COURT OF APPEALS
DECISION
DATED AND FILED

December 3, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP623 **Cir. Ct. No. 2011CV723**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

VALLEY BEAU FARMS, INC.,

PLAINTIFF-RESPONDENT,

V.

KENNETH SCHICK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: PAUL J. LENZ, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Kenneth Schick appeals a judgment declaring interest in land. Schick and Valley Beau Farms, Inc., dispute the location of the boundary line between their adjoining farmland properties, both of which are described, primarily, by township quarter-section. Years after the parties obtained

their respective parcels, the county moved a quarter-section corner monument, thus moving the location of the parties' boundary line a respective distance away from the fence line that previously marked the boundary. Schick argues, under various adverse possession and acquiescence theories, that he should retain title to that portion of land between the fence line and the newly established boundary line. We reject Schick's arguments, and affirm.

BACKGROUND

¶2 Schick and Valley Beau obtained their properties from a common grantor, a bankruptcy estate. Schick acquired his property in December 1991. His deed described the parcel as "The West Half of the Northwest Quarter of Section 6 … EXCEPT lands lying northerly and westerly of C.T.H. 'P' … [and the highway itself]."[1] A "correction" deed was subsequently filed, dated March 18, 1992. The correction deed redefines the parcel as "The West 47.16 acres of the Northwest Quarter of Section 6 …."[2] Valley Beau's deed, dated the same day as Schick's correction deed, describes Valley Beau's parcel as "The Northwest Quarter … of Section Six (6) … EXCEPT the West 47.16 acres thereof …." Thus, Schick owns a western portion of the quarter section, and Valley Beau owns an eastern portion of the quarter section; the eastern boundary of Schick's parcel is the western boundary of Valley Beau's parcel.

[1] Generally speaking, County Highway P runs along the western and northern boundary lines of section 6's northwest quarter.

[2] We note that a quarter section is typically comprised of 160 acres. Thus, half of a quarter section would typically contain 80 acres. The correction deed states, "This deed is given to clarify and correct a prior deed …." Schick does not provide further facts concerning the revision.

¶3 At the time the parties acquired their parcels, there was an old electric fence along the common boundary line. Around that same time, Schick contacted Valley Beau about obtaining a survey of the boundary line and erecting a new fence. Schick hired Ray Hughes to conduct a survey. Prior to conducting the survey, Hughes "calculated out what the 47.16 [acres] should be." Hughes provided Schick the distances from the west boundary of the quarter section to the east boundary of his parcel, at the north and south boundaries of the quarter section. Sometime after March 1992, but prior to Hughes completing the survey and placing iron stakes in September 1992, Schick constructed a new wire fence.

¶4 Schick determined the general location of the new fence by pacing off the measurements Hughes provided, starting from the section and quarter-section monuments. The new fence was built in the same general location as the old fence. When subsequently placing two iron pipes, Hughes determined the new fence was not precisely on the boundary line, but was reasonably close, being off by one to two feet. Hughes prepared his survey and placed the pipes based on the 1992 location of the section and quarter-section monuments marking, respectively, the northwest and southwest corners of Schick's parcel. Hughes determined the eastern boundary of the parcel (the parties' common boundary) by making a line parallel to the western boundary.

¶5 Valley Beau supplied multiple rolls of wire and bundles of posts for the new fence. The parties did not dispute the location of their common boundary line prior to erecting the fence, but neither knew the exact location. Valley Beau did not object to the location of the new fence at any time prior to 2011.

¶6 When the parties acquired their parcels and when Hughes prepared his survey, the quarter-section monument marking the southwest corner of

Schick's parcel (and of the quarter section comprising the parties' parcels) was located in the center of Highway P. That monument, however, was moved by the county surveyor in 2001. The surveyor determined the monument was previously located in the wrong location, and he therefore moved it approximately nineteen feet to the west.[3]

¶7 In July 2011, Richard Denzine prepared a survey on Valley Beau's behalf.[4] Denzine used the same procedure as Hughes to locate the parties' common boundary line. However, Denzine utilized the new location of the southwest quarter-corner monument. Accordingly, when Denzine created a line parallel to the western quarter-section boundary (also Schick's western property line), he determined the parties' common boundary was five feet west of Schick's fence at the north end and twenty-one feet west of it at the south end.

¶8 In September 2011, just shy of twenty years after Schick first obtained title to his parcel, Valley Beau initiated the present suit seeking a declaration of interest in real property. The court held a half-day bench trial at which it ruled for Valley Beau, and it subsequently issued a written decision. The court determined Denzine's 2011 plat of survey "establishes the correct location of the boundary line between [the parcels] according to the deeds of record with the

[3] The reasons for, and propriety of, moving the corner monument are not at issue in this case. However, a record indicated the county surveyor had been unable to locate the original limestone corner marker (as opposed to the then-existing aluminum marker), and the circuit court concluded, "The original West Quarter Corner monument no longer exists. It is not possible to determine the location of that original monument."

[4] A Valley Beau representative testified that Valley Beau owned other property in the area, including land immediately west of Schick's parcel. The representative explained Valley Beau had the property at issue here surveyed because Denzine was already surveying the nearby property.

relocated West Quarter Corner as it is now placed." Further, the court found that the disputed area west of the fence "is being used by [Schick] and constitutes an encroachment on [Valley Beau's] property due to the relocation of the government corner marker …; but it would not have been an encroachment had the marker not been moved."

¶9 The court held Schick did not establish adverse possession under either the ten-year or twenty-year statutes. It also held Schick failed to establish adverse possession under the doctrine of acquiescence. Finally, the court relied on ***Chandelle Enterprises, LLC v. XLNT Dairy Farm, Inc.***, 2005 WI App 110, 282 Wis. 2d 806, 699 N.W.2d 241, holding "relocation of a monument by a county surveyor is not a recognized legal basis upon which to rebut the presumption of Plaintiff's superior legal title, even if the relocation results in an apparent 'loss' of property by one party." The court ordered Schick to vacate the disputed property, but required Valley Beau to bear the cost of moving the fence if it elected to do so. Schick now appeals.

DISCUSSION

¶10 Schick presents four arguments. He argues the court should have ruled in his favor based on adverse possession under the ten-year statute, adverse possession under the twenty-year statute, acquiescence, or in its discretion. In reviewing a circuit court's determinations regarding adverse possession, we accept the court's factual findings unless they are clearly erroneous. ***Steuck Living Trust v. Easley***, 2010 WI App 74, ¶11, 325 Wis. 2d 455, 785 N.W.2d 631. We review de novo whether those facts fulfill the legal standard for adverse possession. ***Id.*** Our standard of review is the same regarding the doctrine of acquiescence. ***Id.***

Ten-year adverse possession

¶11 Schick first contends he established adverse possession under the ten-year statute, WIS. STAT. § 893.26.[5] This statute permits a person to acquire title by adverse possession when the claimant "originally entered into possession of the real estate under a good faith claim of title, exclusive of any other right, founded upon a written instrument as a conveyance of the real estate," the "written instrument … under which entry was made is recorded within 30 days of entry with the register of deeds," and the person "is in actual continued occupation of all or a material portion of the real estate described in the written instrument." WIS. STAT. § 893.26(2)(a)-(c).

¶12 Schick represents that the circuit court rejected his claim under this statute because "Schick's entry on the land was not founded upon a written instrument recorded with the Register of Deeds within 30 days of entry." He cites the court's written decision for this assertion and then continues, "The court found that Schick's claim was not founded upon a written instrument because the court held that [sic] legal description in his deed was unambiguous as written." Schick provides no citation for this assertion, but he subsequently cites the court's oral decision.

¶13 The transcript of the oral ruling does not support Schick's assertion. The court did not mention the ten-year statute or any of its requirements at the citation Schick provides. In fact, the closest the court ever came to doing so at the hearing was when it stated:

[5] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

> The Defendant's use of the property does not meet any of the adverse possession provisions … under anything but the 20-year statute. Likewise, it's clear the parties acquiesced to the location of the fence. However, in this case—I need to state that more clearly. The defendant's use of the property would meet the provisions of adverse possession only under the 20-year statute. Likewise, it's clear that the parties acquiesced to the location of the fence. However, only 19 years passed. He's short by one year.

¶14 Additionally, Schick misrepresents (by omission) the court's rationale set forth in the written decision. That decision provides:

> Defendant has no rights in [the disputed area] by virtue of adverse possession under WIS. STAT. § 893.26. Defendant's entry onto the disputed area was not founded upon a written instrument recorded with the register of deeds within 30 days of Defendant's entry onto [the disputed area], nor has he provided evidence to meet his burden of proof on the other elements of such a claim.

¶15 Because Schick fails to acknowledge, much less address, the court's full reasoning, we reject his argument. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (failure to refute court's ruling constitutes concession of the issue). Moreover, Schick fails to develop a reasoned argument on appeal. He fails to properly address the elements of the adverse possession claim or cite evidence in the record. We will not decide issues that are inadequately briefed. ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994). Nor will we address issues unsupported by citation to the record. ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463. Additionally, we observe Schick failed to reply to Valley Beau's argument that Schick failed to develop an argument or support it with record citations. This failure further demonstrates a concession of the ten-year adverse possession issue. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90

Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded).

¶16 Schick appears to separately argue he satisfied the ten-year adverse possession requirements because his deed was ambiguous. This argument does not escape Schick's concession of the issue that occurs due to his failure to address the circuit court's rationale. *See* ***Schlieper***, 188 Wis. 2d at 322. Further, it appears the court's decision regarding ten-year adverse possession had nothing to do with the issue of ambiguity in the deed.[6]

Twenty-year adverse possession

¶17 Schick argues the court erred regarding twenty-year adverse possession because he was entitled to "tacking" of adverse possession claims. An "adverse claimant may 'tack' or add his time of possession to that of a prior adverse possession in order to establish a continuous possession for the requisite statutory period." ***Perpignani v. Vonasek***, 139 Wis. 2d 695, 724-25, 408 N.W.2d 1 (1987). Schick emphasizes that the court found there was an old wire fence existing along the common boundary, and he argues it would be reasonable to

[6] While we do not reach the issue of ambiguity in the deed, we question Valley Beau's reliance on ***Chandelle Enterprises, LLC v. XLNT Dairy Farm, Inc.***, 2005 WI App 110, 282 Wis. 2d 806, 699 N.W.2d 241. The facts of that case were substantially different than those here. In ***Chandelle***, the section corner had already been moved *before* the parties obtained their properties. ***Id.***, ¶¶2-4. Thus, the court reasoned, a survey at the time of purchase would have revealed that the existing fence was not on the true boundary line. ***Id.***, ¶¶14, 16 ("[T]he dispositive question is … whether the true boundary line *could have been* determined by the descriptions in the [parties'] deeds." (emphasis added)). Moreover, in holding that the deeds' descriptions by quarter section or quarter-quarter section were not ambiguous "in this case at least," the court emphasized that the parcels in dispute were "not smaller or irregular fractions of such sections." ***Id.***, ¶16. Here, however, the parcels were irregular fractions of a quarter section and, because the quarter-corner monument was moved *after* the parties acquired their parcels, a survey at the time of purchase could not have revealed that the existing fence was not on the true boundary or, for that matter, where the true boundary was.

infer the old fence had been there sufficiently long enough to tack on to his nineteen years of possession as found by the court.

¶18 Valley Beau responds that Schick cannot tack any prior duration of possession because the parties took their respective properties from a common grantor. We agree. It is illogical to argue a prior property owner adversely possessed land for which it already held title, and Schick cites no authority supporting the proposition. We may reject arguments unsupported by legal authority. *See* ***Flynn***, 190 Wis. 2d at 39 n.2.

¶19 Valley Beau further argues Schick's argument fails because he cites no evidence concerning how long the old fence was in place, whether it was sufficient to constitute a substantial enclosure, or whether the disputed area was usually cultivated. We agree that the argument fails for these additional reasons. Moreover, Schick concedes the issue by failing to respond to Valley Beau's argument. *See* ***Charolais Breeding Ranches***, 90 Wis. 2d at 109.

Acquiescence

¶20 Schick next argues he established acquiescence under an exception to the general twenty-year rule of possession. The circuit court ruled as follows:

> In the absence of the 20 year requirement, acquiescence cannot be a basis for adverse possession unless the existing fence was erected by agreement of the owners that it would establish the property line in order to settle a dispute. Plaintiff and Defendant did not dispute the property line prior to the Fence being erected, nor did they erect the Fence pursuant to an agreement that it would establish the property line. (*See* ***Buza v. Wojtalewicz***, 48 Wis. 2d 557, 564-66, 180 N.W.2d 556 (1970); ***Nagel v. Philipsen***, 4 Wis. 2d 104, 108-09, 90 N.W.2d 151 (1958)).

(Explanatory parenthetical omitted.)

¶21 Schick concedes, as he did below, that there was no boundary dispute prior to erection of the fence. However, he argues another acquiescence exception recognized in ***Nagel*** applies. We agree with Valley Beau that the exception is inapplicable. As the court explained in ***Nagel***, "Before Nagel erected the original fence …, he had a surveyor survey his land, and the fence was built in reliance on such survey." ***Nagel***, 4 Wis. 2d at 110. Schick, however, erected his fence before the survey stakes were placed and well before the survey was completed. Therefore, it is evident he did not erect the fence in reliance on the survey.

¶22 Alternatively, Schick asks us to recognize a new exception, by analogy to the situation presented in ***Thiel v. Damrau***, 268 Wis. 76, 66 N.W.2d 747 (1954). In ***Thiel***, the court held:

> [W]here adjoining owners take conveyances from a common grantor which describe the premises conveyed by lot numbers, but such grantees have purchased with reference to a boundary line then marked on the ground, such location of the boundary line so established by the common grantor is binding upon the original grantees and all persons claiming under them, irrespective of the length of time which has elapsed thereafter.

Id. at 81. As Schick concedes, this is not a case involving parcels described only as numbered lots. And ***Buza*** long ago rejected the argument Schick makes now, that ***Thiel*** should be extended beyond the numbered-lot scenario. *See* ***Buza***, 48 Wis. 2d at 566.

Circuit court discretion

¶23 Finally, Schick argues the court erroneously exercised its discretion by failing to recognize it had the ability to decide the case in equity. Schick emphasizes that Valley Beau sought relief under WIS. STAT. § 840.03(1)(L), seeking an order requiring Schick to remove the fence line. Schick asserts that provision recognizes injunctive relief, which is equitable in nature, and that, therefore, this was an equitable proceeding. Schick's focus on remedies is unavailing. He cites no authority suggesting that actions upon an interest in real property are equitable or that courts may consequently disregard established case law or statutes. We therefore reject his argument. *See* ***Flynn***, 190 Wis. 2d at 39 n.2. Indeed, in ***Buza***, 48 Wis. 2d at 566, the court observed, "although the equities in this case are in favor of the appellants, it appears under the law, the doctrine of acquiescence is inapplicable to the facts of this case."

By the Court.—Judgment affirmed.

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