

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 3, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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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.

No. 00-2045

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JAMES ROBLESKI,

PLAINTIFF-APPELLANT,

v.

VERNON MOORE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Iron County:
DOUGLAS T. FOX, Judge. *Affirmed.*

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

¶1 PER CURIAM. This appeal arises out of a boundary dispute. James Robleski appeals a judgment determining that Vernon Moore, owner of property adjacent to Robleski's, is the owner of the disputed land. Robleski makes three arguments: (1) The trial court erroneously relied upon an invalid survey; (2) the

proofs support Robleski's adverse possession claim; and (3) the trial court failed to address the issue of privity. Because the record fails to support Robleski's claims of error, we affirm the judgment.

¶2 At trial to the court, Larry Nelson, a licensed surveyor with twenty-six years experience, testified that he surveyed the land in question and that his survey was accurate and in accordance with generally accepted surveying principles. The trial court found that the Nelson survey accurately located the true boundary between the Robleski and Moore properties. The court determined that the survey demonstrated that the disputed land belonged to Moore. The court was satisfied that Robleski's attempts to discredit the survey were unfounded.

¶3 The trial court next considered whether, given the fact that Moore had legal title to the disputed parcel, Robleski had established adverse possession. The land consisted of woods. The court found there was no evidence of cultivation or improvement of the land, and insufficient evidence of a substantial enclosure. The court was unconvinced that the claimed line of blazed trees was visible notice of occupancy. The court determined that Robleski's asserted occasional tree cutting for personal use was consistent with sporadic trespass rather than occupancy. Likewise, it concluded that Robleski's claimed maintenance of a woods area demonstrated the use of an easement rather than occupancy. The court found that these and other proofs offered by Robleski fell short of establishing the open, notorious, visible, exclusive, hostile and continuous occupancy necessary to support an adverse possession claim. Accordingly, the court ruled that the land in question belonged to Moore.

¶4 We first consider Robleski's contention that the trial court erred in relying on Nelson's survey. Robleski argues that Nelson's survey fails to comply

with federal surveying standards, in that he failed to consult with Robleski, the Bayfield Electric Co-op, or reliable witnesses other than Moore, to locate the quarter corner. Robleski also faults Nelson for failing to consult the county plat book and for not locating the sugar and hemlock trees near the crucial corner, as noted in the original field survey book. Robleski further argues that Nelson's single proportionate calculation contravened well-accepted surveying standards.

¶5 Robleski offered no expert testimony, however, to refute Nelson's opinions. Thomas Salzman, the Iron County forest administrator, testified that the original 150-year-old field survey records and the sixty-five-year-old copies are frequently inaccurate due to inaccurate instruments and techniques. Additionally, contrary to Robleski's contentions, Nelson testified that he and his crew talked to a number of people about the boundaries, including Robleski. He further testified that county plat books are inappropriate sources for surveying decisions.

¶6 Nonetheless, Robleski attacks the weight and credibility of Nelson's survey. The trial court, not the appellate court, judges the credibility of witnesses and the weight of their testimony. *State v. Wyss*, 124 Wis. 2d 681, 694, 370 N.W.2d 745 (Ct. App. 1985). Appellate courts search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court did not but could have reached. *In re Estate of Dejmál*, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). Appellate court deference considers that the trial court has the superior opportunity to observe the demeanor of witnesses and gauge the persuasiveness of their testimony. *Id.* at 151-52. A trial court's credibility assessments will not be overturned on appeal unless they are inherently or patently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts. *See Chapman v. State*, 69 Wis. 2d 581, 583, 230

N.W.2d 824 (1975). Based on the record, we are unpersuaded that Nelson's testimony, unrefuted by any other expert, lacks credibility as a matter of law.

¶7 Next, Robleski argues that the trial court erroneously found that he had failed to establish adverse possession. Robleski argues that the testimony of Moore and his father was unreliable and inconsistent. He further contends that aerial photographs show timber lines that support his claim. He argues that before the Moores purchased their property, Robleski's family had established its boundaries by improving the road, picking berries, and placing signs. He also argues that the court erred when it failed to analyze facts demonstrating adverse possession.

¶8 Like the preceding issue, this issue is governed by the deferential standard of review we pay to a trial court's assessments of weight and credibility. *See Leciejewski v. Sedlak*, 110 Wis. 2d 337, 344, 329 N.W.2d 233 (Ct. App. 1982). We must accept the trial court's factual findings on adverse possession unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). We will not set aside findings of fact by the trial court merely because there is evidence to support contrary findings. *Leciejewski*, 110 Wis. 2d at 343. It is the trial court's function to resolve conflicts in testimony and, when more than one inference may be drawn from the evidence, we must accept the inference drawn by the trial court. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶9 The court's written decision shows that it carefully analyzed the proofs in light of WIS. STAT. § 893.25, governing claims of adverse possession not founded on a written instrument. It provides:

(1) An action for the recovery or the possession of real estate and a defense or counterclaim based on title to real estate are barred by uninterrupted adverse possession of 20 years, except as provided by s. 893.14 and 893.29. A person who, in connection with his or her predecessors in interest, is in uninterrupted adverse possession of real estate for 20 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) 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.

¶10 The trial court found that Robleski's evidence of sporadic tree cutting failed to demonstrate occupancy. The trial court also observed that *Droege v. Daymaker Cranberries*, 88 Wis. 2d 140, 145, 276 N.W.2d 356 (Ct. App. 1979), rejected an adverse possession claim, finding as a matter of law that the placement of red and yellow flags and hunting were insufficient to constitute "usual improvement" or "protection by a substantial inclosure." We conclude that the trial court properly reached the same conclusion based upon the line of blazed trees.

¶11 Similarly, the trial court correctly found that a fence post and a pipe in the middle of the disputed strip failed to constitute a substantial enclosure, because it was undisputed that it was not a fence nor was it along the boundary line. Also, the trial court was entitled to find that unsigned no trespassing signs failed to convey any clear message because they were subject to more than one interpretation. We are persuaded that the trial court applied correctly found facts

to the controlling law and therefore do not reverse its rejection of Robleski's adverse possession claim.

¶12 Finally, Robleski argues that the trial court erred when it failed to consider the issue of privity. We disagree. The court effectively considered privity by saying that at no time were the WIS. STAT. § 893.25 requirements satisfied. Because the record fails to support Robleski's contention, we reject it.

By the Court.—Judgment affirmed.

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

