

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 14, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0473

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

PETER P. KAROBLIS,

Plaintiff-Appellant,

v.

**STANLEY STERNBERG, JAMES M. GREZENSKI,
BARBARA D. GREZENSKI, OLE J. HANSON,
BARBARA J. HANSON, PACKAGING CORPORATION
OF AMERICA, d/b/a FOUR STATES TIMBER
VENTURE AND TOWN OF SKANAWAN,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Lincoln County:
GARY L. CARLSON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Peter P. Karoblis appeals from a judgment determining that a road over which he claimed ownership is a town road. We affirm.

I.

This case arises out of a dispute between Karoblis and the Town of Skanawan over a gate that Karoblis erected on Stevens Road. The Town, claiming that Stevens Road is a town road, ordered Karoblis to remove the gate. Karoblis contends that the road was abandoned, and asserts that he owns it either directly or *via* adverse possession. The trial court decided these issues against Karoblis, and made extensive findings of fact. These findings are supported by evidence in the record, including testimony by a surveyor called by the defendants, whose testimony, although questioned, was essentially not contradicted by a surveyor called by Karoblis.

Karoblis owns approximately 130 acres of land in the Town of Skanawan, Lincoln County, Wisconsin. The land abuts and lies west of Grundy Road, and is in Section 35, Township 34 North, Range 7 East, in the Town. The defendants are adjoining property owners and the Town. Karoblis purchased the property from Frederick Latzig in 1993. That summer, Karoblis built a cabin on his land and erected the gate across Stevens Road. The section line between Section 35 and Section 26 lies in the middle of Stevens Road, which runs west from Grundy Road. Stevens Road once ran west from Grundy Road to County Trunk Highway H, but is now not passable all the way to the highway, and ends in a field west of Karoblis's property.

Stevens Road was built between 1921 and 1927, as the result of a petition filed with the Skanawan town board in 1921. Although gas-tax maps show the existence of Stevens Road in the 1930s, no gas tax has been collected on Stevens Road since 1937. The Town has not maintained or repaired Stevens Road during the time that either Latzig or Karoblis owned the land in Section 35. Lincoln County, however, plowed Stevens Road, under a contract with the Town, to keep the road open on what the chairman of the Town of Skanawan testified was a "call-type basis." Additionally, the local paper mill maintained the road for the Town by informal agreement. In 1972, 1973, 1974, 1989, and 1990, the local paper mill used Stevens Road to transport a significant number of truck-loads of wood from property adjoining Stevens Road. One of the defendants, Ole Hanson, used Stevens Road in 1974 to truck wood from his property. In 1993 and 1994, the defendant Harvey Wydeven used Stevens Road to transport fifteen truck-loads of wood from his property to Grundy Road.

In 1979, the local paper mill repaired the culvert at the intersection of Stevens Road and Grundy Road. Latzig paid \$201.85 to the Town of Skanawan for repairs to the culvert, and has claimed ownership of Stevens Road since 1979. In 1978 or 1979, the local paper mill erected a gate on Stevens Road with the Town's permission on the condition that each of the landowners get a key and have access to their property. Karoblis testified that the local paper mill gate was "just west" of his cabin. The Skanawan town chairman testified that the gate "was only locked because of inclement weather," and that other town roads were also closed when conditions warranted. An employee of the paper mill and an owner of property north of Stevens Road both testified that the road was open to the public except when the weather or conditions made the road impassible. The property owner testified that he saw the public use the road. Latzig testified that "you could get through" when the road was "dry." Moreover, the Skanawan town chairman testified that people used the road to "to go in, do some hunting" and collect "wood from downed tops and stuff like that." The trial court found that the paper mill's gate was "generally" kept locked when weather made the road either hazardous or otherwise unsuitable for travel. The trial court determined that the segment of Stevens Road west of the gate was "probably abandoned." The segment of Stevens Road to the east of the paper mill's gate was, the trial court found, "basically passable" in summer "although apparently it's very rough, very rocky, and can be difficult to go over." The trial court found, however, that the road was "basically impassible" in winter. The trial court concluded that the road east of the local paper mill gate had not been abandoned.

II.

Although we review a trial court's legal conclusions *de novo*, *Newhouse v. Citizens Security Mut. Ins. Co.*, 176 Wis.2d 824, 837, 501 N.W.2d 1, 6 (Ct. App. 1990), its findings of fact may not be set aside unless they are "clearly erroneous," RULE 805.17(2), STATS., giving due deference to the trial court's better ability to assess the credibility of the witnesses, *Noll v. Dimicelli's Inc.*, 115 Wis.2d 641, 643-644, 340 N.W.2d 575, 577 (Ct. App. 1983). With these standards of review in mind, we analyze Karoblis's assertions of trial court error.

1. Abandonment of Stevens Road.

Karoblis claims that the trial court erred in concluding that the relevant segment of Stevens Road was not abandoned. Section 80.32(3), STATS., provides that “discontinued” highways “shall belong to the owner or owners of the adjoining lands.” A highway is “discontinued” when it is “entirely abandoned as route of travel, and on which no highway funds have been expended for 5 years.” Section 80.32(2), STATS.¹ See also *State ex rel. Young v.*

¹ Section 80.32, STATS., provides in full:

Discontinuance of highways; reversion of title. (1) Any unrecorded road or any part thereof which has become or is in the process of becoming a public highway by user in any town may be discontinued in the manner hereinbefore provided. Any proceedings taken therefor shall not be evidence of the acceptance at any time by the town of such road or any part thereof.

(2) Every highway shall cease to be a public highway at the expiration of 4 years from the time it was laid out, except such parts thereof as shall have been opened, traveled or worked within such time, and any highway which shall have been entirely abandoned as a route of travel, and on which no highway funds have been expended for 5 years, shall be considered discontinued.

(3) When any highway shall be discontinued the same shall belong to the owner or owners of the adjoining lands; if it shall be located between the lands of different owners it shall be annexed to the lots to which it originally belonged if that can be ascertained; if not it shall be equally divided between the owners of the lands on each side thereof.

(4) Whenever any public highway or public ground has been vacated or discontinued the easements and rights incidental thereto acquired by or belonging to any county, school district, town, village or city or to any utility or person in any underground or overground structures, improvements or services and all rights of entrance, maintenance, construction and repair of the same shall continue, unless written consent to the discontinuance of such easements and rights by the owner thereof is a part of the vacation or discontinuance proceedings and reference thereto is made in the vacation or discontinuance resolution, ordinance or order, or discontinued by failure to use the same for a period of 4 years from the time that the public highway or public ground was vacated or discontinued. Upon the failure of the interested parties to reach an agreement permitting discontinuance of such easements and rights or upon refusal of the owner of such

Maresch, 225 Wis. 225, 232, 273 N.W.2d 225, 229 (1937). Although the trial court found that the Town of Skanawan had not repaired or maintained Stevens Road since 1930, it also found that significant quantities of wood were hauled by truck on the road. That finding is supported by the evidence and is not, therefore, “clearly erroneous.” Moreover, there was other testimony that the public used the road, and Karoblis himself complained to the local paper mill that he objected to the public using Stevens Road “to gain access to the land beyond my property,” as he contended persons were doing. Based on the trial court's findings, the testimony and Karoblis's recognition that the public was using Stevens Road, the trial court's legal conclusion that Stevens Road has not been, in the words of § 80.32(2), “entirely abandoned” is correct.

2. *Adverse possession.*²

Section 893.29(2)(c), STATS., prevents any person from acquiring any “title or interest” by adverse possession of “[r]eal property of a highway as
(.continued)

easements and rights to give written consent to the discontinuance thereof, such easements and rights may be discontinued in the vacation or discontinuance proceedings in any case where benefits or damages are to be assessed as herein provided. Damages for the discontinuance of such easements and rights, in the amount of the present value of the property to be removed or abandoned, plus the cost of removal, less the salvage thereon, or in such other amount as may be agreed upon between the interested parties, shall be assessed against the land benefited in the proceedings for assessment of damages or benefits upon the vacation or discontinuance of the public highway or public ground. The owner of such easements and rights, upon application to the treasurer and upon furnishing satisfactory proof shall be entitled to any payments of or upon such assessment of damages. Any person aggrieved by such assessment may appeal therefrom in the same time and manner as is provided for appeals from assessments of damages or benefits in vacation or discontinuance proceedings in the town, village or city.

(5) Subsection (2) does not apply to state or county trunk highways.

² The trial court decided Karoblis's adverse-possession claim on common-law principles. As noted, our review is *de novo*. We believe that this issue is more efficiently decided under the controlling statutes, which bar Karoblis's claim that he acquired the road by adverse possession.

defined in s. 340.01(22) and including property held by the state or a political subdivision for highway purposes."³ Section 340.01(22), STATS., provides:

"Highway" means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the state, county or municipal parks and in state forests which have been opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in s. 115.01 (1), and institutions under the jurisdiction of the county board of supervisors, but does not include private roads or driveways as defined in sub. (46).

³ Section 893.29, STATS., provides:

Adverse possession against the state or political subdivisions, special

provision. (1) Title to or interest in real property belonging to the state or a city, village, town, county, school district, sewerage commission, sewerage district or any other unit of government within this state may be obtained by adverse possession, prescription or user under s. 893.25, 893.26, 893.27 or 893.28 only if the adverse possession, prescription or user continues uninterruptedly for more than 20 years.

(2) Notwithstanding sub. (1), no title to or interest in any of the following property shall be obtained by adverse possession, prescription or user:

(a) Real property held in trust by the state under s. 24.01 (1), (5), (7), (9) and (10).

(b) Real property of an abandoned railroad acquired by the state under s. 85.09.

(c) Real property of a highway as defined in s. 340.01 (22) and including property held by the state or a political subdivision for highway purposes, including but not limited to widening, alteration, relocation, improvement, reconstruction and construction.

Karoblis claims that this provision does not apply because Stevens Road was abandoned and, further, because the gate erected by the local paper mill and the rudimentary nature of the road remove it from the definition in § 340.01(22). We disagree.

First, we have already determined that the trial court's conclusion that the road was not abandoned is supported by the evidence. Second, § 340.01(22), STATS., includes within its purview roads that are "open to the use of the public as a matter of right for the purposes of vehicular travel" and those roads that "have been opened to the use of the public for the purpose of vehicular travel." The language of this statute is clear; accordingly, we must interpret it as it is written. See *DNR v. Wisconsin Power & Light Co.*, 108 Wis.2d 403, 408, 321 N.W.2d 286, 288 (1982). There is no requirement in § 340.01(22) that the road be open when travel would be dangerous, or that it be passable for all vehicles; the only requirement in the statute is that the public may travel on the road as a matter of right. The trial court found in its oral decision that although the road was "very rough, very rocky, and can be difficult to go over," it was "basically passable" in summer, and found in its written findings that "the gate was generally locked on those occasions when the road was hazardous or in an unsuitable for travel condition" [*sic*]. Moreover, the trial court found that the road west of the local paper mill gate was abandoned. Thus, the gate was at the western-most end of that segment of Stevens Road that the trial court determined was not abandoned. Therefore, the gate was not an impediment to public travel on the road's non-abandoned segment. Accordingly, § 893.29(2)(c), STATS., prevents acquisition of Stevens Road by adverse possession. This conclusion also bars Karoblis's claim of adverse possession under § 893.26, STATS., which specifically notes that its provisions are subject to § 893.29, STATS. Section 893.26(1), STATS.⁴

⁴ Section 893.26(1), STATS., provides:

Adverse possession, founded on recorded written instrument. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 10 years, except as provided by s. 893.14 and 893.29. A person who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 10 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

3. Admissibility of survey offered by the defendants.

Karoblis contends that the trial court erred in receiving a survey offered by the defendants because the surveyor who testified did not do the field survey, and because those who did the survey relied on, as contended by Karoblis in his brief on this appeal, “maps and measurements done by others without verifying their accuracy or even that the work was done by a surveyor.” Karoblis claims that the surveyor and the survey improperly relied on hearsay.

A trial court's decision to admit or exclude evidence is a discretionary determination and will not be upset on appeal if it has “a reasonable basis” and was made “in accordance with accepted legal standards and in accordance with the facts of record.” *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983) (citation omitted). Karoblis does not challenge the witness's qualifications as an expert under RULE 907.02, STATS., nor could he given the witness' credentials and experience.⁵ Expert witnesses may base their opinions on evidence that would not be admissible directly. RULE 907.03, STATS.⁶ Moreover, under RULE 908.03(15), STATS., statements in documents “purporting to establish or affect an interest in property” are not excluded by the hearsay rule.⁷ Karoblis's reliance on cases from the 19th Century, which

⁵ RULE 907.02, STATS., provides:

Testimony by experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

⁶ RULE 907.03, STATS., provides:

Bases of opinion testimony by experts. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

⁷ RULE 908.03(15), STATS., provides:

were decided long before the effective date of the Wisconsin Rules of Evidence in 1974, is misplaced. *See* 59 Wis.2d R1. The Rules of Evidence govern. The trial court did not erroneously exercise its discretion in receiving the surveyor's testimony or the survey attested to by him.

(..continued)

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

....

(15) STATEMENTS IN DOCUMENTS AFFECTING AN INTEREST IN PROPERTY. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

4. *Segment of Stevens Road to the west of the local paper mill gate.*

Karoblis claims that the trial court's conclusion that Stevens Road west of the local paper mill gate was abandoned adversely affects persons who are not parties to this lawsuit. He does not, however, indicate how the trial court's ruling adversely affects him. He also does not indicate how he has standing to assert the interests of those persons. Accordingly, we do not address the trial court's conclusion concerning Stevens Road to the west of the local paper mill gate. See *W.H. Pugh Coal Co. v. State*, 157 Wis.2d 620, 634, 460 N.W.2d 787, 792 (Ct. App. 1990) (appellate court may decline to consider arguments that are undeveloped).

5. *Section 893.33, STATS.*

Karoblis contends that he purchased the property without notice of the Town of Skanawan's claim to the road. He asserts that § 893.33, STATS., prevents the Town from defending his action because of the following provision:

(2) Except as provided in subs. (5) to (9), no action affecting the possession or title of any real estate may be commenced, and no defense or counterclaim may be asserted, by any person, the state or a political subdivision or municipal corporation of the state after January 1, 1943, which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of the action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of the unrecorded instrument or within 30 years after the date of recording of the recorded instrument, or within 30 years after the date of the transaction or event there is recorded in the office of the register of deeds of the county in which the real estate is

located, some instrument expressly referring to the existence of the claim or defense, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which the claim or defense is founded, with its date and the volume and page of its recording, if it is recorded, and a statement of the claims made. This notice may be discharged the same as a notice of pendency of action. Such notice or instrument recorded after the expiration of 30 years shall be likewise effective, except as to the rights of a purchaser of the real estate or any interest in the real estate which may have arisen after the expiration of the 30 years and prior to the recording.

Section 893.33(2), STATS. Section 893.33(5), STATS., however, specifically notes that § 893.33, STATS., “does not apply to real estate or an interest in real estate while the record title to the real estate *or interest in real estate remains in the state or a political subdivision or municipal corporation of this state.*” (Emphasis added.) Based on the trial court's finding that the segment of Stevens Road east of the local paper mill gate was not abandoned and remains a public road, § 893.33, STATS., does not bar the Town of Skanawan from defending this action.

By the Court. – Judgment affirmed.

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