

STATE OF MICHIGAN  
COURT OF APPEALS

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VIOLA MCVEY and DENNIS MCVEY,

Plaintiffs-Appellees,

v

SHEPLER DEVELOPMENT, LLC,

Defendant-Appellant.

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UNPUBLISHED  
November 1, 2002

No. 232384  
Cheboygan Circuit Court  
LC No. 99-006633-CH

Before: Hood, P.J., and Whitbeck, C.J., and O’Connell, J.

PER CURIAM.

Defendant appeals as of right from a judgment of quiet title for plaintiffs. We affirm in part and vacate in part.

Defendant contends that the trial court erred in concluding that the elements of adverse possession were satisfied because plaintiffs failed to present clear and cogent proof of hostile occupancy for the fifteen-year period. We disagree. Although actions to quiet title are equitable and subject to de novo review, the trial court’s factual findings are reviewed for clear error. *Dobie v Morrison*, 227 Mich App 536, 541-542; 575 NW2d 817 (1998). In *Thomas v Wilcox Trust*, 185 Mich App 733, 736-737; 463 NW2d 190 (1990), this Court set forth the elements of a claim of adverse possession:

Adverse possession must be established by clear and cogent proof that the claimant’s possession was actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years. The possession must be hostile and under cover of a claim of right. [Citations omitted.]

In *Doctor v Turner*, 251 Mich 175, 186; 231 NW 115 (1930), the Supreme Court concluded that “the occasional or periodical entry upon land to cut wild grass is not an act manifesting a purpose to take possession as owner, and does not constitute actual possession.” (Citations omitted.) Therefore, the plaintiff failed to acquire property through adverse possession by hay cutting that was casual and amounted to little more than an annual trespass. *Id.* at 187. However, in the present case, the activities that occurred in the disputed property involved more than lawn maintenance. A fence was erected, trees were planted, sheds were maintained and replaced, and family activities occurred in the disputed area by plaintiffs and their predecessors in interest.

Defendant contends that plaintiffs failed to demonstrate hostile occupancy based on their testimony that they did not intend to deprive the railroad, defendant's predecessor, of the property. In *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 646; 528 NW2d 221 (1995), this Court addressed the hostile requirement of adverse possession:

The term "hostile" as employed in the law of adverse possession is a term of art and does not imply ill will. Nor is the claimant required to make express declarations of adverse intent during the prescriptive period. Adverse or hostile use is use inconsistent with the right of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder. [Citations omitted.]

Plaintiffs' occupancy was use inconsistent with the rights of defendant's predecessor as evidenced by the use and occupation of this fenced area of property. Thus, the hostility requirement for adverse possession was established. Indeed, plaintiffs did not intend to deprive the railroad of the use of the property because of their belief that they owned this disputed property. Tacking of successive periods of adverse occupancy may occur although the property is not described in the deed when grantees take possession of the disputed property and regard it as conveyed. *Mary v Maurer*, 339 Mich 115, 119; 62 NW2d 455 (1954).<sup>1</sup>

Defendant alleges that the trial court's supplemental opinion and the trial court's final opinion appear to be in conflict. We agree. It appears that at one point the trial court determined that Viola McVey obtained both the railroad property and all of Hale Street by adverse possession. This would have occurred prior to the time Hale Street was vacated by the city and is supported by the trial court's final order. However, the supplemental opinion provided that one-half of the width of Hale Street belonged to plaintiff. We note that these conclusions appear to be in conflict with each other.

Since the final order and the supplemental opinion appear to be in conflict, we vacate both the supplemental opinion and the final order as it pertains to Hale Street. We direct the trial court to issue a new opinion and order concerning Hale Street. The trial court may conduct further hearings and request briefs from both parties.

Affirmed in part and vacated in part. We remand for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Harold Hood  
/s/ William C. Whitbeck  
/s/ Peter D. O'Connell

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<sup>1</sup> We note that plaintiffs' complaint also sought title to the disputed property through acquiescence, and proof of privity is not necessary under the doctrine of acquiescence. *Siegel v Renkiewicz Estate*, 373 Mich 421, 426; 129 NW2d 876 (1964).