IN THE COURT OF APPEALS OF IOWA

No. 3-1068 / 13-0478
Filed January 9, 2014

PATRICK L. HOUSTON,
Plaintiff-Appellant,

vs.

MILTON D. MEYER AND BEVERLY MEYER,
Defendants-Appellees.

Appeal from the Iowa District Court for Sac County, William C. Ostlund, Judge.

A plaintiff appeals from a ruling quieting title to land in favor of the defendants by way of adverse possession. **AFFIRMED.**

Hannah M. Vellinga and Charles L. Corbett of Corbett, Anderson, Corbett, Vellinga & Irvin, L.L.P., Sioux City, for appellant.

William D. Kurth of Kurth Law Firm and Scott Schleisman, Lake City, for appellees.

Heard by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

This appeal from a ruling in a quiet title action requires us to decide whether a couple acquired ownership of a strip of land by adverse possession.

I. Background Facts and Proceedings

Milton and Beverly Meyer purchased property near a lake in Sac County. The property was adjacent to a 33 by 110 foot strip of land. At the time of the purchase in 1961, the seller told the Meyers the strip was an abandoned road, which he mowed and used for parking and on which he built a ten to twelve-foot sidewalk designed to be the only entrance to his house.

After the purchase, the Meyers used and maintained the adjacent strip in the same manner as their predecessor. They also took other actions that will be described in more detail below.

In 1964, Patrick Houston and another individual purchased a number of properties in the vicinity, including the strip. Houston eventually sold most of the properties. He retained the strip, paying the other individual for his interest in it. That individual died before he could execute a deed reflecting the transaction.

Decades later, Houston and the Meyers contested ownership of the strip. The Meyers filed an affidavit of possession, claiming they were the owners of the property. Houston filed a petition to quiet title to the strip as against a number of defendants, including the Meyers.[1] At trial, the Meyers claimed ownership

[1] The present litigation only involves the Meyers. Prior litigation involving Houston and the City of Lake View was resolved in favor of Houston. *See City of Lake View v. Houston*, No. 07-2026, 2008 WL 5412284, at *8 (Iowa Ct. App. Dec. 31, 2008) (concluding the City of Lakeview's interest in the strip was extinguished by the Marketable Record Title Act).

through adverse possession. The court found the elements of the doctrine satisfied and quieted title in their favor. Houston appealed.

II. Adverse Possession

A party invoking the adverse possession doctrine "must establish hostile, actual, open, exclusive and continuous possession, under claim of right or color of title for at least ten years." *C.H. Moore Trust Estate v. City of Storm Lake*, 423 N.W.2d 13, 15 (Iowa 1988). Proof of these elements must be "clear and positive." *Id.*

We begin with the hostile, actual, open, and exclusive elements, which we will consider together. The Meyers ensured that the strip was mowed, shoveled, and cleared of overgrowth. *See Burgess v. Leverett & Assocs.*, 105 N.W.2d 703, 706 (Iowa 1960) ("Actual possession is the type of possession or control owners ordinarily exercise in holding, managing and caring for property of like nature and condition."); *Louisa Cnty. Conservation Bd. v. Malone*, 778 N.W.2d 204, 208 (Iowa Ct. App. 2009) ("'[M]ere use' is insufficient to establish hostility, [but] certain acts, including substantial maintenance and improvement of the land, can support a claim of ownership and hostility to the true owner."). They planted trees on the strip and parked their car close to the sidewalk. Although they built another entrance to their house and extended the sidewalk onto their property, they continued to use the sidewalk situated on the strip. They erected parking barriers approximately thirty feet into the strip to demarcate their yard and, if people parked within that area, they told them to move. They also paid taxes on the strip for two taxable years and removed a "For Sale" sign that Houston placed on the strip. *See Burgess*, 105 N.W.2d at 706 ("For plaintiff's possession

to be hostile it is sufficient to show conduct of his intention to hold title exclusive of all other titles or against the world."). While they did not enclose the strip with a fence, that omission does not preclude a finding of adverse possession. *Clear Lake Amusement Corp. v. Lewis*, 18 N.W.2d 192, 195 (Iowa 1945) ("To constitute adverse possession . . . does not necessarily require the claimant to . . . inclose [sic] it with fences."). On our de novo review, we are persuaded their actions amounted to "hostile, actual, open, [and] exclusive" possession of the strip. *See Malone*, 778 N.W.2d at 206 (setting forth the standard of review).

In reaching this conclusion, we have considered the fact that Houston disputed much of Mr. Meyer's testimony. He stated that he and his real estate partner took turns mowing the strip and, later, hired someone to do the job. He also stated that he parked a boat lift on the strip. However, neighbors took issue with these assertions and confirmed Mr. Meyer's description of his maintenance activities. One testified that Mr. Meyer "cleaned the brush off, . . . trimmed the trees, . . . mowed the lawn, [and] . . . pushed snow." Another said the disputed strip was "always maintained" by the Meyers. A third witness characterized the Meyers' maintenance of the strip as "[e]xcellent." The district court factored their statements in as they "relate[d] to credibility." We give weight to the court's credibility finding. *Id.* at 206–07.

This brings us to the "claim of right or color of title" element. These are alternatives, and either element will suffice to establish adverse possession. *Pearson v. City of Guttenberg*, 245 N.W.2d 519, 530 (Iowa 1976).

"Color of title" in the adverse possession context means "that which in appearance is title but in reality is not title." *Grosvenor v. Olson*, 199 N.W.2d 50,

52 (Iowa 1972). "To constitute color of title there must be a paper or record title of some kind." *Goulding v. Shonquist*, 141 N.W. 24, 25 (Iowa 1913). The Meyers did not have "color of title" because they did not have a deed to the disputed strip of land. We turn to the "claim of right" element.

"Claim of right" has often been used interchangeably with "claim of title." *Id.* "Claim of right" does not require a writing. *Council Bluffs Sav. Bank v. Simmons*, 243 N.W.2d 634, 636 (Iowa 1976). It requires a person to use land "openly and notoriously, as owners of similar lands use their property, to the exclusion of the true owner." *I-80 Assocs., Inc. v. Chicago, Rock Island & Pac. R.R. Co.,* 224 N.W.2d 8, 11 (Iowa 1974). Also encompassed within this element is a good faith requirement. *Carpenter v. Ruperto*, 315 N.W.2d 782, 786 (Iowa 1982).

Houston contends the Meyers did not act in good faith because they "knew when they bought their property that it did not include the disputed property." In *Carpenter*, the Iowa Supreme Court acknowledged its previous statement that "'there can be no such thing as adverse possession where the party knows he has no title, and that, under the law, he can acquire none by his occupation.'" *Id.* at 785 (quoting *Litchfield v. Sewell*, 66 N.W. 104, 106 (Iowa 1896)). The court characterized this assertion as "an overstatement." *Id.* The court qualified the "overstatement" by explaining that, while knowledge of a defect in title would not alone preclude a finding of good faith, "when knowledge of lack of title is accompanied by knowledge of no basis for claiming an interest in the property, a good faith claim of right cannot be established." *Id.* The court cited *Creel v. Hammans*, 13 N.W.2d 305, 307 (Iowa 1944), for this proposition.

Id. In *Creel*, the court stated, "The doctrine of adverse possession presupposes a defective title. It is not based on, but is hostile to, the true title." 13 N.W.2d at 307.

The Meyers had a basis for claiming an interest in the disputed strip notwithstanding their knowledge that they lacked legal title to the land. That basis was the seller's 1961 statement that the adjacent strip was an abandoned road that he had been using and maintaining. According to Mr. Meyer, the seller specifically told him, "[Y]ou're the adjoining landowner. Just treat it as your own." *See Pearson*, 245 N.W.2d at 529–30 (recognizing acquisition of abandoned road by adverse possession).[2]

Houston suggests that the Meyers could not have believed they had a right to use the strip because they telephoned a city government representative to ask whether they could park their cars there. In our view, the fact that they did not accept the seller's assertion at face value and sought to confirm that assertion with a public authority supports, rather than undermines, the Meyers' contention that they acted in good faith. We conclude the Meyers established a good faith claim of right to the disputed strip of land.

All that remains is the ten-year continuous period of possession. *See C.H. Moore*, 423 N.W.2d at 15. This requirement was easily satisfied. One witness who lived in the vicinity even before the Meyers purchased their property testified that he had no question about who owned the disputed strip. He stated the

[2] In *Stecklein v. City of Cascade*, 693 N.W.2d 335, 340–41 (Iowa 2005), the court clarified that abandonment cannot be presumed but must be proven by a showing of actual acts of abandonment accompanied by an intention to abandon. In this case, all agree that the strip was not used as a road.

Meyers "always have mowed . . . always had snow removal in the area." As noted, others confirmed this statement.

The record contains clear and positive proof of adverse possession. Accordingly, we affirm the district court's ruling quieting title to the disputed strip of land in the Meyers.

AFFIRMED.