

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 4, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 97-0533**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MARK D. PETROWSKY,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ROBERT W. HENKEL AND LOIS S. HENKEL,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Waushara County:  
LEWIS MURACH, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Robert and Lois Henkel appeal a judgment awarding Mark Petrowsky a strip of property by adverse possession. The Henkels argue that the trial court erred by finding that Petrowsky had established the requisites for adverse possession, and that the occupation line established by the

court was incorrect. Because we find that the trial court properly applied the law of adverse possession to the facts presented, we affirm.

The property at issue is a strip of land on Lake Huron, the part of Lot 27 which borders Lot 28. The Henkels argue that the trial court erred in granting adverse possession to Petrowsky because they claim that possession was interrupted, that the possession was not exclusive, and that the property was not enclosed. The Henkels also argue that the court improperly established the occupation line.

We sustain a trial court's factual findings unless they are clearly erroneous. *Klinefelter v. Dutch*, 161 Wis.2d 28, 33, 467 N.W.2d 192, 194 (Ct. App. 1991). The legal significance of those facts, however, presents a question of law which we review de novo. *Id.* In an adverse possession case, the trial court's determination as to what the parties did and how the land appeared are facts. Whether, given those facts, adverse possession has been established is a question of law. *Id.*

In order to establish a claim of adverse possession, the claimant must show hostile, open and notorious, exclusive and continuous possession for a period of twenty years. *Leciejewski v. Sedlak*, 116 Wis.2d 629, 636, 342 N.W.2d 734, 737 (1984). The possession must be uninterrupted and requires enclosure, cultivation or improvement of the land. *Id.*, citing § 893.25, STATS.

The testimony established that Petrowsky and his predecessors had continuous and uninterrupted possession of the property. The Henkels argue that possession was interrupted because there was no evidence that Arthur Rochol,

who owned the property briefly in 1987, actually used it.<sup>1</sup> The evidence established, however, that adverse possession had occurred by the time Arthur Rochol owned the property. Once the acts which establish adverse possession have occurred for the requisite period of time, the claimant is presumed to be in possession. See *Herzog v. Bujniewicz*, 32 Wis.2d 26, 33, 145 N.W.2d 124, 128 (1966).

Even if adverse possession had not been established by the time Arthur Rochol owned the property, the evidence does not establish an interruption. The property was a seasonal cottage and the record indicates that the Rochols and Petrowskys used it seasonally. “In the case of property, the use of which is seasonal in character, the fact that it is not continuously occupied does not militate against such occupation being sufficient to constitute adverse possession so long as it is exclusive.” *Laabs v. Bolger*, 25 Wis.2d 17, 23, 130 N.W.2d 270, 274 (1964). The requirement of continuity is established by activities appropriate to seasonal use. *Otto v. Cornell*, 119 Wis.2d 4, 7, 349 N.W.2d 703, 705 (Ct. App. 1984). The evidence presented that Arthur did not use the cottage during the month he owned it, therefore, would not defeat the adverse possession claim.

The Henkels also argue that the claim must fail because Petrowsky did not establish that the use was exclusive. Specifically, they argue that there was testimony that Lorraine Henkel had planted and maintained lilac bushes on the disputed property, and that the Henkels had maintained the property by mowing

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<sup>1</sup> Howard Rochol purchased Lot 28 in 1947 and built an outhouse on the disputed property the next year. He owned the property for forty years until his death in 1987. He left the property to his brother, Arthur Rochol, but told his brother that he wanted his stepson, Don Petrowsky to have the property. About one month after Howard’s death, Arthur conveyed the property to Don. Don owned it until 1995 when he conveyed it to his son, Mark Petrowsky.

the lawn.<sup>2</sup> The witnesses, however, did not agree on the location of the lilac bushes.<sup>3</sup> Further, Petrowsky's witnesses denied that the Henkels had continually maintained the disputed property. The trial court found the Henkels' testimony to be implausible and found the testimony of Petrowsky's witnesses, particularly that of a neighbor, Don Walczak, to be credible. This finding is not clearly erroneous.

The evidence further established that while the disputed property was not enclosed, it was cultivated and improved in a manner customary for summer cottage property.

Adverse possession without enclosure need not be characterized by a physical, constant, visible occupancy or improved by improvements of every square foot of the land. ... Actual occupancy means the ordinary use of which the land is capable and such as an owner would make of it. Any actual visible means, which gives notice of exclusion from the property to the true owner or to the public and of the [claimant's] domination over it, is sufficient.

*Burkhardt v. Smith*, 17 Wis.2d 132, 137-38, 115 N.W.2d 540, 543-44 (1962) (citation omitted).

The trial court found that Howard Rochol and his successors initially cleared and continually mowed and maintained the disputed property, forming a line which differentiated the two lots. This line was formed in relation to two stakes on the property. In addition, Howard built an outhouse on the property. A metal shed, a second outhouse and a boathouse were later built on the property.

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<sup>2</sup> Lorraine Henkel and her husband purchased their property in 1957. Lorraine conveyed the property to her son and daughter-in-law, Robert and Lois, in 1995.

<sup>3</sup> Lorraine testified that she planted the lilac bushes on the boundary line between Lots 27 and 28. Don and Mark Petrowsky testified that the lilac bushes were behind the outhouse built by Howard Rochol on the occupation line.

These findings of fact were not erroneous and showed sufficient cultivation and improvement of summer cottage property to establish adverse possession. *See Laabs*, 25 Wis.2d at 24, 130 N.W.2d at 274. (Planting trees, sewing grass seed and mowing lawn to a certain line sufficient to constitute possession of seasonal property.)

Despite the Henkels' assertion to the contrary, the trial court's determination of the occupancy line is a finding of fact.<sup>4</sup> Since there is nothing in the record to establish that this finding was clearly erroneous, we affirm the trial court's determination. *See Klinefelter*, 161 Wis.2d at 33, 467 N.W.2d at 194.

The trial court's findings of fact were not clearly erroneous. These findings establish that Petrowsky and his predecessors in title adversely possessed the disputed property. Therefore, we affirm the judgment of the trial court awarding the property to Petrowsky.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

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<sup>4</sup> The Henkels argue that the court erred because the initial plat shows lots with borders running perpendicular to the road while the occupation line runs diagonally across the property. This argument, however, ignores the basic reason for this action. Petrowsky needed to bring the adverse possession claim because the platted boundary lines did not coincide with the occupation lines.



