

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 19, 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. 2005AP3169**

**Cir. Ct. No. 2003CV191**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**LARRY B. HACKETT AND PEGGY L. HACKETT,**

**PLAINTIFFS-RESPONDENTS,**

**V.**

**STEVEN MEYER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Polk County:  
MOLLY E. GALEWYRICK, Judge. *Affirmed.*

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

¶1 PER CURIAM. Steven Meyer appeals a judgment rejecting his adverse possession claim against Larry and Peggy Hackett and requiring him to remove encroachments from their property, particularly a garage. Meyer argues that the great weight of the evidence supports his adverse possession claim and

that the injunction was unfair and inequitable because the trial court failed to balance the cost of removing the garage with the Hacketts' interest in preserving their property rights. We reject these arguments and affirm the judgment.

¶2 The parties' surveyors agree that Meyer's new garage is approximately one-half foot over the Hacketts' deeded property line. Meyer attempted to establish adverse possession of the property by showing that his garage, constructed in 1999, was built over the footprint of a preexisting garage. The trial court found Meyer's witnesses not credible based on their obvious interest in the results of this action and their tone and demeanor on the witness stand. The court found Jason Hackett's testimony "particularly compelling." Hackett testified that he mowed the lawn for Meyer's predecessor in title and stated that the new garage encroaches further on the Hacketts' property than the previous garage he mowed around.

¶3 Meyer's argument on appeal ignores this court's deferential standard of review. Under the circumstances of this case, this court has no authority to overrule the trial court's findings of fact that are based on the witnesses' credibility. *See State v. Wyss*, 124 Wis. 2d 681, 694, 370 N.W.2d 745 (1985). The trial court's duty was to strictly construe the evidence against Meyer and apply all reasonable presumptions in favor of the Hacketts. *See Droege v. Daymaker Cranberries, Inc.*, 88 Wis. 2d 140, 144, 276 N.W.2d 356 (Ct. App. 1979). On the basis of evidence the trial court found credible, Meyer did not establish that his and his predecessor's encroachments existed for twenty years.

¶4 The court properly exercised its discretion when it granted an injunction against Meyer requiring him to remove encroachments he placed on the Hacketts' property. The record shows that Meyer continuously attempted to

expand his property line by constructing encroachments, even after the Hacketts advised him of the trespass. He constructed his new garage without attempting to identify the correct property line. The trial court reasonably refused to allow Meyer to benefit from his negligent encroachment on the Hacketts' property. The Hacketts asserted that Meyer's encroachments had a negative impact on their property's marketability, an assertion Meyer has not refuted on the record. Meyer cannot be heard to complain that the circuit court failed to consider the cost of moving the garage when he presented no evidence on that question. *See Popp v. Popp*, 146 Wis. 2d 778, 796, 432 N.W.2d 600 (Ct. App. 1988).

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

