

STATE OF MICHIGAN
COURT OF APPEALS

SAMIR S. AMIN and KAREN ANN AMIN,

Plaintiffs-Appellees,

v

HEIRS and ASSIGNS of EDWARD WALSH,
HEIRS and ASSIGNS of EDNA HOEL, DONNA
M. HENRY, VERA O'HARA, CAROL
ROHLINGER, THOMAS OLNEY and MABEL
OLNEY,

Defendants,

and

LARRY W. KING and BARBARA KING,

Defendants-Appellants.

UNPUBLISHED
December 9, 2004

No. 249581
Missaukee Circuit Court
LC No. 00-004718-CH

Before: Markey, P.J., and Fitzgerald and Owens, JJ.,

PER CURIAM.

Defendants-appellants (hereinafter "the Kings) appeal as of right from a judgment quieting title to a narrow strip of land in favor of plaintiffs. We affirm.

The property in question is south of, and runs parallel to, Workman Road in Missaukee County. Plaintiffs, who own property south of Workman Road, claimed possession and ownership to Workman Road, including the disputed strip of land. The Kings, who own property north of Workman Road, maintained that they owned the disputed property, even though it was located south of Workman Road and plaintiffs must cross the property in order to reach Workman Road. Plaintiffs and the Kings each purchased their property in 1968, and Workman Road was constructed in approximately 1970.

Following a bench trial, the trial court found that the only significant use of the disputed property was to allow plaintiffs access to Workman Road over plaintiffs' driveway. The court determined that clear and convincing evidence established plaintiffs' claim of ownership to the disputed property by adverse possession.

On appeal, the Kings argue that plaintiffs failed to prove that their possession of the disputed property was hostile. We disagree.

This Court reviews equitable actions, such as an action to quiet title, de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). However, the trial court's findings of fact in support of its decision are reviewed for clear error. *Eller v Metro Industrial Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004). "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).

This case is factually similar to *DeGroot v Barber*, 198 Mich App 48, 51-53; 497 NW2d 530 (1993). In *DeGroot*, this Court recognized that a property owner who never intended to occupy another's property, but was mistaken about where a boundary line was located, could establish title by adverse possession. Although the Court acknowledged that when one "takes possession of land of an adjacent owner, with the intent to hold to the true [boundary] line, the possession is not hostile and adverse possession cannot be established," *id.* at 51, quoting *Connelly v Buckingham*, 136 Mich App 462, 468; 357 NW2d 70 (1984), it observed that "adverse possession is established where the intent is to claim title to a visible, recognizable boundary, *DeGroot, supra* at 52. See also *Gorte v Dep't of Transportation*, 202 Mich App 161, 170-171; 507 NW2d 797 (1993). Where the plaintiffs in *DeGroot* operated under the mistaken belief that a road represented the true boundary line for their property and claimed ownership of all land up to the road, and the plaintiffs exclusively used the property, this Court held that the plaintiffs proved adverse possession. *DeGroot, supra* at 53.

In this case, both plaintiffs testified that they believed that Workman Road represented the boundary line for their property, and evidence was presented showing that plaintiffs treated Workman Road as the boundary line. Further, plaintiffs exclusively used their driveway, which crossed over the disputed strip of land, to access Workman Road. The trial court did not err in finding that the elements of adverse possession were established.

The Kings also argue that the trial court erred by awarding plaintiffs all of the disputed property even though it found that plaintiffs' driveway represented the only significant use of the property. As the trial court observed, "[d]etermination of what acts or uses are sufficient to constitute adverse possession depends upon the facts in each case and to a large extent upon the character of the premises." *Burns v Foster*, 348 Mich 8, 14; 81 NW2d 386 (1957). In this case, the disputed property consisted of a narrow strip of land along a county road. Its size, shape, rural character, and location rendered it unfeasible for development. In light of these characteristics, the trial court found that plaintiffs' "exclusive and continued use of the driveway gave notice to the Kings that they claimed ownership of all land south of the road." We conclude that the trial court did not err in awarding plaintiffs the entire tract of land.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens