COURT OF APPEALS
DECISION
DATED AND FILED

December 28, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP1286 **Cir. Ct. No. 2005CV144**

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

BILLY RAY KYSER,

PLAINTIFF-RESPONDENT,

V.

HOWARD SHELDON AND JOYCE SHELDON,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL J. MCALPINE, Judge. *Affirmed*.

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Howard and Joyce Sheldon appeal from a judgment awarding property to Billy Ray Kyser by adverse possession. The parties tried their dispute to a jury. The issue is whether the evidence was sufficient to support the jury's verdict in Kyser's favor. We affirm.

¶2 The Sheldons purchased a 102-acre farm in 1966. In 1967 Howard began installing a fence near the southern edge of the farm, and completed it in 1971. Because he did not know exactly where his southern boundary lay, he deliberately placed the fence several feet north of where he believed the property line to be. The fence has remained in place to the present, and this lawsuit resulted from a surveyor's determination in 2004 that the true property line lay thirty-three feet south of the fence.

¶3 Floyd Clements was the longtime owner of a farm that included the property south of the Sheldons, which he used to graze cattle. He entered a nursing home in approximately 1991, and died in 1992. His estate sold the property to John and Judith Smieja in 1993 or 1994. The Smiejas sold it to Kyser in 1996. When Kyser bought the property he assumed that the fence marked his boundary with Sheldon and that he owned all of the land south of it, including the Sheldons' thirty-three-foot strip. Over the next few years he planted up to 400 trees and shrubs on the strip, and constructed a cabin and outhouse that encroached on it.

¶4 Since 1967 Howard periodically placed fill in a small ravine just south of the fence. When he placed fill in 1999 Kyser asked him to stop and he did so. In a subsequent conversation Howard told Kyser that he believed the property line lay ten feet south of the fence. As noted, neither the Sheldons nor Kyser learned of the true property line until 2004. Rather than move his cabin and abandon his use of the strip, Kyser commenced this lawsuit. The Sheldons' appeal follows judgment entered on the jury's finding that Kyser and his predecessors adversely possessed the thirty-three-foot strip of the Sheldons' land for the requisite twenty years.

¶5 Persons claiming adverse possession must show that they and/or their predecessors in title used the disputed property in a hostile, open and notorious, exclusive and continuous manner for twenty years. ***Leciejewski v. Sedlak***, 110 Wis. 2d 337, 343, 329 N.W.2d 233 (Ct. App. 1982); *see also* WIS. STAT. § 893.25 (2003-04).[1] The use must apprise a reasonably diligent landowner and the public of the claim to possession. *See* ***Pierz v. Gorski***, 88 Wis. 2d 131, 137, 276 N.W.2d 352 (Ct. App. 1979). Sufficient notice is provided by putting the land to the uses an owner might in the ordinary course of affairs. *See* ***Burkhardt v. Smith***, 17 Wis. 2d 132, 138, 115 N.W.2d 540 (1962).

¶6 We will uphold a jury's verdict if any credible evidence supports it. ***Beacon Bowl, Inc. v. Wisconsin Elec. Power Co.***, 176 Wis. 2d 740, 791, 501 N.W.2d 788 (1993). The credibility of witnesses and the weight given their testimony is for the jury to decide, and where more than one reasonable inference is available from the evidence, we accept the inference drawn by the jury. *See* ***Meurer v. ITT Gen. Controls***, 90 Wis. 2d 438, 450, 280 N.W.2d 156 (1979). If credible evidence supports the verdict, we will uphold it even if contradictory evidence is stronger and more convincing. *See* ***Weiss v. United Fire & Cas. Co.***, 197 Wis. 2d 365, 389-90, 541 N.W.2d 753 (1995).

¶7 The Sheldons argue that the evidence was insufficient to find adverse possession because Kyser failed to establish that his and his predecessors' use of the disputed strip was continuous and exclusive for the requisite twenty years. The use was not continuous, they contend, because testimony established

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

that Kyser's property lay vacant and unused between Clement's entry into a nursing home in 1991, and the Smiejas purchase in 1993 or 1994. We disagree that the testimony compelled that inference. A long-time adjacent landowner, Wayne Getter, testified that cattle and horses grazed on the property for 50 years until Kyser bought it in 1996. He conceded that he did not "follow every year," but testified that to the best of his recollection cattle grazed on the property continuously between 1985 and 1996. He also testified that after Clement left the property in 1991 someone continued to care for his "young cattle." Getter's testimony, if deemed credible, allowed the reasonable inference that cattle remained on the property between 1991 and 1994, even though the owner became incapacitated and then died during that time. The jury also heard testimony that livestock will graze all of a pasture up to a fence line in search of food, and Kyser saw signs of livestock on the disputed strip when he hunted on the property in the years before he bought it. From that testimony the jury could reasonably infer that Clement's cattle grazed continuously on the disputed strip as well as on the remainder of the pasture it connected to.

¶8 While conceding that evidence of Kyser's and the Smiejas' use of the strip between 1994 and 2005 established adverse possession in all other respects, the Sheldons contend that the evidence failed to show that their use was exclusive. In so arguing, the Sheldons rely on Howard's testimony that he filled the ravine south of the fence in 1999, and sometimes cleared brush on the south side of the fence. The filling occurred once after 1994, and Howard stopped placing fill at Kyser's request. That carries the reasonable inference that both Howard and Kyser considered Kyser to be the owner of the strip. As for the brush clearing, there was no evidence that it occurred more than sporadically, and Howard testified that he remained on the north side of the fence while doing the

clearing. From this testimony the jury could have reasonably inferred that the clearing was not necessarily a conflicting exercise of ownership that rendered Kyser's uses non-exclusive.

By the Court.—Judgment affirmed.

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