

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 29, 2003

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.

**Appeal No. 02-2214-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-40

**IN COURT OF APPEALS
DISTRICT III**

JOSEPH WELHOUSE,

PLAINTIFF-APPELLANT,

v.

RALPH L. BOODRY AND SHARON A. BOODRY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Florence County:
ROBERT A. KENNEDY, Judge. *Affirmed.*

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

¶1 PER CURIAM. Joseph Welhouse appeals a judgment declaring that Ralph and Sharon Boodry acquired by adverse possession land previously

titled to Welhouse.¹ Welhouse argues the circuit court erred by (1) concluding that WIS. STAT. § 893.33(2) did not bar the Boodrys' counterclaim of adverse possession; and (2) admitting a land survey into evidence without first having the survey's author authenticate it. We reject Welhouse's arguments and affirm the judgment.

¶2 Welhouse and the Boodrys own adjoining real property in Florence County. The dispute in this case involves a strip of land that runs along the boundary between the two properties. The trial court found that an "ancient fence" encroached upon property Welhouse purchased in 1995. Although Welhouse had a recorded title to the disputed strip, the Boodrys had occupied the land up to the fence line since their acquisition of the property in 1978. In August 2000, Welhouse filed suit seeking a declaration of his interest in the property pursuant to WIS. STAT. § 841.01.² The Boodrys counterclaimed, contending they had title to the disputed real estate by adverse possession. The circuit court found in favor of the Boodrys and this appeal follows.

¶3 Welhouse argues that WIS. STAT. § 893.33(2) precludes the Boodrys' claim for adverse possession. The statute provides in part:

[N]o action affecting the possession or title of any real estate may be commenced ... which is founded upon any ... event occurring more than 30 years prior to the date of commencement of the action, unless ... within 30 years after the date of the ... event there is [an instrument or notice of claim recorded with the register of deeds].

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

² Pursuant to WIS. STAT. § 841.01(1), "[a]ny person claiming an interest in real property may maintain an action against any person claiming a conflicting interest, and may demand a declaration of interests."

¶4 Welhouse, claiming that the fence was erected in the 1930's, argues that the fence's placement triggered the twenty-year adverse possession period, thereby vesting title to the adverse possessor in the 1950's. Citing *Shelton v. Dolan*, 224 Wis. 2d 334, 591 N.W.2d 894 (Ct. App. 1998), Welhouse ultimately contends that because the Boodrys failed to assert their adverse possession claim within thirty years after title vested, i.e. by the 1980's, the thirty-year recording requirement of WIS. STAT. § 893.33(2) bars their claim. In *O'Neill v. Reemer*, 2003 WI 13, ¶1, ___ Wis. 2d ___, 657 N.W.2d 403, however, our supreme court overruled *Shelton*, concluding that the owner-in-possession exception to the thirty-year recording requirement applies to adverse possession claims.³ We therefore conclude that § 893.33(2) does not bar the Boodrys' adverse possession claim.

¶5 Welhouse also claims that because WIS. STAT. § 909.01 prevents evidence from being admitted without proper authentication, the circuit court erred by admitting a land survey into evidence without first having the survey's author authenticate it. We are not persuaded. Pursuant to § 909.01, "[t]he requirements of authentication or identification as a condition precedent to admissibility are satisfied by evidence sufficient to support a finding that the matter in question is

³ The court recognized that "[u]nder the thirty-year recording requirement, a person who claims ownership rights as the result of an event loses the right to bring a claim based on that event if an instrument or notice of claim is not recorded within thirty years of the event." *O'Neill v. Reemer*, 2003 WI 13, ¶10, ___ Wis. 2d ___, 657 N.W.2d 403. The court further acknowledged that "[a]dverse possession for the period of time necessary under the circumstances to obtain title is considered to be an 'event' covered by the thirty-year recording requirement and the thirty-year period commences to run upon the expiration of that period." *Id.*

Ultimately, however, the *O'Neill* court applied the owner-in-possession exception created by WIS. STAT. § 893.33(5), which provides in part: "[The 30-year recording requirement] does not apply to any action commenced ... by any person who is in possession of the real estate involved as owner at the time the action is commenced." The court noted that "the exception ensures that the rights of owners who are in possession of their property are not affected if they have not made the filings of record that would otherwise be necessary under the thirty-year recording requirement." *Id.*, ¶11.

what its proponent claims.” Section 909.015(7) describes a “writing authorized by law to be recorded ... in a public office” as an example of authentication conforming with the requirements of § 909.01. Because the survey offered by the Boodrys was prepared by a registered land surveyor and recorded in the office of the Florence County Register of Deeds, the survey satisfies the requirements of § 909.01.

By the Court.—Judgment affirmed.

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

