COURT OF APPEALS
DECISION
DATED AND FILED

July 28, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0151-FT

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

DEAN M. AUGUST,

PLAINTIFF-RESPONDENT,

V.

CLIFFORD L. STANIS AND DORENE WARD,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Iron County: PATRICK J. MADDEN, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Clifford Stanis and Dorene Ward appeal a judgment awarding Dean August a part of their property by adverse possession.[1]

[1] This is an expedited appeal under RULE 809.17, STATS.

They argue that August offered insufficient evidence to establish adverse possession. We reject this argument and affirm the judgment.

Stanis and Ward own a lot on Bearskull Lake immediately west of August's lot. The Augusts attempted to buy the disputed property from a previous owner and thought they had bought it in 1956. Since that time, they improved the 180 foot by 20 foot strip as if it were theirs, both before and after they realized they did not own the strip. They planted trees in this strip from 1956 to 1960, improved a path from the cabin to the boat dock by building steps in 1960 and 1961, and improving them in 1975. They also bulldozed a "turn-around" driveway in 1963 and have used and improved the land seasonally ever since. After personally viewing the premises, the trial court found that August had adversely possessed the disputed property for more than twenty years.

The trial court's findings of fact will not be upset on appeal unless they are clearly erroneous. *See* § 805.17(2), STATS. This court must also accept any reasonable inference drawn by the trier of fact. *See* ***State v. Friday***, 147 Wis.2d 359, 370-71, 434 N.W.2d 85, 89 (1989). Whether the facts fulfill a particular legal standard is a question of law. *See* ***Klinefelter v. Dutch***, 161 Wis.2d 28, 33, 467 N.W.2d 192, 194 (Ct. App. 1991).

To establish adverse possession, August was required to prove hostile, open and notorious, exclusive and continuous physical possession for twenty years. *See* ***Leciejewski v. Sedlak***, 116 Wis.2d 629, 636, 342 N.W.2d 734, 737 (1984). The "hostile" element is met if the land is occupied to the exclusion of the true owner. *See* ***Northwoods Dev. Corp. v. Klament***, 24 Wis.2d 387, 393, 129 N.W.2d 121, 123, (1964). "Open and notorious" use of the land means that the adverse claim is open and obvious as to the fact of possession and its real

adverse character so as to apprise the owner of the possessor's intent to usurp control. *See* ***Allie v. Ruso***, 88 Wis.2d 334, 343-44, 276 N.W.2d 730, 735, (1979). "Exclusive use" must be of such a nature as to give notice of the adverse possessor's exclusive dominion to the owner or the public. ***Id.*** at 336, 276 N.W.2d at 736. "Continuous physical possession" for the statutory twenty years may be met by activities that are seasonal in character and that correspond with the natural uses of the particular property. *See* ***Laabs v. Bolger***, 25 Wis.2d 17, 23, 1130 N.W.2d 270, 274 (1964). The twenty year possession does not have to be the twenty years immediately preceding the claim. *See* ***Harwick v. Black***, 217 Wis.2d 691, 699, ___ N.W.2d ___ (Ct. App. 1998).

August presented sufficient evidence to support his adverse possession claim. The "turn-around" driveway consisted of a bulldozed one-hundred foot long encroachment from the road to the cabin. From the photographic evidence, the area appears as a well-maintained driveway. Stanis and Ward argue that the turn-around area consists of "the mere use of a way over unenclosed land [that] is presumed to be permissive and not adverse." *See* § 893.28(3), STATS. The construction and maintenance of this driveway constitute more than "mere use." Stanis and Ward also argue that the area was "wild lands" and that the improvement was insufficient to give them notice of exclusion. This argument fails for two reasons. First, the property in question is not properly described as "wild lands." It is an area immediately adjacent to lakefront cottages. Second, the photographic evidence depicts sufficient improvement to apprise Stanis and Ward that August treats the property as his own. A bulldozed driveway clear of vegetation cannot be reasonably described as "sporadic, trivial and frequently benign trespass." *See* ***Pierz v. Gorski***, 88 Wis.2d 131, 139, 276 N.W.2d 352, 356 (Ct. App. 1979).

Stanis and Ward argue that the trees planted on the disputed property were similar to the wild trees and therefore did not adequately inform them or their predecessor in title that August was treating the property as his own. The trial court's personal view of the premises resulted in a finding that it could locate mature trees that were planted by August in the late 1950's and early 1960's. That finding is not clearly erroneous. Whether the trees were sufficiently different in type or location so as to apprise a landowner of another's trespass is a matter best decided by the trier of fact's personal inspection of the property.

The photographic evidence establishes that the path from the cottage to the pier, improved with steps, constituted sufficient improvement to apprise the true owners of the adverse possession. Much of Stanis' and Ward's argument is based on their erroneous assertion that the area constituted "wild lands." A path between a cottage and a pier including wood steps dug into the hillside does not constitute "wild lands." Rather, these open improvements, plainly visible in the photographic evidence, constitute an improvement sufficient to notify the true owner of the adverse possession.

By the Court.—Judgment affirmed.

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