COURT OF APPEALS
DECISION
DATED AND FILED

AUGUST 25, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0796-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

DONALD LARSEN,

PLAINTIFF-APPELLANT,

V.

MARLENE NEHLS,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

ANDERSON, J. Donald Larsen appeals from a judgment dismissing his complaint seeking to eject his neighbor, Marlene Nehls, for property encroachments and granting Nehls's counterclaim of adverse possession. Larsen claims that because of the small size of the disputed property "the encroachment [was] so benign as to not give notice to [him] of the adverse possession"; therefore, the trial court's judgment was not supported by the evidence. We reject this argument because Nehls's continuous use and the nature

of the encroaching property—a slice of a concrete driveway, its approach apron and a portion of wooden steps—gave Larsen sufficient notice of Nehls's open, notorious, hostile and continuous possession. Accordingly, we affirm.

In November 1995, Larsen bought a vacant lot next door to Nehls's home. Seeking a building permit to construct a new home on his property, Larsen hired a surveyor to review the property's setbacks and drainage plan. The survey revealed encroachments on the northern property lines. Nehls's concrete driveway extended onto Larsen's property in a six-inch-wide, forty-feet-long triangular sliver, and the driveway's approach apron had a three and one-half foot overlay onto Larsen's property. The survey also revealed that Nehls's wooden steps, used to access the pier, actually extended onto Larsen's property by one inch. Nehls had purchased her home in 1976, and at that time the driveway, originally poured in 1971, was in its present position.

Larsen brought suit against Nehls for the trespass resulting from the encroachments on his property and sought an order ejecting her from the disputed property. Nehls responded with an affirmative defense that she adversely possessed the driveway, approach apron and steps. After a trial, the court concluded that Nehls had established her claim of adverse possession and dismissed Larsen's cause of action. Larsen appeals.

Section 893.25(1), STATS., allows a person in uninterrupted adverse possession for twenty years to commence an action to establish title.

> Adverse possession under this section requires enclosure, cultivation, or improvement of the land. It requires physical possession that is hostile, open and notorious, exclusive and continuous for the statutory period. "Hostility" means only that the possessor claims exclusive right to the land possessed. The subjective intent of the

> parties is irrelevant to the determination of an adverse possession claim.

Otto v. Cornell, 119 Wis.2d 4, 7, 349 N.W.2d 703, 705 (Ct. App. 1984) (citations omitted).

Larsen argues that the evidence does not support the trial court's conclusion that adverse possession occurred. Specifically, he claims that the property encroachment was only a "[s]poradic, trivial and benign trespass," which did not sufficiently notify him that portions of Nehls's driveway, approach apron and staircase were on his property. The trial court's determinations as to what the parties did and how the land appeared are findings of fact that we sustain unless clearly erroneous. *See* ***Klinefelter v. Dutch***, 161 Wis.2d 28, 33, 467 N.W.2d 192, 194 (Ct. App. 1991). "The finder of fact must strictly construe the evidence against the adverse possessor and apply all reasonable presumptions in favor of the true owner." ***Droege v. Daymaker Cranberries, Inc.***, 88 Wis.2d 140, 144, 276 N.W.2d 356, 358 (Ct. App. 1979). Whether, given the findings of fact, Nehls adversely possessed the disputed property is a question of law that we review de novo. *See* ***Klinefelter***, 161 Wis.2d at 33, 467 N.W.2d at 194.

To support his argument that Nehls's possession can only be construed as "sporadic, trivial and benign," Larsen relies, without discussion, upon ***Pierz v. Gorski***, 88 Wis.2d 131, 276 N.W.2d 352 (Ct. App. 1979). ***Pierz*** concerned a dispute over whether "wild" land had been adversely possessed. *See* ***id.*** at 134, 276 N.W.2d at 354. The defendants argued that making a worm bed, spraying poison ivy, planting clover and trees, and removing trees chewed down by beavers notified the landowner of their possession of the property. *See* ***id.*** at 138, 276 N.W.2d at 355-56. The court disagreed, concluding that such acts were not particularly visible in a "wild" forest. *See* ***id.*** "None of the acts described …

significantly altered the character of the land in a manner which would give a reasonably diligent landowner notice of adverse possession." ***Id.*** Rather, "[t]he activities described were consistent with sporadic, trivial and frequently benign trespass." ***Id.*** at 139, 276 N.W.2d at 356.

In other words, Larsen contends that a residence's concrete driveway and wooden steps are not readily visible to a landowner or a significant alteration to the land, similar to the difficulty of viewing a new worm bed or clover plant in a forest. We cannot agree.

On the contrary, we conclude that that the facts found by the trial court are supported by the record and are not clearly erroneous. From the testimony and exhibits presented at trial, the trial court found the followings facts. Nehls purchased her home, along with the wooden steps and driveway, in 1976. She never altered the steps but did have a new driveway installed in the same location as the old one, which still bears an imprint of the year of its original construction—1971. During this time, she continually used the driveway, approach apron and steps. We agree with the trial court that these activities constitute an "open, notorious, visible, exclusive, hostile and continuous" possession that "would apprise a reasonably diligent landowner and the public that the possessor claims the land as his [or her] own." ***Id.*** at 137, 276 N.W.2d at 355. Neither a twenty-eight-year-old concrete driveway and approach apron nor a set of wooden steps can be viewed as sporadic, trivial or benign. In contrast, the driveway, approach apron and steps are structures that have "significantly altered the character of the land in a manner which would give a reasonably diligent landowner notice of adverse possession." ***Id.*** at 138, 276 N.W.2d at 355-56. As a result, we determine that the trial court was presented with sufficient evidence to grant Nehls's adverse possession claim.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.