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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0732**

Gordon Grannes, et al.,  
Appellants,

vs.

Red Cedar of Yellow Medicine, Inc.,  
Respondent.

**Filed February 3, 2009  
Affirmed in part, reversed in part, and remanded  
Larkin, Judge**

Redwood County District Court  
File No. 64-C8-04-000550

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Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Stauber, Judge.

**UNPUBLISHED OPINION**

**LARKIN**, Judge

In this post-remand appeal from judgment, appellants challenge the district court's award of property to respondent by adverse possession. Because the district court's

findings of fact do not support the district court's conclusion that the elements of adverse possession were established as to the entire portion of the disputed property that was awarded to respondent, we affirm in part, reverse in part, and remand.

### OPINION

Appellants Gordon Grannes, et al., and respondent Red Cedar of Yellow Medicine, Inc., own adjacent parcels of property. The current dispute involves the ownership of a 4.68 acre parcel. Appellants are the record owners of the disputed property. This property dispute was the subject of previous appeal, *Grannes v. Red Cedar of Yellow Med., Inc.*, No. A06-595, 2007 WL 656452 (Minn. App. Mar. 6, 2007) (*Grannes II*), review denied (Minn. May 30, 2007). A detailed recitation of the facts underlying the property dispute is set forth in *Grannes II*, No. A06-595, 2007 WL 656452, at \*1-2.<sup>1</sup>

In *Grannes II*, appellants challenged the district court's determination that respondent acquired title to the disputed property by adverse possession. We affirmed in part, reversed in part, and remanded based on our conclusion that respondent had not established all five elements of adverse possession with respect to the southerly portion of the disputed property but had established all five elements of adverse possession with respect to the northerly portion. The purpose of the remand was to permit the district court to locate the southern boundary of the portion of the property for which respondent

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<sup>1</sup> Respondent argues that our decision in *Grannes II* was erroneous. We need not consider the assertion that *Grannes II* was wrongly decided. See Minn. R. Civ. App. P. 140.01 (stating that there is no rehearing in the Court of Appeals).

had established title by adverse possession and to draft a description of that portion of the property.

On remand, the district court determined that the existing record was sufficient to locate the southern boundary of the disputed property and therefore, declined to reopen the record. The district court amended its findings of fact and conclusions of law to state that the divisional line between the southerly and northerly portions of the disputed property is 344 feet north of the disputed parcel's southern boundary.

Appellants argue that the district court's findings of fact do not support a finding of adverse possession as to the entire portion of the disputed property that was awarded to respondent. Adverse possession must be proved by clear and convincing evidence. *Grubb v. State*, 433 N.W.2d 915, 917 (Minn. App. 1988), *review denied* (Minn. Feb. 22, 1989).

“Mere possession is not enough to establish title to land by adverse possession.” *Johnson v. Raddohl*, 226 Minn. 343, 345, 32 N.W.2d 860, 861 (1948). To establish adverse possession, the disseisor must show, by clear and convincing evidence, that the property was used in an actual, open, continuous, exclusive, and hostile manner for at least 15 years. *See* Minn. Stat. 541.02 (2008) (stating that an adverse-possession claim cannot be made until after 15 years of possession); *Rogers v. Moore*, 603 N.W.2d 650, 657 (Minn. 1999) (stating the elements necessary for adverse possession); *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972) (establishing clear-and-convincing-evidence standard). “Failure to establish any one of the five essentials is fatal to the validity of the claim.” *Johnson*, 226 Minn. at 345, 32 N.W.2d at 861.

The issue before us is whether the district court erred in its determination regarding the description and southern boundary of the northerly portion of the disputed property for which respondent had established title by adverse possession. “[W]hether the findings of fact support a district court’s conclusions of law and judgment is a question of law, which we review de novo.” *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. App. 2002) (citing *Donovan v. Dixon*, 261 Minn. 455, 460, 113 N.W.2d 432, 435 (1962) (noting that “it is for this court to determine whether the findings support the conclusions of law and judgment”)).

Prior to *Grannes II*, the district court had determined that respondent proved its adverse-possession claim as to the entire disputed parcel. The district court advanced two legal theories to support its determination, which were set out in its memorandum. First, the district court explained a “tacking theory.” Next, the district court explained an “alternative analysis” in which it examined different portions of the disputed property and analyzed whether the elements of adverse possession had been established as to each portion. In its alternative analysis, the district court divided the disputed parcel into four portions and concluded that the elements of adverse possession had been established as to each portion. The district court identified the portions from north to south as follows: (1) the north 330 feet of the disputed property; (2) the next area to the south, 550 feet in length; (3) the next area to the south, approximately 150 feet in length; and (4) the southerly 344 feet of the disputed property.

In *Grannes II*, we held that adverse possession had been established as to that portion of the disputed property that had been used by View Quarry for its quarry

operation and thereafter by Marvin Skogen for his sawmill operation. *Id.* at \*5. We also held that adverse possession had not been established as to any portion of the property that had not been used by View Quarry for its quarry operation and then by Marvin Skogen for his sawmill operation. *Id.* at \*4. Accordingly, we remanded “to the district court to permit it to locate the southern boundary of the disputed property that View Quarry possessed and transferred to Marvin Skogen and to draft a description of the northerly portion of the disputed property for which Red Cedar established title by adverse possession.” *Id.* at \*6. Implicit in that instruction was the need for the district court to determine the dimensions of that portion of the disputed property that had been used first for the quarry operation and then for the sawmill operation.

We conclude that the district court did not follow our remand instructions. Rather, the district court appears to have utilized the land demarcations from its original analysis, setting the southern boundary of the property awarded to respondent 344 feet north of the southern boundary of the disputed parcel. The district court erred by awarding all of portions one, two and three of the disputed property to respondent.

Our holding in *Grannes II* was based on our determination that respondent’s possession of the disputed property did not become exclusive and hostile until respondent entered into a contract for deed for purchase of the property in 1994. *Id.* at \*4. Because respondent did not have 15 years of exclusive and hostile possession between 1994 (when respondent entered into the contract for deed) and 2004 (when appellants brought suit), respondent had to establish adverse possession by previous holders that could be tacked to respondent’s possession in order to meet the 15-year possession requirement.

*Id.* As we explained in our opinion, respondent could rely on the activities of View Quarry in its quarry operation and Marvin Skogen in his sawmill operation to establish adverse possession. *Id.* at \*4-5. The combined length of the quarry and sawmill operations was at least 19 years (from at least 1975 to 1994) and could be tacked to respondent's use to establish adverse possession. *Id.* But respondent could not rely on its own use prior to 1994 because that use was not exclusive and hostile. *Id.* at \*4.

Based on this analysis, we affirmed the district court's conclusion that adverse possession had been established as to that portion of the disputed property that had been used in connection with the quarry and sawmill operations. But we reversed the district court's determination of adverse possession with regard to any portion of the disputed property that had not been used in connection with the quarry and subsequent sawmill operations. Thus, the district court's task on remand was to specifically determine which portion of the disputed property had been used in connection with the quarry and sawmill operations.

On remand, the district court correctly concluded that the elements of adverse possession have not been established as to portion four, the southerly 344 feet of the disputed parcel. This is because there was no evidence that View Quarry engaged in activities in this area. We affirm the district court's judgment as to portion four.

We next turn our analysis to portion three. There is no finding that View Quarry engaged in activities in this area or used this area in connection with its quarry operation. Nor is there a finding that Marvin Skogen used this area in connection with his sawmill operation. The finding that a member of respondent's corporation placed a deer stand on

portion three in 1989 is insufficient to establish adverse possession given our determination that respondent's use of the property prior to 1994 was not exclusive and hostile. Thus, for the purpose of the adverse possession analysis, portion three is indistinguishable from portion four. Accordingly, the district court erred by awarding portion three to respondent.

Finally, we examine the district court's determinations regarding portions one (the northern-most 330 feet of the disputed parcel) and two (the adjacent land to the south of portion one, 550 feet in length). It appears that View Quarry's quarry operation and Marvin Skogen's sawmill operation occurred within portion one and possibly extended into portion two. However, as was the case in *Grannes II*, we cannot define the parameters of the property used in connection with the quarry and sawmill operations. The building erected and used by View Quarry, and then by Marvin Skogen, is located on portion one. View Quarry installed guy wires related to its quarry activities that apparently extend from portion one into portion two. While there is a finding that portion two "was the subject of guy wires" installed by View Quarry, there is no finding regarding the location of the guy wires in portion two (i.e., how far into portion two the wires extend). Nor is there a finding that the guy wires were used in connection with the sawmill operation. And again, the finding that a member of respondent's corporation installed a duck blind in portion two cannot be used to establish adverse possession because as we determined in *Grannes II*, respondent's use prior to 1994 was not exclusive and hostile. With the exception of the incomplete finding regarding the guy wires discussed above, there is no finding of possession related to quarry or sawmill

operations in portion two. Therefore, the district court erred by awarding all of portions one and two of the disputed parcel to respondent.

We must, unavoidably, reverse and remand for a specific determination of the area within portions one and two of the disputed property that was used by View Quarry in its quarry operations and then by Marvin Skogen in his sawmill operation.<sup>2</sup> This is the portion of land for which adverse possession has been established. On remand, the district court is bound by our determinations in *Grannes II* as follows: (1) respondent's use of the disputed parcel prior to 1994 was not exclusive and hostile possession and therefore cannot be the basis for an award of title by adverse possession; and (2) View Quarry's use of the disputed parcel in connection with its quarry operation, followed by Marvin Skogen's use in connection with his sawmill operation, established title by adverse possession, but only as to that portion of the disputed parcel associated with the aforementioned use. *See In re Trusteeship of Trust of Williams*, 631 N.W.2d 398, 404 (Minn. App. 2001) ("The doctrine of law of the case applies when an appellate court has ruled on a legal issue and remanded to the lower court for further proceedings."), *review denied* (Minn. Sept. 25, 2001).<sup>3</sup>

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<sup>2</sup> While the demarcation of the portions is useful for the purpose of analysis, the district court is not bound by these designations in determining the property description on remand.

<sup>3</sup> Arguments were made on appeal regarding where the boundary should be located given the record evidence and our holding in *Grannes II*. But we are remanding for a determination of the appropriate boundary. Arguments regarding the location of that boundary should be made to the district court.

Finally we reject appellants' argument that the district court erred by not allowing the parties to present further evidence on remand after *Grannes II*. On remand, a district court has the duty to execute the mandate of the remanding court strictly according to its terms. *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988). But “[w]hen the [district] court receives no specific directions as to how it should proceed in fulfilling the remanding court’s order, the [district] court has discretion in handling the course of the cause to proceed in any manner not inconsistent with the remand order.” *Id.* And “[e]videntiary rulings concerning materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are within the [district] court’s sound discretion and will only be reversed when that discretion has been clearly abused.” *Johnson v. Wash. County*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted).

*Grannes II* did not require the district court to reopen the record, take new testimony, or consider new evidence. *See Grannes II*, No. A06-595, 2007 WL 656452, at \*6 (describing district court’s task on appeal). Therefore, decisions regarding the evidentiary record on remand remained within the district court’s discretion. In exercising its discretion, the district court did not deem it necessary to reopen the record and declined to hear further testimony. The district court apparently determined that the existing record contained sufficient evidence to enable it to make the required determinations regarding the southern boundary and description of the northerly portion of the disputed property for which respondent established title by adverse possession.

The district court's decision not to reopen the record does not constitute an abuse of discretion.

**Affirmed in part, reversed in part, and remanded.**

Dated: \_\_\_\_\_

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The Honorable Michelle A. Larkin  
Minnesota Court of Appeals