STATE OF MICHIGAN

COURT OF APPEALS

HENRY E. SMITH and DENISE SMITH, husband and wife, MIRIAM E. BLAIR AND EDSEL BLAIR, husband and wife, HAZEL E. (MCMILLAN) DECKER, and JAMES MCMILLAN, mother and son,

Plaintiffs-Appellees,

v

SANLEY G. LATUS and MURIAL J.LATUS, husband and wife,

Defendant-Appellants.

UNPUBLISHED
September 3, 1996

No. 179281
LC No. 93-3521-CH

Before: Hood, P.J., and Markman and A. T. Davis,* JJ.

PER CURIAM.

Defendants appeal by right a judgment awarding title to disputed property to plaintiffs by adverse possession. We affirm.

Plaintiffs Henry Smith, Miriam Blair and Hazel McMillan and defendant Murial Latus are siblings. The present action arises out of their disagreement over the ownership of subparcels of a fourteen-acre parcel of land owned by their family. The parties' parents owned the parcel as tenants by the entirety. Upon their father's death in 1963, their mother, Edna Smith, became sole owner. In 1963, Edna conveyed the parcel to herself and her oldest son, Roger Smith, as joint tenants with a right of survivorship. At trial, Roger testified that it was his parent's intention that he own the entire parcel alone. However, at the time of this conveyance, Roger was aged twenty-two and plaintiffs were younger than he.[1] Plaintiffs and three witnesses who are not parties to this action testified that Edna repeatedly spoke of her intention to divide the parcel into five-acre parcels for her sons and one-acre parcels for her daughters.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Edna conveyed parcels to plaintiffs via warranty deeds that did not list Roger as a joint tenant and which Roger did not sign.[2] On July 15, 1977, Edna conveyed a five-acre parcel (the Smith parcel) to plaintiffs Henry and Denise Smith. On August 18, 1978, Edna conveyed a one-acre parcel (the Blair parcel) to plaintiffs Edsel and Miriam Blair and a one-acre parcel (the McMillan parcel) to plaintiffs Hazel and James McMillan. At trial, Roger testified that at the time his mother drafted these deeds she asked him to sign them but he refused. Edna died in 1979. Plaintiffs exercised control over the parcels deeded to them as discussed below. During the relevant time period, Roger lived away from the family home but visited yearly.

On April 29, 1989, Roger conveyed the entire fourteen acre parcel to defendants Murial Latus (his sister) and her husband. He testified that consideration for this conveyance consisted of $400 - $500 in groceries, a used car and additional money upon successfully acquiring the parcels from plaintiffs.

Plaintiffs filed the present action to quiet title on August 17, 1993. The trial court found that plaintiffs had demonstrated sufficient indicia of ownership and possession for fifteen years to meet their burden with respect to adverse possession regarding the three parcels at issue. Its specific findings regarding each of the parcels at issue are discussed in detail below. In its opinion from the bench, the trial court made several observations applicable to all three parcels. First, it noted that the failure of Roger and defendants to pay real estate taxes on the parcels "reflects poorly upon the defendants' claim of title." Second, it found that it was the intent of the parties' parents to split the fourteen-acre parcel between their children and that Edna took actions consistent with that intent. It found that Roger and defendant Murial Latus "were obviously aware that was her intent." It found that Roger knew of plaintiffs' claims and "acquiesced" in them and that it was "disingenuous" of him to now claim title to the disputed parcels. Finally, the court found that the low consideration paid by defendants for the deed from Roger demonstrated that both Roger and defendants understood that plaintiffs were claiming title to the disputed parcels. This minimal consideration suggests both Roger's assessment of the uncertainty of his claim to the entire fourteen-acre parcel and defendants' recognition that the claim to the entire parcel was questionable and that litigation would be required to quiet title. They were, in effect, engaging in a roll of the dice and purchasing a lawsuit.

Actions to quiet title are equitable and this Court reviews such equitable decisions de novo, but this Court reviews trial court factual findings under the clearly erroneous standard. *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993).

Pursuant to MCL 600.5801; MSA 27A.5801, an action for recovery or possession of land generally must be brought within fifteen years after it accrues. *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993).

> A claim of adverse possession requires clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years. These are not arbitrary requirements, but the logical consequence of someone claiming by adverse possession having the burden of proving

> that the statute of limitations has expired. To claim by adverse possession, one must show that the property owner of record has had a cause of action for recovery of the land for more than the statutory period. A cause of action does not accrue until the property owner of record has been disseised of the land. MCL 600.5829; MSA 27A.5829. Disseisin occurs when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership. [*Id*. at 439; citations omitted.]

In *Rozmarek v Plamondon*, 419 Mich 287, 293; 351 NW2d 558 (1984), the Court cited with approval *McVannel v Pure Oil Co*, 262 Mich 518, 525-526; 247 NW 735 (1933); *Ennis v Stanley*, 346 Mich 296, 301; 78 NW2d 114 (1956):

> It is well settled that in order to establish adverse possession, the true owner must have actual knowledge of the adverse possession, or alternatively, the possession must be so notorious as to raise the presumption to the world that the possessor claims ownership.

Here, with respect to all three disputed parcels, we must first assess when the fifteen year period began. The record indicates that neither defendants nor Roger took any action to regain possession of the disputed parcels until August 1993. Accordingly, in order to succeed in their adverse possession claims, plaintiffs had the burden of establishing that a cause of action against them first accrued before August 1978. In their brief on appeal, defendants concede that the Smiths "arguably" provided notice to Roger in 1977 that they claimed ownership of the Smith parcel. With regard to the Blair and McMillan parcels, Roger offered conflicting testimony regarding when he knew of the deeds. However, he ultimately admitted knowledge of these deeds at the time they were drafted during the following cross-examination:

> Q. So you knew way back when the deeds were first being drafted you were asked to sign those deeds and –
>
> A. I didn't have to sign.
>
> Q. But you were asked by your mother way back then about these deeds?
>
> A. Yes.

On the basis of this trial testimony, the trial court did not clearly err in finding that Roger had actual knowledge of the adverse claims of the Blairs and McMillans at the time the August 17, 1978 deeds were signed. Accordingly, the trial court did not clearly err in determining that the fifteen-year period had elapsed with respect to all three parcels at issue.

The controlling issue then becomes whether plaintiffs' actions with respect to the disputed parcels met the substantive requirements of adverse possession. The trial court separately addressed the three parcels at issue.

With respect to the Smith parcel, the court found that the Smiths exercised dominion over the parcel since 1977 (the date of their deed.) The Smiths lived in a house on the parcel before 1977 and paid rent to Edna until she deeded the property to them. They lived on the parcel through the date of the trial, except for a period from 1988 through 1991. The court stated:

> 'Continuous' is not so narrowly defined as requiring actual continual physical occupancy upon a particular piece of property. Rather, continuous means to exercise continuous dominion against the world.

During the period that they were not living on the parcel, the court found that they continued to exercise dominion over it, including renting it out for at least a third of that time. It noted that the Smiths paid the property taxes on the parcel. The court noted that neither Roger nor defendants exercised dominion over the parcel that would break the Smith's continuous possession of it. It found that it was "disingenuous" for Roger to now claim ownership of this parcel.

With respect to the Blair parcel, the trial court found that the Blairs exercised dominion over the parcel since 1977. It noted the August 17, 1978 deed from Edna. It found that the Blairs' acts "were of such regularity and consistency to furnish the element of continuous." It specifically noted that the Blairs cleared the property, put in a culvert and driveway, cut trees, made fires, constructed an outhouse, used the property to park various trailers and paid taxes. It acknowledged defendants' contention that they paid some taxes on the parcel but contrasted that allegation with the absence of any interference to the dominion of the Blairs over the parcel.

With respect to the McMillan parcel, the trial court found that the McMillans met the elements of adverse possession. It found that the McMillans maintained dominion over the parcel since 1977. It noted the August 17, 1978 deed from Edna. It found that the parcel is undeveloped but that the McMillans returned every year to check on the property, picnic on it and "enjoy the undeveloped nature." It also noted that they paid the property taxes.

The facts cited by the trial court in support of its determination that plaintiffs made out the elements of adverse possession are supported by the record. Obviously, there were differences in the nature and extent of plaintiffs' assertions of dominion over the three parcels at issue: the Smiths lived on their parcel; the Blairs improved their property by clearing it and putting in a culvert, driveway and outhouse; and the McMillans left their parcel undeveloped but monitored it and picnicked on it. Regarding adverse possession, this Court in *Denison v Deam*, 8 Mich App 439, 444; 154 NW2d 587 (1967), quoted from *Monroe v Rawlings*, 331 Mich 49, 53; 49 NW2d 55 (1951):

> It is sufficient if the acts of ownership are of such a character as to openly and publicly indicate an assumed control or use such as are consistent with the character of the premises in question.

The McMillans' use of the parcel was less substantial than that of the Smiths and Blairs with respect to their parcels. However, as an undeveloped parcel, their limited use was consistent with the character of

the property. Further, the tax records indicate that plaintiffs all paid taxes on their respective parcels for many years. In *Rozmarek*, *supra*, at 293, the Court held:

> The payment of taxes is not conclusive, but is an important element in determination of title by adverse possession.

Here, the record indicates that Roger did not pay taxes on the disputed parcels during the relevant time period and that defendants only paid them for a few years. Accordingly, this important element, in conjunction with the other factors, indicates that plaintiffs were asserting dominion over the disputed parcels. Further, where the party against whom adverse possession is asserted has actual, as opposed to constructive, knowledge of the adverse claim, sheer delay in responding to the adverse claim is an appropriate factor for consideration. Here, despite his knowledge of the deeds, and plaintiffs' assertions of some dominion over the disputed parcels pursuant to the deeds, Roger did nothing to eject plaintiffs or otherwise assert his ownership over the disputed parcels from 1977 through 1989 (when he sold his interest in the entire parcel to defendants).

The evidence also supported the trial court's determination that the parties' parents intended to divide the fourteen-acre parcel among all the children and that Roger and defendant Murial Latus were aware of this intention and of plaintiffs' rightful assertion of control over the parcels at issue. On the basis of plaintiffs' assertions of possession over the disputed parcels and the underlying understanding of all the parties that their parents intended the fourteen-acre parcel to be divided among all the children, we affirm the trial court's order quieting title to the disputed parcels in plaintiffs pursuant to adverse possession.

Affirmed.

/s/ Harold Hood
/s/ Stephen J. Markman
/s/ Alton T. Davis

[1] Defendant Murial Latus, the oldest of the siblings, received a deed for a one-acre parcel in 1955.

[2] We note that the technical effect of Edna conveying her interest in the disputed parcels to plaintiffs was to sever her joint tenancy with Roger and to make Roger a tenant in common with the plaintiffs with respect to the parcels. *Albro v Allen*, 434 Mich 271, 275; 454 NW2d 85; *Smith v Smith*, 290 Mich 143, 155-157; 287 NW 411 (1939).