COURT OF APPEALS
DECISION
DATED AND RELEASED

May 2, 1996

No. 95-3496-FT

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

MARVIN ZUELKE and
BETTY ZUELKE,

Plaintiffs-Respondents,

v.

RUSSELL WOITULA and
BILLIE JO WOITULA,

Defendants-Appellants.

APPEAL from a judgment of the circuit court for Marquette County: DONN H. DAHLKE, Judge. *Affirmed*.

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. Russell Woitula and Billie Jo Woitula appeal from a judgment in favor of Marvin Zuelke and Betty Zuelke. We affirm.[1]

[1] This is an expedited appeal under RULE 809.17, STATS.

The trial court decided the case on the basis of the Zuelkes' summary judgment motion. Summary judgment methodology is well established and need not be repeated here. *See* ***Grams v. Boss***, 97 Wis.2d 332, 338-39, 294 N.W.2d 473, 476-77 (1980). The Zuelkes alleged that they are owners of a property identified on the relevant survey map as Lot 2, and that the Woitulas are owners of the adjoining Lot 1. They alleged that the Woitulas were maintaining and using a shed and gas tank on the Zuelkes' property. The Zuelkes sought a judgment ordering removal of the improvements and damages for trespass. The complaint states a claim for trespass.

The Woitulas denied the material allegations of the complaint. They also counterclaimed that they owned a portion of Lot 2 by adverse possession. They further claimed that a row of pine trees north of the lot line had been established as the boundary by "acquiescence."

The Zuelkes moved for summary judgment. Their affidavit stated the history of the two properties, supported by most of the relevant deeds. Before 1959, Marvin Zuelke owned both lots. In 1959, Zuelke sold Lot 1 to Lyndon and Felicia McFaul. In 1963, the McFauls conveyed Lot 1 to their son Robert McFaul, while reserving a life estate to themselves. In 1966, Lyndon and Felicia McFaul purchased Lot 2 from the Zuelkes. In 1990, the McFauls conveyed Lot 2 back to the Zuelkes. Also in 1990, Lyndon McFaul died and his wife terminated her life estate in Lot 1. In 1993, Robert McFaul sold Lot 1 to the Woitulas. Therefore, between 1966 and 1990, Lyndon and Felicia McFaul had control of both properties: Lot 1 as holders of a life estate and Lot 2 as owners in fee simple.

The Zuelkes' affidavit states a defense to the Woitulas' claim of adverse possession. Real estate is adversely possessed only if the person possessing it, in connection with his or predecessors in interest, is in actual continued occupation for twenty years. Section 893.25, STATS. The Woitulas have not been in possession of Lot 1 for twenty years, and therefore their claim of adverse possession must be founded on the actions of their predecessors in interest. The twenty-year period would have to include part of the period from 1966 to 1990 in which Lyndon and Felicia McFaul were in control of both lots. We conclude that nothing that could have happened during that time could be adverse possession. To find adverse possession here we would have to conclude, essentially, that Lyndon and Felicia McFaul adversely possessed

against themselves. However, they had a legal right to be in occupation of both lots. It takes two adverse parties to make possible a claim of adverse possession.

The Woitulas submitted an affidavit in opposition to the Zuelkes' motion for summary judgment. The affidavit adds some additional details about the history of the properties, but contains nothing showing that there is a material issue of fact. We conclude the trial court properly granted the motion for summary judgment.

The Woitulas also pleaded, as their second counterclaim, that a row of pine trees planted on Lot 2 is the boundary because the parties and their predecessors in title have established this boundary by "acquiescence." The Woitulas argue the trial court erred in granting the summary judgment motion because the court did not address this issue. However, our review of a summary judgment decision is independent of the trial court's analysis. *See* ***In re Cherokee Park Plat***, 113 Wis.2d 112, 115-16, 334 N.W.2d 580, 582-83 (Ct. App. 1983). Therefore, we may determine whether the judgment was properly granted as to this issue, in spite of the trial court's omission. However, the Woitulas' discussion of the theory of acquiescence is inadequate, and we decline to address the issue. *See* ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

The Woitulas also ask that we use our discretionary power of reversal under § 752.35, STATS. They argue that justice has miscarried because it would be inequitable to ruin their property in the way they claim this decision will. However, the fact that a proper application of the law causes an inequitable result does not mean we may say "justice has miscarried" and disregard the law. Our authority under the statute is not so broad. The Woitulas also argue the real controversy was not fully tried. However, the issue presented to the trial court, which was whether the Woitulas had an ownership interest in part of Lot 2, was tried to the fullest extent necessary.

By the Court.—Judgment affirmed.

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