

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 6, 2007**

A. John Voelker  
Acting 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. 2006AP1598-FT**

**Cir. Ct. No. 2001CV6**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**ELAINE I. FINCK,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ROBERT N. BALLARD, MARY S. BALLARD AND ANDREW T. BALLARD,**

**DEFENDANTS-APPELLANTS.**

---

APPEAL from a judgment of the circuit court for Forest County:  
ROBERT A. KENNEDY, JR., Judge. *Reversed and cause remanded with  
directions.*

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

¶1 PER CURIAM. Robert, Mary and Andrew Ballard (collectively “Ballard”) appeal<sup>1</sup> a judgment awarding a portion of Elaine Finck’s property to Ballard by adverse possession. Ballard argues the circuit court erred by not including as adversely acquired a roadway and a cleared area near the lake. We agree and reverse.

¶2 Ballard and Finck own adjacent properties on Pine Lake. Finck’s property is a “wild lake lot.” A survey dated December 18, 2001 showed Ballard’s house, cabin, boathouse, and a fish house encroached on Finck’s property. Finck initially commenced suit against Ballard claiming trespass and money damages.<sup>2</sup> Finck requested judgment ordering Ballard to remove all structures from her premises. Ballard counterclaimed asserting adverse possession. Following a trial to the court, judgment was entered finding Ballard acquired a portion of the property by adverse possession. The court also awarded Ballard a prescriptive easement for the use of the road to the lake and for the use of two strips of land six feet wide on each side of a cleared area near the lake. Ballard accesses the cabin and the boathouse through the cleared area. Ballard now appeals claiming entitlement to the road and all the property in the cleared area by adverse possession.

¶3 Adverse possession requires a showing that the disputed property was used for the requisite period of time in an open, adverse, notorious, visible, exclusive, and continuous manner that would apprise a reasonably diligent

---

<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

<sup>2</sup> It does not appear the claim for money damages was pursued at trial, but regardless it is not an issue in this appeal.

landowner and the public that the possessor claimed the land as his or her own. *Pierz v. Gorski*, 88 Wis. 2d 131, 136-37, 276 N.W.2d 352 (Ct. App. 1979). We resolve conflicts in the evidence to favor the verdict unless the findings are contrary to the clear preponderance of the evidence. *Id.* at 136. Whether the facts as found by the trial court establish adverse possession is a question of law. *See Klinefelter v. Dutch*, 161 Wis. 2d 28, 33, 467 N.W.2d 192 (Ct. App. 1991).

¶4 Adverse possession not founded on a written instrument requires proof of twenty years of uninterrupted possession of the disputed property to the extent the property is actually occupied and usually cultivated or improved. WIS. STAT. § 893.25. Improvements sufficient to apprise the true owners of adverse possession of wild land must substantially change the character of the wild land. Where the land remains “wild” after the improvements are completed, no owner shall be held to notice of the improvements. *Pierz*, 88 Wis. 2d at 137 (citing 2 C.J.S. *Adverse Possession* § 44 (1972)).

¶5 The circuit court held that the road was not an improvement. We conclude the court erred. The road constituted an improvement as contemplated by WIS. STAT. § 893.25. Photographs received into evidence show a very well used roadway. Unrefuted testimony from Roman Tauer indicated that he came on the property over fifty years ago to do bulldozing work on the roadway for a predecessor in title to Ballard. Robert Ballard purchased the property in 1969. Robert testified that he maintained the road, raked it and picked up the limbs. Tauer testified that he hauled in topsoil for Ballard and applied it to the road from the cottage to the house. Tauer worked on the road at Ballard’s request at least ten times. Andrew Ballard, who was added as a title owner on the deed in 1996, testified the road is maintained the same as it was in 1969. These undisputed facts

clearly establish an improvement to the character of the land that would apprise a reasonably diligent landowner that the possessor claimed the land as his own.

¶6 The circuit court also determined the road was non-exclusive. The court reasoned: “[T]here is no gate on it, nothing that kept anybody out of there.” However, the record reveals that Finck asked Ballard for permission to walk down the road. This demonstrates that Finck recognized the road as belonging to Ballard. Moreover, we have been provided no authority indicating the absence of a gate on the road is dispositive. Accordingly, the circuit court erred by concluding the road was non-exclusive.

¶7 We also agree with Ballard that the circuit court erred by not finding Ballard acquired the entire cleared area near the lake through adverse possession. Finck offered nothing to refute Ballard’s claim at trial that the character of the cleared area was visibly changed from the surrounding wild area sufficient to apprise Finck and her predecessors of the encroachment by Ballard and their predecessors. Furthermore, the record provides clear evidence that Ballard and their predecessors had uninterrupted possession of the cleared area well beyond twenty years.

¶8 William Box testified at the trial that he was the predecessor in title to Ballard. William’s parents later owned the property and lived there permanently from 1960-69. William described his visit to the property in 1948:

Q: 1948 you saw the property?

A: Yeah.

Q: You go way back. Mr. Box let’s talk about it then. Are the buildings any different now basically than what they were in 1948?

A: Principally the same but aged a little.

Q: Painted a little different, too, I am sure, but main house still looks as it did?

A: That is right.

Q: And same thing with the garage?

A: Yes.

Q: And the boat house?

A: Yes.

Q: And the guest house?

A: Yes.

....

Q: ... that clear[ed] area that we looked at this morning, what was that like in '48?

A: As much as I can recollect not very much different.

Q: Was there grass on it?

A: There was grass on it. And my uncle mowed it.

....

Q: How about your dad. Did he mow it?

A: My dad mowed it, yes.

Q: As far as you know from the last 50 or 60 years that has been maintained and mowed?

A: Yes.

¶9 Robert Ballard testified that he brought in stones to stop erosion. Robert fertilizes the area every fall and puts lime on it. He mows it all summer. Andrew Ballard also testified the cleared area by the lake is the same as it was in

1969. He mowed the lawn by the lake, as did his mother and father.<sup>3</sup> The circuit court relied upon *Pierz* to conclude Ballard's actions regarding the road and cleared area constituted sporadic trespass and were therefore insufficient to establish adverse possession. We disagree. In *Pierz*, the court concluded that a house, garage, shed, outbuildings, yard and garden were visibly improved from a wild area. However, a wooded area 1,000 feet from the yard was not sufficiently improved to allow adverse possession. The court noted that maintaining a worm bed, spraying for poison ivy and planting clover under the power line for deer and partridge "are not visible in a forest." *Id.*, 88 Wis. 2d at 138. In addition, a logging road was not visible to a trained forester, and a rock pile was intentionally concealed. The court held, "[t]hese acts, considered in relationship to each other and to the house, and considering the nature and size of the land in question, were not sufficient to apprise the true owner of an adverse claim." *Id.* at 138-39. The activities were described by the court as "sporadic, trivial and frequently benign trespass." *Id.* at 139.

¶10 The facts of the present case are quite different. The character of the property at issue in this case was changed substantially by the road and cleared area. The activities were not sporadic, trivial or benign trespass. Ballard and their predecessors improved the areas and maintained them in an open, visible, continuous, exclusive and notorious manner well beyond twenty years. Ballard was entitled to judgment declaring them owners of the road and the cleared area

---

<sup>3</sup> Payment of taxes, while not controlling, is another element to be considered. See *Northwoods Dev. Corp. v. Klement*, 24 Wis. 2d 387, 129 N.W.2d 121 (1964). Ballard introduced into evidence the real estate tax rolls for their property. These rolls all show assessments for land and improvements. Conversely, there were no assessments for any improvements on Finck's tax statements.

by the lake. The judgment of the circuit court is reversed and remanded with directions to enter judgment consistent with this decision.

*By the Court.*—Judgment reversed and cause remanded with directions.

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

