

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 9, 2001

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.

No. 00-3412

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JAMES KASIETA AND REYNE KASIETA,

PLAINTIFFS-APPELLANTS,

V.

JAMES TENNIES AND CAROLINE TENNIES,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Iron County:
PATRICK J. MADDEN, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 PER CURIAM. James and Reyne Kasieta appeal from an order dismissing their claim for adverse possession. The dispositive issue is whether the Kasietas proved that they adversely possessed the disputed property for the required twenty years. We conclude that they did not, and therefore affirm.

¶2 Joseph and Isabelle Kasieta, James Kasieta's parents, formerly owned two lots on the north shore of Spider Lake in Iron County. In 1961, they sold one to Joseph's brother John and his wife. In 1971, the latter sold their lot to James and Caroline Tennies. Joseph died in 1974, and title to the other lot passed to Isabelle. She sold it to her son, James Kasieta, in 1979.

¶3 The Kasietas' lot lies just west of the Tennies' lot, with a boundary line in part running ninety-six feet due south from an iron rod to the shoreline.¹ However, from at least 1961 on, the Kasietas believed it ran ninety-one feet south southeast from the iron rod to a point 15.6 feet further east along the shore, near a large boulder. Consequently, John Kasieta testified that he did not use the land west of the boulder during the ten years he owned the east lot, while Joseph and his family cut brush on it and used it for recreation.

¶4 From 1971 to 1979, both families used the disputed land (here called the triangle) and the beach in front of it for recreation. The Kasieta family continued to cut brush and perform maintenance over to the boulder. The Tennies knew their property extended west of the boulder, but did not perform any maintenance there, preferring to leave it wild. Initially they did not object to any of the Kasietas' activities on the land.

¶5 James Kasieta testified that after buying the west lot in 1979, he ran a bulldozer over the triangle to improve landscaping and erosion control. James Tennies testified that he never noticed this. In 1980, James Kasieta extended a horizontal beam along the shoreline to what he believed was the lot line, and piled

¹ In this opinion shoreline means the ordinary high water mark of Spider Lake.

large rocks behind it to control erosion. Thereafter he continued to perform routine maintenance in the triangle, such as brush clearing. In 1988, he built a ten-foot high retaining wall along the shoreline from his west boundary line to the large boulder he still believed stood at his east property line. Thereafter he installed sod and decorative fencing in the triangle, finally and definitively incorporating it into his lot.

¶6 The Tennies did not question James Kasieta's activities in the triangle until 1995. The parties then arranged for a survey that for the first time informed the Kasietas of the true lot line. The Kasietas continued using the triangle as part of their yard until July 1999, when the Tennies finally demanded removal of certain improvements from the area. The Kasietas responded with this action for adverse possession.

¶7 A person claiming adverse possession must prove twenty years of hostile, open, notorious, exclusive, and continuous use. *Keller v. Morfeld*, 222 Wis. 2d 413, 416-17, 588 N.W.2d 79 (Ct. App. 1998). For purposes of adverse possession, "hostile" means that the one in possession claims exclusive right to the occupied land. *Leciejewski v. Sedlak*, 110 Wis. 2d 337, 343, 329 N.W.2d 233 (Ct. App. 1982). To convey "hostility" the adverse claimant must do something that "clearly brings home" to the true owner the claimant's intent to usurp the property. *Cuskey v. McShane*, 2 Wis. 2d 607, 609, 87 N.W.2d 497 (1958). The ordinary use of land, such as the owner would use it in the normal course of events, can provide sufficient notice of exclusive possession. *Burkhardt v. Smith*, 17 Wis. 2d 132, 138, 115 N.W.2d 540 (1962).

¶8 Adverse possession is a mixed question of fact and law, requiring findings as to what happened and a conclusion of law as to the consequence of

those findings. *Perpignani v. Vonasek*, 129 Wis. 2d 478, 490, 386 N.W.2d 59 (Ct. App. 1986), *aff'd in part, rev'd in part*, 139 Wis. 2d 695, 408 N.W.2d 1 (Wis. 1987). We affirm the trial court's findings of fact unless they are clearly erroneous, WIS. STAT. § 805.17(2) (1999-2000);² we review its conclusions of law de novo. *First Nat'l Leasing Corp. v. City of Madison*, 81 Wis. 2d 205, 208, 260 N.W.2d 251 (1977).

¶9 The Kasietas did not prove that they adversely possessed the land between 1971 and 1980. Consequently, they failed to meet the test of possession for twenty uninterrupted years. The Kasietas, parents and son, were on friendly terms with the Tennies for years after the Tennies bought their property in 1971. James Kasietas and Carolyn Tennies were cousins. The children of both families played on the disputed parcel together and separately. What maintenance or landscaping James Kasietas performed was not particularly noticeable to the Tennies until he put in his rock wall in 1980. Under those circumstances, the trial court did not clearly err by finding that the Kasietas' use of the land before James started to build things on it was of a sporadic and friendly nature. That finding necessarily leads to the conclusion that the Kasietas failed to prove their claim for twenty years. *See Burkhardt*, 17 Wis. 2d at 137 (concluding sporadic, friendly acts do not convey a hostile intent to adversely possess land).

By the Court.—Order affirmed.

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

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

