COURT OF APPEALS
DECISION
DATED AND FILED

December 15, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1609

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

JAMES R. MARUCHA,

PLAINTIFF-RESPONDENT,

v.

EMERY CIPOV,

DEFENDANT-APPELLANT.

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

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. This appeal arises out of a claim of adverse possession under § 893.25, STATS. Emery Cipov appeals a judgment transferring title to a portion of his land to a neighboring lot owner, James Marucha. Cipov argues that the record fails to support Marucha's claim of adverse possession. We agree. Therefore, we reverse the judgment.

This action involves a small parcel of vacant land in the Village of Radisson that is approximately fifty-by-100-feet. At trial, Marucha testified that he lived at the property adjacent to Cipov's lot. His grandmother had purchased the Marucha property in 1963, and Marucha purchased it from the estate in 1991 or 1992. Since 1991, he has mowed the lawn on Cipov's adjacent lot, driven vehicles across it, piled wood over the lot lines adjacent to his property, planted a garden and let kids play on it. During the year previous to the trial, he had a family reunion on the lot.

Marucha further testified that members of his family and his grandmother's tenants also "took care of that piece of property." He testified further that until 1997, he or members of his family paid the taxes on the lot in question. He testified that he determined that he definitely did not own the parcel but willingly paid taxes on it.

Marucha stated that he started to store firewood on the Cipov's property the second year after he purchased his grandmother's home. Every November he had ten cords of firewood stacked in a forty-by-nine-foot area on the lot, which remained there until March of each year. He testified that he parked vehicles on Cipov's lot until the frost came out of the ground. He used his vehicles, however, so they were not there constantly. He further testified that he planted two "very small" pine trees on the north lot line.

With respect to his family's use, Marucha testified that he was born in 1970 and "can remember back give or take I would say 1985." When asked about mowing, he testified, "well, I can't think back 20 years ago basically on something like that."

The former village property tax assessor testified that he served the village from 1984 through 1996. He testified that the tax bill for the disputed lot was mistakenly sent to Marucha for the years 1984 through 1995. He also observed that the grass was being mowed consistently with that of the Marucha property.

Cipov testified that he purchased his property in 1987 and that there really were not many cars parked on it until the past year. Since the lawsuit started, Marucha planted two little trees. He testified that he did not mow the entire parcel but did not observe that anyone else had mowed it until "this year." Because he owns other property, he was not aware that the disputed parcel was not included on his tax bill.

The trial court found in Marucha's favor. It stated that the purpose of adverse possession is that people who own property have a responsibility to keep track of their property and who is using it. Based upon Marucha's and the tax assessor's testimony, the court concluded the property has been used by the predecessor in title and Marucha for the required twenty years and that "the adverse possession was open, observable to any reasonably diligent person, was notorious, it was hostile, it was continuous and it was adverse." Accordingly, the trial court entered judgment in favor of Marucha.

The parties agree that § 893.25, STATS., controls claims of adverse possession not founded on a written instrument. A person who, in connection with his or her predecessors in interest, is in uninterrupted adverse possession of real estate for twenty years may commence an action to establish title under ch. 841, STATS. Real estate is possessed adversely under this section:

> (a) Only if the person possessing it, in connection with his or her predecessors in interest, is in actual continued occupation under claim of title, exclusive of any other right; and
>
> (b) Only to the extent that it is actually occupied and:
>
> 1. Protected by a substantial enclosure; or
> 2. Usually cultivated or improved.

Section 893.25(2), STATS.

We conclude as a matter of law that the record fails to support a finding that Marucha established uninterrupted adverse possession by himself or his predecessors in title of the parcel for twenty years. Although Marucha testified that his grandmother owned the property since 1963, he admitted that he could remember back only as far as 1985. The former tax assessor testified that he was aware of the condition of the property between the years of 1984 and 1995. No other witnesses testified on Marucha's behalf. The action was filed in 1997. The record falls far short of establishing uninterrupted use of the property for twenty years.

Marucha argues on appeal that he has knowledge that his family members or renters took care of the subject property, mowed it, drove across it and "stored stuff on it." He argues that the trial court can therefore reasonably conclude that predecessors in title maintained the property in a manner consistent with Marucha. We disagree. The record fails to reveal the nature of the use of the property before 1984.

The parties dispute whether the nature of the use, i.e., mowing, playing on it, driving over it, and storing wood on it constitutes continuous occupancy within the meaning of § 893.25, STATS. Because we conclude that the

record fails to establish that these activities took place over a twenty-year time frame, it is not necessary to decide whether they constitute occupancy.

By the Court.—Judgment reversed.

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