COURT OF APPEALS
DECISION
DATED AND FILED

April 24, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1611 **Cir. Ct. No. 99-CV-248**

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

RAYMOND B. SCHAEFER AND EDNA SCHAEFER,

PLAINTIFFS-RESPONDENTS,

V.

DAVID D. BOLDT AND JACQUELINE M. BOLDT,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Ozaukee County: THOMAS R. WOLFGRAM, Judge. *Affirmed*.

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. David and Jacqueline Boldt appeal from a judgment awarding a portion of their property to Raymond and Edna Schaefer on alternative grounds: adverse possession and reformation of the Schaefers' deed. Because we affirm the circuit court's decision to award the property to the

Schaefers on the grounds of adverse possession, we do not reach the reformation issue.

¶2 This dispute arose after a survey revealed that the line between the Schaefer and Boldt properties was not where the parties thought it was. After a trial, the circuit court made the following findings. Judge Charles Larson, a predecessor in title to both parties, lived on one lot and deeded an adjoining lot to Ervin Hamman. At the time Hamman constructed his home, Judge Larson and Hamman intended to center the home on the lot with side yards of twelve feet on each side of the house. The construction plans reflected the twelve-foot side yards.

¶3 The Schaefers purchased Hamman's home in September 1960. In the 1960s, the Schaefers regraded their lot and installed a stone retaining wall at the rear of the property. Before making these improvements, the Schaefers consulted with Judge Larson regarding the location of the improvements. Judge Larson acquiesced in the location of the stone wall, agreeing that it was on the boundary between his property and the Schaefers' property.

¶4 In the 1970s, the Schaefers installed a large wooden planter to control erosion on the side of their lot adjoining Judge Larson's lot. The planter was constructed out of nine-foot timbers, leaving three feet between the improvement and what the Schaefers and Judge Larson believed to be the lot line. Judge Larson and the Schaefers mowed their properties to the approximate area of this lot line, which they believed was twelve feet from the east wall of the Schaefers' home.

¶5 In 1997, the Boldts bought Judge Larson's home. The dispute regarding the lot line arose when the Boldts began installing a fence and

landscaping. A survey revealed that the line accepted by the Schaefers and Judge Larson as the lot line was actually 4.18 feet beyond the true lot line, and the Schaefers had encroached on the Boldt (formerly Larson) property. The survey also showed that the stone retaining wall and the wooden planter encroached on the survey-determined boundary of the Boldts' property.

¶6 The Schaefers commenced an action to determine the lot line and to obtain ownership of the 4.18-foot strip of the Boldt property. The Schaefers contended that they and the Boldts' predecessor in title, Judge Larson, had recognized the lot line since 1960, and the strip should be awarded to them on adverse possession grounds.

¶7 After a court trial, the court found that the Schaefers' stone retaining wall was a substantial enclosure and that the Schaefers cultivated and improved the premises in a normal and typical manner. The Schaefers' possession of the 4.18-foot strip was sufficiently open and notorious to have alerted the title holder of the fact of possession and their intent to exclude others from possession. Therefore, the Schaefers' possession was hostile within the meaning of adverse possession law. The court granted the Schaefers title in fee simple to the 4.18-foot strip of property. The Boldts appeal.

¶8 Under WIS. STAT. § 893.25(1) and (2) (1999-2000),[1] a party may gain ownership of real property by adverse possession if there is uninterrupted possession for twenty years and the party "is in actual continued occupation under claim of title, exclusive of any other right" and the property is "[p]rotected by a

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

substantial enclosure" or is "[u]sually cultivated or improved." The party claiming adverse possession must show that the disputed property was used for twenty years, § 893.25(1), in an "open, notorious, visible, exclusive, hostile and continuous [manner], such as would apprise a reasonably diligent landowner and the public that the possessor claims the land as his own." ***Pierz v. Gorski***, 88 Wis. 2d 131, 137, 276 N.W.2d 352 (Ct. App. 1979).

¶9 "[A]dverse possession issues are usually mixed questions of law and fact." ***Perpignani v. Vonasek***, 139 Wis. 2d 695, 728, 408 N.W.2d 1 (1987). Although we do not ordinarily defer to the circuit court's conclusion of law, we will give weight to a legal determination that is intertwined with the factual findings in support of that determination. ***Wassenaar v. Panos***, 111 Wis. 2d 518, 525, 331 N.W.2d 357 (1983). The circuit court, not the appellate court, judges the credibility of witnesses and the weight of their testimony. *See* ***Patrickus v. Patrickus***, 2000 WI App 255, ¶26, 239 Wis. 2d 340, 620 N.W.2d 205. We search the record for evidence to support findings reached by the circuit court. ***Johnson v. Merta***, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983) (citation omitted).

¶10 On appeal, the Boldts make much of the fact that Judge Larson testified that he and the Schaefers did not make any claims against each other regarding the lot line for the thirty-seven years they were neighbors. Judge Larson described a cooperative, neighborly relationship when it came to mowing and shoveling snow up to the apparent lot line. From this testimony, the Boldts argue that there was nothing hostile or notorious about the Schaefers' possession of the

4.18-foot strip of Judge Larson's property, and the Schaefers never alerted Judge Larson to their claim to that strip of land or attempted to exclude him.

¶11 The circuit court's findings regarding the Schaefers' use of the disputed area are not clearly erroneous. WIS. STAT. § 805.17(2). It is undisputed that Judge Larson was involved in siting the house on the Schaefers' lot and that the plans for the twelve-foot side yards did not coincide with the survey-determined lot lines. It is also undisputed that Judge Larson and the Schaefers treated the lot line between them as including, on the Schaefers' side, the 4.18-foot strip.[2] The Schaefers' use of that property excluded Judge Larson because he mowed up to roughly where he thought that 4.18-foot strip abutted his property.[3]

¶12 The evidence shows that the Schaefers actually occupied the strip of property, made improvements and maintained their lot in a manner which gave notice that they believed their lot included the 4.18-foot strip. They made "ordinary use of which the land is capable and such as an owner would make of it" which was sufficient to give notice of the Schaefers' claim to the strip. ***Burkhardt v. Smith***, 17 Wis. 2d 132, 138, 115 N.W.2d 540 (1962).

¶13 The Schaefers' claim to exclusive use of the property, as evidenced by their treatment of the property over the years, satisfies the hostility requirement of adverse possession law. "Hostility" means that the party in possession "claims exclusive right to the land possessed, and actual possession prevents the

[2] The twenty-year adverse possession period, *see* WIS. STAT. § 893.25(1), was satisfied before the Boldts purchased Judge Larson's home.

[3] In his testimony, David Boldt conceded that when he first bought the home, he considered the lot line to be where the Schaefers and Judge Larson had considered it to be. The Boldts did not have the property surveyed before they closed on their purchase.

assumption that the true owner is in possession." ***Leciejewski v. Sedlak,*** 110 Wis. 2d 337, 343, 329 N.W.2d 233 (Ct. App. 1982), *aff'd,* 116 Wis. 2d 629, 342 N.W.2d 734 (1984).

¶14 The Boldts argue that the Schaefers did not possess all of the 4.18-foot strip to the sidewalk and that merely mowing that area is insufficient to establish adverse possession. Under the facts of this case, we disagree. There was evidence that the Schaefers and Judge Larson respected what they believed to be the lot line between their homes to the sidewalk. The Schaefers also planted trees up to what they believed to be the lot line (twelve feet from the house). The Schaefers removed a tree within the twelve-foot area at Judge Larson's request. Judge Larson maintained a garden on his side of the lot line.

¶15 The circuit court's findings are not clearly erroneous and the court properly applied the law to the facts it found. We therefore affirm the circuit court's adverse possession ruling. Because we affirm on adverse possession, we need not reach the deed reformation issue.

By the Court.—Judgment affirmed.

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