

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES TENNANT and KATHLEEN
TENNANT,

UNPUBLISHED
March 7, 1997

Plaintiffs/Counter-Defendants/Appellees,

v

No. 189876
Allegan Circuit Court
LC No. 93-001630

JAMES E. TADRA and BONITA J. TADRA,

Defendants/Counter-Plaintiffs/Appellants.

Before: Murphy, P.J., and Markey and A.A. Monton,* JJ.

PER CURIAM.

The Tadras appeal as of right from the decision of the trial court finding no cause of action and granting judgment for the Tennants. We affirm.

The sole issue for our review is whether the Tadras established their right to ownership of a portion of the neighboring lot owned by the Tennants, labeled "Parcel D," either by adverse possession or acquiescence for the statutory period. Thus, this is an action to quiet title that we review de novo although the factual findings of the trial court are reviewed for clear error. *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

The elements of adverse possession are well established: a claim of adverse possession exists where possession is actual, visible, open, notorious, exclusive, continuous, and uninterrupted for fifteen years after the cause of action accrued. MCL 600.5801; MSA 27A.5801, *Thomas v Rex A Wilcox Trust*, 185 Mich App 733, 736; 463 NW2d 190 (1990). Whether adverse possession is established depends on the facts of the case and the character of the property in dispute. *Id.*, 737. Here, the Tennants did not need to take any affirmative possession of the property and could simply hold it for future use or sale; however, the Tadras needed to show positive and affirmative acts of ownership to claim title by adverse possession. *Barley v Fisher*, 267 Mich 450, 453; 255 NW 223 (1934).

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

Although the Tadras testified at an earlier deposition that they did not know they were occupying a portion of the Tennants' lot until 1987, we will assume for purposes of review that the Tadras' occupation of Parcel D was hostile based on their testimony at trial that they knew in 1974 they were using a portion of the Tennants' lot but disregarded the true boundary line. Even with this assumption, the remaining elements of adverse possession were not established by the evidence proffered by the Tadras.

First, the Tadras' actions were not open and notorious. The placement of their travel trailer and various items of debris slightly over the boundary line did not constitute notice that an adverse claim of possession was being made. Neither did the Tadras' occasional mowing of the grass or trimming of the trees reasonably apprise the Tennants that another was assuming control of their property. See *Bankers Trust Co of Muskegon v Robinson*, 280 Mich 458, 464-465; 273 NW 768 (1937).

Next, the Tadras' actions were not continuous and uninterrupted. The mere act of placing a wire fence along the line of occupation in 1990 after the Tennants complained in 1987 about the encroachments does not establish adverse possession for the statutory period. Additionally, the locations of the two trailers between the Tadras' properties and Parcel D varied. Likewise, the amount and variety of debris on Parcel D varied. Most significant, when the Tennants demanded that the Tadras remove their items from Parcel D, the Tadras appeared to have complied and showed no evidence of their ownership claim.

Finally, despite the Tadras' argument on appeal that the sand fill created a visible boundary, the testimony at trial indicated that any new boundary line that was created by the fill line was difficult to measure and may have even extended beyond the point where a surveyor marked it in 1993. Because the Tadras did not show these requisite acts of ownership, a cause of action against the Tennants based on adverse possession did not accrue.

Alternatively, the Tadras argue that they acquired Parcel D by statutory acquiescence because the Tennants accepted the line created by the sand fill as the new boundary by not seeking to eject the Tadras from Parcel D either after their complaint in 1987 or in this lawsuit. However, the testimony at trial did not reveal any substantial period of time when the Tennants believed or treated the line of occupation as the boundary line. Indeed, the testimony showed that the Tennants requested surveys in 1987, 1992, and 1993 to confirm their suspicions that various items owned by the Tadras were encroaching the true boundary line. Therefore, a cause of action against the Tennants based on acquiescence did not accrue.

Affirmed.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Anthony A. Monton