STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0812

Gaylord Winfield, et al.,
Respondents,

vs.

Steven W. Kasel, et al.,
Appellants.

Filed January 27, 2009
Affirmed
Hudson, Judge

Mower County District Court
File No. 50-CV-06-1674

Scott Richardson, Richardson Law Office, 132 Third Avenue Northwest, Austin, Minnesota 55912 (for respondents)

Kenneth R. Moen, Moen Law Firm, 202 Riverside Building, 400 South Broadway, Rochester, Minnesota 55904 (for appellants)

Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and Collins, Judge.*

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

HUDSON, Judge

In this property dispute, appellants argue that the district court erred by awarding respondents title by adverse possession. We affirm.

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* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Appellants Steven and Julie Kasel hold title to a tract of land in Mower County. Respondents Gaylord and Shirley Winfield hold title to an adjacent tract of land. Respondents purchased their land in 1963 and acquired a warranty deed in 1964. Appellants purchased their land in 1996 and acquired a deed of conveyance in 2002. A fence separated the two properties and was in place from the time respondents acquired the warranty deed to their property in 1964. Respondents and their family have solely maintained the section of the fence along appellants' property and have pastured cattle on their land every year from 1964 to 2004.

In 2004, respondents intended to replace the fence. Appellants notified respondents that they would like the fence put on the actual property line because the current fence surpassed the property line by approximately 2.8 acres. Until that time, respondents believed that the fence was on the actual property line. In May 2004, appellants and respondents entered into an agreement whereby, "[i]n exchange for the use of the [appellants'] land, [respondents] agree[] to replace the above noted fence and maintain the fence as needed. [Respondents] also agree[] to pay $200.00 rent per year for approximately 2.8 acres of wooded land." The agreement was later rescinded by appellants. Respondents subsequently brought an action for title to the disputed property by adverse possession.

On November 29, 2007, a bench trial was held in Mower County District Court. The district court specifically found: appellants have never cultivated the portion of the disputed land; respondents or their sons have used the disputed portion of appellants'

land continuously since 1964 and "[n]o other person(s) or entities have used or attempted to use the property since 1964"; "[t]he property, along with any cattle pasturing upon it, is visible from State Highway 56"; "the only viable use of th[e] land is for pasturing"; respondents "believed that they were the legal owners of the property, and were unaware that the legal conveyance did not include the portion of land southwest of the fence"; and respondents have maintained the fence since 1964 without any assistance from appellants or any predecessors in interest. The district court concluded that respondents established adverse possession by continuous, open, actual, exclusive, and hostile use of the disputed land and were, therefore, entitled to sole title and possession in fee simple. This appeal follows.

D E C I S I O N

I

Appellants argue that the district court erred when it found that respondents proved hostile use of the disputed area by clear and convincing evidence. "In all actions tried upon the facts without a jury[,] . . . [f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. "In applying this rule, we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). "The decision of a district court should not be reversed merely because the appellate court views the evidence differently." *Id.* "Rather, the findings must be 'manifestly contrary to the weight of the evidence or not reasonably supported by

the evidence as a whole.'" *Id.* (quoting *N. States Power Co. v. Lyon Food Prods., Inc.*, 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975)). But whether the findings of fact support a district court's conclusions of law and judgment is a question of law, which we review de novo. *See Donovan v. Dixon*, 261 Minn. 455, 460, 113 N.W.2d 432, 435 (1962) ("[i]t is for this court to determine whether the findings support the conclusions of law and the judgment.").

Appellants argue that respondents did not prove hostile use of the property by clear and convincing evidence and therefore failed to satisfy one of the five requirements for a claim of adverse possession. "The elements necessary to prove adverse possession are well established and require a showing that the property has been used in an actual, open, continuous, exclusive, and hostile manner for 15 years." *Rogers*, 603 N.W.2d at 657. Appellants maintain that certain evidence contradicts a finding of hostile use, specifically that respondents: (1) required other neighbors along the same fence line to fulfill fencing obligations (but never required appellants to do so), (2) built and maintained the fence separating their farm from that of appellants, and (3) signed the 2004 agreement by which respondents gained "permissive use" of the disputed property in exchange for $200 rent per year and assumption of all fence maintenance and replacement.

Appellants place particular emphasis on the 2004 agreement and argue that the 2004 agreement was indicative of respondents' state of mind because it demonstrates that respondents did not believe they owned the property by adverse possession or otherwise. Respondents, however, claim that they entered into the agreement simply to "get along"

in what had become an acrimonious dispute with appellants. To support their argument, appellants cite *Sage v. Rudnick*, 67 Minn. 362, 69 N.W. 1096 (1897). There, the Minnesota Supreme Court held that evidence of a lease for contested property in an adverse possession case was relevant to show the lack of hostile nature or continuous and exclusive use of property for more than the statutory period. *Id*. at 364, 69 N.W. at 1096–97. But *Sage* is distinguishable because at issue in that case was whether the disseizor entered into a lease with the owner *before* the statutory time period for title by adverse possession had run. Here, the required 15-year time period began to run in 1964 and respondents signed the agreement long *after* the time period for title by adverse possession had run.

Appellants characterize the 2004 agreement as a "lease" between the parties and suggest that "the lease is competent evidence of the character of [respondents'] possession of the property." But the *Sage* court provided that "[w]hen the statute of limitation has run in favor of a disseizor, no subsequent acknowledgment of the former owner's title, except by deed sufficient to pass title to land, will devest the title acquired by adverse possession." *Id.* at 362, 69 N.W. at 1096. Here, the 2004 agreement is not a "deed sufficient to pass title to land" and therefore respondents' acknowledgment of appellants' former title has no effect on respondents' title through adverse possession.

Our conclusion is supported by considerable precedent. The "hostility" requirement "does not refer to personal animosity or physical overt acts against the record owner of the property." *Ehle v. Prosser*, 293 Minn. 183, 190, 197 N.W.2d 458, 462 (1972). Hostility is flexibly determined by examining "the character of the

possession and the acts of ownership of the occupant." *Carpenter v. Coles*, 75 Minn. 9, 11, 77 N.W. 424, 424 (1898). Case law regarding the "continuous" requirement for adverse possession is instructive as to whether adverse possession can be "cut off" by an event after the statutory time period has run. To maintain a title acquired by adverse possession, it is not necessary to continue the adverse possession beyond the time when title is acquired. "The title once acquired is a new title, a legal title though not a record title, is not lost by a cessation of possession, and continued possession is not necessary to maintain it." *Fredricksen v. Henke*, 167 Minn. 356, 361, 209 N.W. 257, 259 (1926) (citing *McArthur v. Clark*, 86 Minn. 165, 90 N.W. 369 (1902); *Dean v. Goddard*, 55 Minn. 290, 56 N.W. 1060 (1893)). Therefore, respondents perfected title by adverse possession many years before signing the 2004 agreement.

Appellants also make much of the fact that respondents solely maintained the portion of the fence shared with appellants, but involved other neighbors in the repair and maintenance of their respective shared portions of the fence. Appellants point out that since 1996 respondents have never required or asked for such participation by appellants suggesting, appellants argue, that respondents did not believe they owned the property in question and therefore had no right to demand that appellants help maintain the fence. But appellants cite no authority which would make these details dispositive to a claim for adverse possession.

The district court made numerous findings of fact in support of its order for title by adverse possession, including that appellants have never cultivated the portion of the disputed land; respondents or their sons have used the disputed portion of appellants'

land continuously since 1964 and "[n]o other person(s) or entities have used or attempted to use the property since 1964"; "[t]he property, along with any cattle pasturing upon it, is visible from State Highway 56"; "[t]he only viable use of the land is for pasturing"; respondents "believed that they were the legal owners of the property, and were unaware that the legal conveyance did not include the portion of land southwest of the fence"; and respondents have maintained the fence since 1964 without any assistance from appellants or any predecessors in interest. On this record, we conclude that the district court's findings were sufficient to support both a determination of hostile use and its subsequent order of title by adverse possession.

II

Appellants also argue that the district court erred when it found that: (1) there was proper notice of a fence viewing proceeding pursuant to Minn. Stat. § 344.04 (2008), and (2) the order of the fence viewer was valid. Because we conclude that the district court properly decided the issue of adverse possession, we do not reach these issues.

Affirmed.