

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2005AP2999-FT

Cir. Ct. No. 2004CV79

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

THOMAS A. STEVENS AND WOODENE D. STEVENS,

PLAINTIFFS-RESPONDENTS,

V.

JAMES HOWARD, JUDY HOWARD AND PEARL HOWARD,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Rusk County:
FREDERICK A. HENDERSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. James, Judy, and Pearl Howard appeal a judgment of adverse possession in favor of Thomas and Woodene Stevens.¹ While they

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

concede there was sufficient evidence to award a portion of the property to the Stevenses, they claim the evidence was insufficient as to a specific strip of property. We disagree and affirm the judgment.

¶2 James and Judy Howard own a forty-acre parcel to the north of the Stevenses' property.² By adverse possession, the Stevenses were awarded a strip of property between the true property line and a line of utility poles north of that property line. A portion of what is now the Stevenses' garage protrudes onto this property. There is also a roadway that generally runs parallel to the true property line, part of which has been used as a gravel driveway, and the rest used as a path. The Howards do not contest the adverse possession judgment to the extent it awards the Stevenses to the north boundary of this roadway. However, they do challenge the judgment insofar as it awards the Stevenses a strip of grass, sometimes referred to as "the ditch," between the north edge of the roadway and the utility poles. Specifically, the Howards claim that there was insufficient evidence to support a claim of adverse possession respecting this strip of grass. North of this strip of grass and the utility poles is the Howards' farm field.

¶3 Where an adverse possession claim is not based on a written instrument, the claimants must prove that they adversely possessed the claimed property for a period of twenty years. WIS. STAT. § 893.25(1). Pursuant to WIS. STAT. § 893.25(2), property is adversely possessed:

- (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

² James and Judy Howard's ownership interest is subject to a life estate held by Pearl Howard.

- (b) Only to the extent that it is actually occupied and;
1. Protected by a substantial enclosure; or
 2. Usually cultivated or improved.

Property is “usually improved” if it is put to the exclusive use of the occupant in such a manner as a true owner might use the land in the ordinary course of events. *Burkhardt v. Smith*, 17 Wis. 2d 132, 138, 115 N.W.2d 540 (1962). To constitute adverse possession, the use of the land must be open, notorious, visible, exclusive, hostile, and continuous, so as to apprise a reasonably diligent landowner and the public that a possessor claims that land as his or her own. *Pierz v. Gorski*, 88 Wis. 2d 131, 137, 276 N.W.2d 352 (Ct. App. 1979). Acts that are consistent with sporadic trespasses are insufficient to constitute adverse possession. *Id.* However, an adverse possessor need not “lay his hands, so to speak,” on every square foot of the claimed property. *Burkhardt*, 17 Wis. 2d at 138. Occupancy may be established by any actual, visible means that gives notice of exclusion to the true owner and the public. *Id.* The burden of proof is upon the person claiming adverse possession, and the factfinder must strictly construe the evidence against the adverse possessor and apply all reasonable presumptions in favor of the true owner. *Pierz*, 88 Wis. 2d at 136. On review, we resolve conflicts in the evidence in favor of the verdict. *Id.*

¶4 The relevant testimony regarding this strip of property is as follows. Joyce Hettinger testified that she purchased what is now the Stevenses’ property in 1974.³ When she purchased the property, there were no buildings on it. In 1974, she built a house on the property, and in 1975, built the garage. She used the

³ Joyce Hettinger is Woodene Stevens’s mother.

roadway as a driveway and improved it by adding gravel. She kept the ditch mowed between the driveway and the utility poles. She also kept a burn barrel in that area.

¶5 In 1980, Hettinger sold the property to Kim Henderson. Hettinger testified that she visited the Hendersons regularly after selling them the property. She testified that they also mowed the ditch and kept a burn barrel there. In 1988, Michael Konig purchased the property. He did not keep the ditch area mowed, but he did keep a burn barrel there. He also stored his canoe in that area and kept wood stacked there.

¶6 The Stevenses then purchased the property in 1994. Woodene Stevens was familiar with the property because she had lived there as a teenager. Upon purchasing the property, they mowed the grass in the ditch and maintained it as part of their yard. They also moved the burn barrel, which was beginning to look “junky,” and cleaned up what had been Konig’s woodpile. The Stevenses parked a boat in the ditch area and sometimes had guests park their vehicles there. Woodene Stevens also testified about numerous pictures that had been taken at the property. The pictures clearly show the delineation between the ditch area and the Howards’ field. They show the ditch area mowed, looking as though it is part of the Stevenses’ yard. The pictures also show the burn barrel, various vehicles and a boat being parked there, and children playing there.

¶7 The Howards’ argument begins by estimating the square footage of the ditch area and comparing it to the estimated square footage occupied by the uses testified to at trial. For example, they estimate the square footage occupied

by the burn barrel, the boat, König's woodpile, etc.⁴ The Howards argue that the area occupied is less than the area awarded, and therefore the Stevenses did not meet their burden of proving they adversely possessed the whole of that property.

¶8 We reject this argument because, as indicated, an adverse possessor need not “lay his hands, so to speak” on every square foot of the claimed property. *Burkhardt*, 17 Wis. 2d at 138. While the Stevenses, König, the Hendersons, and Hettinger did not all use the property in the same way, they each used the property as any owner might. *See id.* The uses were open, notorious, continuous, and gave notice of exclusion to the Howards. *See id.* at 138-39; *Pierz*, 88 Wis. 2d at 137. The pictures entered into evidence convincingly demonstrate the area adversely possessed. The circuit court opined that this was the clearest case of adverse possession it had ever seen, and we agree that the Stevenses met their burden of proof.

By the Court.—Judgment affirmed.

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

⁴ As noted by the Stevenses, these estimations were not part of the evidence before the circuit court and were apparently developed for this appeal.

