

STATE OF MICHIGAN  
COURT OF APPEALS

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BAD AXE LAKESIDE CLUB and POINT AUX  
BARQUES, INC.,

UNPUBLISHED  
August 5, 2003

Plaintiffs/Counter-Defendants-  
Appellees,

v

No. 237718  
Huron Circuit Court  
LC No. 00-001097-CH

SAMUEL J. SERRA and WILLIAM L. SERRA,

Defendants/Counter-Plaintiffs-  
Appellants.

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Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant<sup>1</sup> appeals the trial court's ruling that plaintiffs established ownership of a section of property to which defendant claimed legal title. We affirm.

Defendant contends that plaintiffs presented insufficient evidence to establish that they acquired the disputed section of property by adverse possession. We disagree.

“Although actions to determine interests in land are equitable in nature and are thus . . . reviewed de novo, we review the trial court's findings of fact for clear error.” *Slatterly v Madiol*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2003). As this Court explained in *Marina Bay Condominiums, Inc v Schlegel*, 167 Mich App 602, 604-605; 423 NW2d 284 (1988), “[a] trial court's finding is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.”

“To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years.” *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Further, the elements of adverse possession must be shown by “clear and cogent” evidence. *Walters v Snyder*, 225 Mich App 219, 223; 570 NW2d 301 (1997); *Gorte v Department of Transp*, 202 Mich App 161, 170;

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<sup>1</sup> Samuel Serra died in 1996 and, throughout this opinion, “defendant” refers to William Serra.

507 NW2d 797 (1993). The nature of conduct necessary to constitute adverse possession is largely dictated by the character of the property at issue. *Barley v Fisher*, 267 Mich 450, 452; 255 NW 223 (1934).

Here, the trial court found that plaintiffs maintained fencing at the disputed site for more than fifty years and that plaintiffs regularly repaired and replaced the fencing during the statutory period. In addition to the maintenance of the fencing, the trial court found that, for years, plaintiffs posted signs on the property that warned against hunting and trespassing. Further, the trial court found that plaintiffs regularly patrolled and maintained the disputed section for at least seventeen years. The trial court also concluded that plaintiffs maintained their ownership of the property under a claim of right and that plaintiffs' claim was hostile to the title of the true owner, defendant.

After reviewing the record in this case, we hold that the trial court did not clearly err in its findings of fact and that plaintiffs presented "clear and cogent" proof to establish their claim of adverse possession. Ample witness testimony established that, notwithstanding defendant's title ownership of the land, plaintiffs erected and maintained intersecting fences at the disputed section, that plaintiffs repaired, replaced or reconstructed that fencings over a period of many years and that, consistent with its seasonal use, plaintiffs patrolled and maintained the area and posted "no trespassing" signs.

We reject defendant's argument that, because he presented some contrary evidence, plaintiffs did not meet their burden of "clear and cogent" evidence to establish adverse possession. *Walters, supra*, at 223. While "clear and cogent" evidence is, indeed, an elevated burden of proof, the mere existence of counterevidence does not render plaintiffs' proofs inadequate, particularly where, as here, abundant witness testimony and documentary evidence clearly established plaintiffs' claim. Our review of the trial court's findings of fact does not leave us with the "definite and firm conviction that a mistake has been made" and we, too, conclude that plaintiffs established their claim of adverse possession at trial.<sup>2</sup>

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder

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<sup>2</sup> Because we conclude that plaintiffs acquired title to the disputed section of land by adverse possession, we need not address defendant's arguments regarding the trial court's finding that plaintiffs also acquired the land by acquiescence.

Defendant also challenges the trial court's ruling on plaintiffs' trespass claim and merely asserts that plaintiffs neither owned nor possessed the property when defendant tore down plaintiffs' fencing. The record evidence shows that plaintiffs clearly possessed the property when plaintiff tore down plaintiff's fencing. 1 Restatement Torts, 2d, § 158, p 277. Accordingly, we decline to reverse the trial court's ruling on this basis.