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DISTRICT IV

January 22, 2014

To:

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You are hereby notified that the Court has entered the following opinion and order:

2012AP1705 Mary Ellen Hughes v. Gerald E. Fults and Sandra A. Fults (L. C. #2011CV47)

Before Lundsten, Sherman and Kloppenburg, JJ.

This case arises out of a lot line dispute. Gerald and Sandra Fults argue that the circuit court erred by granting adverse possession to Mary Ellen Hughes. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We summarily affirm the judgment.

In 1941, Hughes' parents built a home on a lot in Owen. Hughes inherited the home when her father passed away in 1994. In 1987, the Fultses purchased a home directly south of

[1] References to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Hughes' lot.[2] The Fultses bought the property from the Sutters, who had owned it since 1951. After the Fultses' purchase, a dispute arose over a small strip of land separating the properties abutted by a line of trees.

The matter was tried to the court over two days. The court thereafter issued a memorandum decision, concluding that the Hugheses acquired the disputed area by adverse possession during the period of the Sutters' ownership from 1951 to 1987. The court specifically stated: "The court finds that by 1987, the Hughes family owned the tree line and that property north of the tree line including property east of the end of the tree line but running along that line, more particularly described as line 'A' on exhibit 1." The court also found that Gerald Fults admitted at trial that he had no evidence to refute the adverse possession claim from 1951 to 1987.

WISCONSIN STAT. § 893.25 permits a person to acquire title to real property by adverse possession for an uninterrupted period of twenty years. The statute requires the property to be actually occupied and either protected by a substantial enclosure or usually cultivated or improved. WIS. STAT. § 893.25(2). A person claiming adverse possession must show that the disputed property was used for the requisite time period in an "open, notorious, visible, exclusive, hostile and continuous" manner that would apprise a reasonably diligent landowner and the public that the possessor claimed the land as his or her own. *See* ***Pierz v. Gorski***, 88 Wis. 2d 131, 137, 276 N.W.2d 352 (Ct. App. 1979).

[2] The circuit court, in its memorandum decision, stated that the Fultses "purchased their property to the south of the [Hughes property] in 1989." Gerald Fults, however, testified that he and his wife purchased that property in the fall of 1987.

Here, we are satisfied that the circuit court correctly determined that Hughes submitted adequate evidence to support the adverse possession claim.[3] *See* ***Leciejewski v. Sedlak***, 116 Wis. 2d 629, 636, 342 N.W.2d 734 (1984). Undisputed and credible evidence shows that the Hugheses seeded and mowed up to the tree line at issue, and the Sutters mowed up to their respective side of the tree line. The evidence further established that the Hugheses planted plum trees on the disputed area that were recognized by the Sutters as being owned by the Hugheses. The Hugheses also maintained a culvert that they used for drainage, and deposited snow on the disputed area in the winter. As the circuit court observed, the Fultses admitted at trial that they had no evidence to refute the adverse possession claim from the time that the Sutters purchased the property in 1951 until the Fultses' purchase in 1987.

The Fultses insist that the record lacks proof of exclusive use by the Hugheses.[4] "Exclusive use" must be of such a nature as to give notice of the adverse possessor's exclusive dominion to the owner or the public. *See* ***Allie v. Russo***, 88 Wis. 2d 334, 346, 276 N.W.2d 730 (1979). From the evidence adduced at trial, the circuit court reasonably concluded that the use of the disputed area was such as to give notice of the Hugheses' exclusive dominion for the requisite twenty-year time period.

[3] At the outset, we note that the Fultses' brief violates the requirements of WIS. STAT. RULE 809.19(1)(d)-(e) by failing to provide citations to the record on appeal. The Fultses cite only to their appendix. We will not search the record for facts supporting a party's contentions. *See* ***Siva Truck Leasing, Inc. v. Kurman Distribs.***, 166 Wis. 2d 58, 70 n.32, 479 N.W.2d 542 (Ct. App. 1991).

[4] In the circuit court, the Fultses argued that there was no showing of exclusive use. The Fultses argue for the first time on appeal that "no evidence exists that the predecessor Hughes family claimed, as a lot owner, any of the other essential legal elements of 'continuous,' 'open, and hostile' possession for any stated statutory timeframe." We generally do not consider issues addressed for the first time on appeal. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980). However, even if we reached the issues, the evidence satisfied each element of adverse possession.

Because sufficient evidence exists in the record to support the circuit court's conclusion that Hughes met her burden of proving adverse possession, we affirm the judgment.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals