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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0324**

Elvin D. Siegel,
Appellant,

vs.

R. Scott Nagel,
Respondent.

**Filed March 11, 2008
Affirmed
Ross, Judge**

Morrison County District Court
File No. 49-C9-05-000465

Peter Vogel, Rosenmeier, Anderson & Vogel, 210 Second Street Northeast, Little Falls,
MN 56345 (for appellant)

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56345 (for respondent)

Considered and decided by Ross, Presiding Judge; Chief Judge Toussaint, Judge;
and Muehlberg, Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

This appeal involves a land-ownership dispute between rural neighbors Elvin Siegel and Scott Nagel in Morrison County. Siegel, who destroyed 2,500 trees and a fence on Nagel's property at first repeatedly agreed to pay for the damage, but he later reneged. After Nagel sued to recover in trespass, Siegel defended aggressively, asserting for the first time in his counterclaim that, by virtue of adverse possession, Siegel actually owns the land where the alleged trespass occurred. The parties tried the case to the district court, which rejected Siegel's claim of ownership by adverse possession and awarded treble damages to Nagel for the trespass. Siegel appeals, challenging the district court's factual findings regarding the bases for adverse possession and the court's legal determination that Nagel's adverse possession claim also is barred by laches. Because the record supports the district court's findings that establish that Siegel failed to prove all of the elements of adverse possession, we affirm.

FACTS

Elvin Siegel and Scott Nagel own abutting parcels along the north bank of the Little Elk River in Morrison County. The land north of the boundary is owned by Siegel. Siegel or his predecessors farmed that land at least since the 1960s. The land south of the now-disputed recorded boundary of the southern end of Siegel's property was owned by Burlington Northern and Santa Fe Railway Company since at least 1896. Siegel sought to own that land also. In 1994 he attempted unsuccessfully to buy it from the railroad. In 1998 Nagel also began negotiating with the railroad to purchase the land. But when

Siegel learned of this, he competed for ownership of part of it by extending another offer. Nagel prevailed, purchasing the land south of Siegel's property from the railroad in January 2000. Before he purchased it, Nagel walked the property with a railroad representative. Neither saw evidence of anyone other than the railroad possessing or using the land. Nagel gave Community Federal Saving and Loan Association a mortgage on the land on March 1, 2002.

In the fall of 2004, Nagel discovered that many of the trees he planted on the north edge of his property near the boundary with Siegel's land had been destroyed, and he saw that fence posts had been removed. He questioned Siegel, who indicated that he had hired someone to plow his land and that his contractor "must have gone too far." Siegel and Nagel agreed to meet on the land to examine the damage. Siegel later accepted responsibility for the damage and agreed to pay Nagel for it. Nagel sent Siegel an estimate of the cost to replace the destroyed trees. Siegel did not reply. Nagel called Siegel three times, leaving messages. In October 2004 Nagel and Siegel met to review the estimate, and Siegel again agreed to pay for the damage. He then requested proof that Nagel actually intended to replace the trees. Nagel sent Siegel that proof, and Siegel said he would pay by January 14, 2005. Although Siegel still did not pay, during a conciliation court hearing in late March 2005, Siegel admitted that he previously promised to pay for the replacement trees, survey the property, and replace the fence posts. But Siegel never paid. Nagel filed suit in district court for the trespass, and Siegel asserted an adverse-possession counterclaim.

The district court denied Siegel's adverse-possession counterclaim on three independent grounds. It found that Siegel failed to prove facts to support the elements of adverse possession. It held that Siegel's claim was barred by laches because he unreasonably delayed bringing it, and it determined that Siegel failed to join an essential party, Community Federal Savings and Loan Association, the mortgagee. Siegel appeals.

D E C I S I O N

Siegel challenges the district court's findings of fact that bear negatively on his claim of adverse possession. Our response to that challenge resolves this appeal.

Whether a claimant proves the elements of adverse possession is a question of fact. *Denman v. Gans*, 607 N.W.2d 788, 793 (Minn. App. 2000), *review denied* (Minn. June 27, 2000). We uphold a district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01. A finding is not clearly erroneous if the record contains evidence that supports it. *Kilton v. Richard G. Nadler & Assocs.*, 447 N.W.2d 468, 470 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990). And we review the record in a light favorable to the district court's judgment. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

Adverse possession requires "actual, open, hostile, continuous, and exclusive possession for the statutory 15-year period." *LeeJoice v. Harris*, 404 N.W.2d 4, 6 (Minn. App. 1987); *see also* Minn. Stat. § 541.02 (2006). The party claiming title by adverse possession must prove all five of these elements. *Grubb v. State*, 433 N.W.2d 915, 917 (Minn. App. 1988), *review denied* (Minn. Feb. 22, 1989). After reviewing the evidence and walking the land with the parties, the district court judge concluded that Siegel failed

to prove his adverse possession claim. Specifically, the district court found that Siegel failed to prove that his alleged possession was hostile, open, actual, or continuous. Because the record clearly supports the district court's finding that Siegel failed to prove hostility, we affirm on that ground and do not address the other challenges to the district court's well-reasoned, clearly analyzed decision.

To show hostility, the adverse possessor "must intend to exclude the world and treat the disputed property in a manner generally associated with the ownership of a similar type of property in the particular area involved." *Grubb*, 433 N.W.2d at 918. Hostility requires a possessor to enter and take possession of the land "as if it were the disseizor's and owning it with the intention of excluding all others." *Ganje v. Schuler*, 659 N.W.2d 261, 268 (Minn. App. 2003).

The record contains many facts tending to show that Siegel failed to treat the disputed tract as if it were his own against all others. While Nagel was negotiating with the railroad to buy the land south of Siegel's, including the disputed tract, Siegel made no indication that he owned or possessed any of the land. Meanwhile, he attempted to purchase part of that tract from the railroad. Siegel had unsuccessfully attempted to buy it four years earlier. An attempt to buy land is not necessarily fatal to an adverse possession claim. *See Dozier v. Krmpotich*, 227 Minn. 503, 509, 35 N.W.2d 696, 700 (1949) ("The continuity of adverse possession is not broken by the adverse claimant's taking a written conveyance of the interest claimed by him from parties claiming ownership."). But whether Siegel's attempted purchase was intended only to perfect the title or instead demonstrated that he had never considered the land to be his own is a fact

question. Siegel's attempt to purchase the land is but one fact among several that support the district court's finding that Siegel's possession was never hostile.

Before Nagel filed suit, for example, Siegel affirmatively represented that the land was not his. He did not fence in the land. He did not object when Nagel planted thousands of trees on it. When Siegel and Nagel walked the property line, Siegel indicated that he believed the land was Nagel's. Siegel reaffirmed his belief when Nagel complained to Siegel that work erroneously done on Nagel's land had damaged Nagel's trees. Siegel volunteered that his agent "must have gone too far," indicating that Siegel yielded to Nagel's exclusive right to possess the land. Siegel repeatedly told Nagel that the disputed land belonged to Nagel. And he agreed to pay damage he caused on the property. The district court reasonably found that Siegel's actions belie his claim that his alleged possession was hostile.

Siegel contends that his predecessors' act of trespass by occupying and using the land establishes hostility. But permissive occupation of land is not hostile and cannot be relied on to prove adverse possession. *Bloomquist v. Comm'r of Nat. Res.*, 704 N.W.2d 184, 188 (Minn. App. 2005). The district court found that Siegel never occupied all of the disputed land, and it was not persuaded by Siegel's evidence of claimed farming of any of it. And to the extent that the Siegels' predecessors might have used the land before Nagel purchased it, the use does not prove hostility because there was no finding that the use occurred without the railroad's permission. The record, read in the light most favorable to the judgment, indicates that even if Siegel's predecessors in interest actually used the land, they did so only with the railroad's permission. Siegel's long-time

neighbor testified to this fact, and Siegel testified that he was unsure whether the prior use had been permissive.

The record contains sufficient evidence that Siegel's alleged possession of the land was permissive and not hostile, and the district court's finding that Siegel failed to prove hostility is not clearly erroneous. We therefore affirm the district court's denial of Siegel's adverse possession claim, and we do not reach the issues of laches and Siegel's alleged failure to join an indispensable party.

Affirmed.