IN THE COURT OF APPEALS OF IOWA

No. 9-119 / 08-1240
Filed March 26, 2009

JIMMY D. LEAF, SR. and SHERRIE L. LEAF,
Plaintiffs-Appellants,

vs.

JASON LEAR and DANIELLE LEAR,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Artis I. Reis, Judge.

Plaintiffs appeal the district court's decision denying their action to quiet title based on a claim of adverse possession to certain property. **AFFIRMED.**

Eric Borseth and Lynn C. H. Poschner of Borseth Law Office, Altoona, for appellants.

John S. Harding, Des Moines, for appellees.

Considered by Mahan, P.J., and Miller, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

BEEGHLY, S.J.

I. Background Facts & Proceedings

Jimmy Leaf Sr. and Sherrie Leaf purchased 449 SE Granger Ave. (Lot 13) in Des Moines on June 20, 1995. The abstract, assessor's office, and the appraisal all showed their lot was forty feet wide. In 2000, they purchased twenty feet from their neighbor to the west, 441 SE Granger Ave., increasing their lot width to sixty feet. No survey was conducted at the time of these transactions.

The Leafs' lot line was immediately to the east of their driveway. Throughout the time they lived in their house, however, they parked vehicles, such as a camper, to the east of their driveway beyond the lot line. The Leafs removed some trees from this area and then planted grass seed. They stated that they consistently mowed this area. From the time the Leafs moved in until 2005 the home to the east of the Leafs, 453 SE Granger Ave., was owned by James and Marsha Thiesen. The Thiesens rented out the property.

On May 11, 2005, 453 SE Granger Ave. (Lots 14 and 15) was purchased from the Thiesens by Jason and Danielle Lear. The Lears removed snow from the entire length of their sidewalk, and occasionally mowed in the area where the Leafs' vehicles were parked. The Lears paid taxes on the property. They purchased all of lots 14 and 15, and have a mortgage on the property.

In 2006, the Lears decided to place a fence on their property, and in order for them to obtain a permit for the fence, the City of Des Moines required them to have the property surveyed. The survey showed that the lot line was

immediately to the east of the Leafs' driveway, and the Leafs' vehicles were parked on the Lears' property.

On March 27, 2007, the Leafs filed a petition to quiet title against the Lears. The Leafs claimed they owned a strip of land about ten feet wide on the east side of their property under a theory of adverse possession. The district court found, "Merely raking, mowing, seeding, tree planting, and generally maintaining portions of the property, which Plaintiffs also assert they did, does not satisfy the clear and convincing proof required for a claim of adverse possession." The court determined title of lots 14 and 15 should be quieted in the Lears. The court denied the Leafs' motion filed pursuant to Iowa Rule of Civil Procedure 1.904(2). The Leafs appeal.

II. Standard of Review

An action to quiet title is heard in equity, and our review is de novo. *Barks v. White*, 365 N.W.2d 640, 643 (Iowa Ct. App. 1985). In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the district court, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

III. Merits

A party claiming title to property under the doctrine of adverse possession must show hostile, open, exclusive, and continuous possession, under a claim of right or color of title, for at least ten years. *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982). The doctrine of adverse possession is strictly construed. *Garrett v. Huster*, 684 N.W.2d 250, 253 (Iowa 2004). A claim of adverse

possession must be established by clear and positive evidence. *Mitchell v. Daniels*, 509 N.W.2d 497, 499 (Iowa Ct. App. 1993).

The Leafs claimed title to the property in question under a claim of right. The elements of hostility and claim of right are closely related. *Brede v. Koop*, 706 N.W.2d 824, 828 (Iowa 2005). A party must show an assertion of ownership by declarations or acts establishing a claim of exclusive right to the land. *Johnson v. Kaster*, 637 N.W.2d 174, 178 (Iowa 2001). Continued use does not, by the mere lapse of time, become hostile or adverse. *Mensch v. Netty*, 408 N.W.2d 383, 387 (Iowa 1987).

"Although mere use does not constitute hostility or a claim of right, some specific acts or conduct associated with the use will give rise to a claim of right." *Collins Trust v. Allamakee County Bd. of Sup'rs*, 599 N.W.2d 460, 464 (Iowa 1999). "Thus, acts of maintaining and improving land can support a claim of ownership and hostility to the true owner." *Id.* Whether a party has established a claim of right must be determined on a case-by-case basis. *Johnson*, 637 N.W.2d at 179.

In *Collins Trust*, 599 N.W.2d at 464-65, the court found that annual maintenance of property for several decades, plus the installation and maintenance of a culvert, showed a claim of right. The placement of a mobile home, in addition to mowing, cleaning up, and taking out trees and buildings established a claim of right. *See Johnson*, 637 N.W.2d at 179. On the other hand, adding gravel and grading the surface of a road were determined not to be

independent acts from the use of the road, and did not show a claim of right. *Brede*, 706 N.W.2d at 829.

The district court found the Leafs did not sufficiently show specific acts or conduct associated with the use of the property to establish a claim of right. The court stated, “Merely raking, mowing, seeding, tree planting, and generally maintaining the portions of the property, which Plaintiffs also assert they did, does not satisfy the clear and positive proof required for a claim of adverse possession.”

We agree with the district court’s conclusion that the Leafs did not show possession of the property as a claim of right by clear and positive evidence. The Leafs showed they mowed the property, parked vehicles upon it, removed some trees, and then reseeded grass after the trees were removed. These activities show mere use of the property as opposed to a claim of ownership. Sherrie Leaf’s testimony shows there was ambiguity as to the location of the property line from June 1995 when they moved in. The Leafs did not engage in “acts revealing a claim of exclusive right to the land.” *See Collins Trust*, 599 N.W.2d at 464. Jason Lear testified that he shoveled snow off the sidewalk in front of the disputed property, and sometimes mowed it.

We affirm the decision of the district court finding the Leafs had not proven, by clear and positive evidence, a claim of adverse possession to the property in question. We conclude the court properly quieted title to the Lears.

AFFIRMED.