

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

AUGUST 13, 1996

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. 96-0508

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**FRANK X. KINAST and
CATHERINE A. KINAST,**

Plaintiffs-Appellants,

v.

**DENNIS R. BARRY and
DOROTHY A. BARRY,**

Defendants-Respondents,

**ANTHONY J. CORTINA and
JUDITH L. CORTINA,
HENRY MISICKA and
ELLA MISICKA,**

Defendants.

APPEAL from a judgment of the circuit court for Sawyer County:
NORMAN L. YACKEL, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Frank and Catherine Kinast appeal a judgment dismissing their quiet title action against Dennis and Dorothy Barry. The trial court ruled that the Barrys and their predecessors in title adversely possessed the disputed property for more than twenty years.¹ The Kinasts argue that the record does not establish adverse possession in the first year the Barrys occupied the property or adverse possession by their predecessors in title, the Winnies. They also argue that the Barrys failed to prove the area actually occupied. We reject these arguments and affirm the judgment.

We must affirm the trial court's findings of fact unless they are clearly erroneous. Section 805.17(2), STATS. The credibility of the witnesses and the weight to be accorded their testimony are for the trial court to decide. *Leciejewski v. Sedlak*, 116 Wis.2d 629, 637, 342 N.W.2d 734, 738 (1984).

The trial court's findings are supported by adequate evidence. Until the early 1970s, all of the property in question and some other contiguous property was known as the "Wilderness Resort." The cabins that made up the resort were separately sold. The compound was serviced by a private roadway. Several witnesses testified that the areas of occupation were immediately visible. A witness testified that the property looked the same in 1974 as it did on the day of trial. She testified that there had always been improvements to the property and that "areas had been kind of sculpted out for camping." The trial court personally viewed the property, noted the sculpted campsites, electrical hookups that had once been there and the differences in vegetation, and found that the property had been adversely possessed for more than twenty-one years before the lawsuit was filed. The fact that the Barrys had not yet built their cabin in the first year of their possession is irrelevant as is their failure to present evidence from the Winnies. Possession of an area with sculpted campsites and electrical hookups as well as other improvements is sufficient to establish adverse possession.

The area subject to the adverse possession claim was clearly identified at trial. Although no metes and bounds description of the property was presented at trial, the trial court and various witnesses had no difficulty

¹ The trial court also ruled that two other couples adversely possessed parts of Kinasts' property. The Kinasts have not appealed the judgment as to those couples.

identifying the area of occupancy. The Barrys, therefore, met their burden of establishing a boundary upon which the legal description could be based. *See Droege v. Daymaker Cranberries, Inc.*, 88 Wis.2d 140, 146, 276 N.W.2d 356, 359 (1979).

Finally, the Barrys request actual costs and attorney fees on the ground that this appeal is frivolous. While it is a close question, we conclude that the appeal is not frivolous. There is no evidence the appeal was brought in bad faith or for purposes of harassment. The Kinasts' arguments fail because this court is required to defer to the trial court's findings of fact and its assessment of the witnesses' credibility. Because a different view of the evidence would have supported the Kinasts' argument, we decline to conclude that they knew or should have known that their appeal lacked merit.

By the Court. – Judgment affirmed.

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