

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 19, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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

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, STATS.

**No. 98-1248**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**THEODORE BLASZKOWSKI,**

**PLAINTIFF-RESPONDENT,**

**v.**

**THOMAS SCHMITT AND MARY SCHMITT,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Washington County: LAWRENCE F. WADDICK, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Anderson, JJ.

PER CURIAM. Thomas and Mary Schmitt appeal from a judgment awarding Theodore Blaszkowski title by adverse possession to a small portion of the northern part of their property. We conclude that there was sufficient evidence to support the trial court's conclusion that Blaszkowski had acquired title to the disputed parcel by adverse possession. We affirm the judgment.

Blaszkowski purchased his property, a parcel of twenty acres, in 1975. He was told that a wire fence marked the southern border of his parcel. In 1991, the Schmitts purchased property south of Blaszkowski's parcel. A survey placed the border of their property north of the existing fence. When a survey ordered by Blaszkowski revealed that the property line as described in his deed was even further north of the fence, Blaszkowski commenced this action to acquire title to the parcel between the deeded property line and the fence to its south, a parcel consisting of 3.158 acres.

The Schmitts argue that the trial court's finding that adverse possession occurred is not supported by the evidence. It is not clear whether they challenge the trial court's findings of fact or the ultimate conclusion. The trial court's determination as to what the parties did and how the land appeared are findings of facts which we sustain unless clearly erroneous. *See Klinefelter v. Dutch*, 161 Wis.2d 28, 33, 467 N.W.2d 192, 194 (Ct. App. 1991). "The finder of fact must strictly construe the evidence against the adverse possessor and apply all reasonable presumptions in favor of the true owner." *Droege v. Daymaker Cranberries, Inc.*, 88 Wis.2d 140, 144, 276 N.W.2d 356, 358 (Ct. App. 1979). Whether, given the findings of facts, Blaszkowski adversely possessed the disputed strip is a question of law which we review de novo. *See Klinefelter*, 161 Wis.2d at 33, 467 N.W.2d at 194.

Section 893.25(1), STATS., allows a person in uninterrupted adverse possession for twenty years to commence an action to establish title.

Adverse possession under this section requires enclosure, cultivation, or improvement of the land. It requires physical possession that is hostile, open and notorious, exclusive and continuous for the statutory period. "Hostility" means only that the possessor claims exclusive right to the land possessed. The subjective intent of the

parties is irrelevant to the determination of an adverse possession claim. The requirement of continuity is satisfied by activities that are appropriate to seasonal uses, needs and limitations, considering the land's location and adaptability to such use.

*Otto v. Cornell*, 119 Wis.2d 4, 7, 349 N.W.2d 703, 705 (Ct. App. 1984) (citations omitted).

The trial court found that Blaszkowski's predecessors in title had used the land up to the fence line for pasturing cows and for recreational purposes. In the mid-sixties, Fred and Mildred Mettler, who sold the property to Blaszkowski, built a pond, a portion of which lay on a part of the disputed parcel, and planted evergreen trees near the fence. The Mettlers had maintained the fence and posted the property against trespassing. The trial court found that although the fence had deteriorated since 1985, it was in good condition when the land was conveyed to Blaszkowski and had been more than a temporary fixture for more than twenty years.

The Schmitts do not argue that these findings are clearly erroneous. Rather, they focus on Blaszkowski's testimony that he allowed the land to grow wild and did not perform any regular and consistent activities in the disputed area. They also try to attach significance to the fact that no witness could identify when the fence was built, who built the fence and the purpose of the fence. These evidentiary points do not detract from the other evidence of use and possession of the disputed parcel.

The facts found by the trial court support a conclusion that there was exclusive, continuous and hostile possession of the disputed parcel by Blaszkowski's predecessors in title. The uses made of the disputed parcel were appropriate for the type of land. The land provided a water source for stock and,

when allowed to grow wild, a natural buffer from activities on the Schmitts' parcel. Moreover, the existence of the fence and the posting of the property were inconsistent with the Schmitts' claim that the land was simply left in a wild state of nature. See *Klinefelter*, 161 Wis.2d at 36-37, 467 N.W.2d at 195.

The trial court also found that there was agreement and acquiescence in the fence constituting the boundary for more than fifty years prior to 1993. The doctrine of acquiescence

applies the twenty year statute even though the one in possession of the disputed land did so in the honest belief he had a right to the land and the adverse party acquiesced in such possession. The rule does not require that the one seeking to benefit from the adverse possession statute establish that he knew the land was not his when he took possession and intended to deprive the true owner of possession.

*Beasley v. Konczal*, 87 Wis.2d 233, 241, 275 N.W.2d 634, 639 (1979).

Title evidence established that on Blaszkowski's side the fence was considered the boundary line. The first owner of Blaszkowski's parcel was deeded twenty acres when the parcel was broken off from a larger farm parcel. The fence line approximates the boundary for a twenty-acre parcel. Every owner thereafter was conveyed twenty acres and paid taxes for twenty acres. As to the Schmitts' chain of title, the compelling evidence is that the Schmitts' predecessors in title had cultivated and planted hay from the south only up to the fence. A farmer who had rented the land from Schmitts' predecessor in title indicated that although he had never had a specific discussion about the north boundary, he assumed that the fence was the property line. He had asked Blaszkowski for permission to trim trees to the north of the fence line.

Even in the absence of a verbal acknowledgment that the fence served as the divider, planting only to the fence was sufficient evidence of acquiescence. *See generally Menzner v. Tracy*, 247 Wis. 245, 251, 19 N.W.2d 257, 260 (1945). Further, because the fence went undisturbed, acquiescence may be presumed. *See Klinefelter*, 161 Wis.2d at 35, 467 N.W.2d at 195 (“If the claimant ‘raises his flag and keeps it up,’ so to speak, sufficiently to attract the attention of the true owner to the situation, in view of the circumstances of the invasion, as a hostile claim of title, knowledge of such owner may be presumed as a fact ....”) (quoted source omitted).

The Schmitts’ final argument is that the evidence was insufficient to permit the awarding of the entire disputed parcel to Blaszkowski. The Schmitts maintain that the rugged and wooded swamp area of the disputed parcel is not capable of being considered an occupied area which can be adversely possessed. *See Droege*, 88 Wis.2d at 146, 276 N.W.2d at 359 (“The burden of proving the extent of occupancy rests with the adverse possessor. In the absence of evidence upon which a legal description of the occupied area could be based, the claim of adverse possession must fail.”).

The evidence was sufficient to conclude that the fence line was the southern boundary of Blaszkowski’s property. The Schmitts’ citation to *Droege* is not applicable because there the area to be adversely possessed was not enclosed by a fence line. An adequate legal description of the area encompassed by the fence line was provided. The award of the entire disputed parcel is affirmed.

*By the Court.*—Judgment affirmed.

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



