was the old cabin.

Even though the cabin was only used seasonally, seasonal use is sufficient "continuous" use to constitute adverse possession. See *Burkhardt v. Smith*, 17 Wis.2d 132, 139, 115 N.W.2d 540, 544 (1962). The outhouse and retaining wall were sufficient to apprise the true owners that someone was treating the property as his own. See *Bettack v. Conachen*, 235 Wis. 559, 566, 294 N.W. 57, 60 (1940). The fact that others may have used the outhouse does not defeat the Joneses' claim of "exclusive" use of the property. Anyone using the outhouse would have believed it belonged to the Joneses or their predecessors in title. The wall and outhouse constitute sufficient improvements changing the character of the "wild lands" such that the owner is held to notice of the improvement. See *Pierz v. Gorski*, 88 Wis.2d 131, 137, 276 N.W.2d 352, 355 (Ct. App. 1979). No additional enclosure or physical barrier was required to set off the property that appeared to belong to the lot with the cabin. See *Illinois Steel Co. v. Bilot*, 109 Wis. 418, 446, 85 N.W. 402, 408 (1901).

The Esenthers argue that the Joneses failed to prove adverse possession for twenty years because Margaret Burdick was the common owner of Lots 15 and 16 until 1976. Her use of Lot 16 in association with the cabin on Lot 15 cannot be adverse because she cannot be adverse to herself. The Joneses' adverse possession is not predicated on Margaret Burdick's adverse possession. Rather, it is based on Joe Raiolo's adverse possession of the cabin and its accoutrements. The Joneses presented sufficient evidence that they and Raiolo continuously occupied the cabin, along with its adjacent outhouse and retaining wall, for twenty years. The Joneses are allowed to tack on Raiolo's adverse possession because his use of the property was the same as theirs. *Draeger v. Gutzdorf*, 159 Wis.2d 596, 598-99, 465 N.W.2d 204, 205 (Ct. App. 1990). A fair reading of the transcripts shows that Raiolo occupied the cabin from the time he bought Lot 14 in 1967 until he sold it to the Joneses. Because the outhouse and retaining wall are inextricably connected to the cabin, Raiolo and the Joneses adversely possessed parts of Lot 16 since 1967.

By the Court.—Judgment affirmed.

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