COURT OF APPEALS
DECISION
DATED AND FILED

August 31, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1854 **Cir. Ct. No. 2011CV734**

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

RANDALL A. HATTAMER AND MISCHELLE M. HATTAMER,

PLAINTIFFS-APPELLANTS,

V.

NORTHERN STATES POWER COMPANY, A WISCONSIN CORPORATION,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Chippewa County: STEVEN R. CRAY, Judge. *Affirmed*.

Before Stark, P.J., Hruz, J., and Thomas Cane, Reserve Judge.

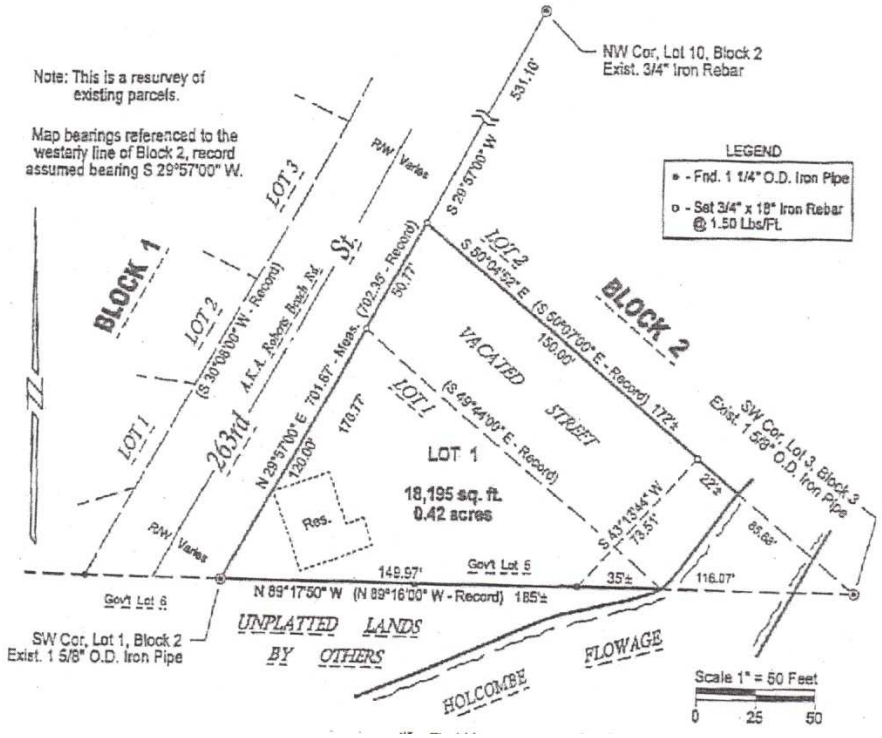
¶1 PER CURIAM. Randall and Mischelle Hattamer appeal a judgment dismissing their adverse possession claim against Northern States Power Company and denying their motion for reconsideration. Following a bench trial, the circuit court determined that, except for the construction of a basement walk-out and deck

addition in 1989 that encroached on Northern States' land, none of the other uses of Northern States' property by the Hattamers or their predecessors in interest were inconsistent with the permission, leases, or licenses under which the Hattamers or their predecessors had used the property for many years. With respect to the basement walk-out and deck addition, the circuit court concluded this adverse use had not continued for the requisite twenty-year period. The circuit court nonetheless exercised its equitable authority to order the sale of the land underlying the addition, together with land sufficient to meet the applicable setback requirements.

¶2 On appeal, the Hattamers appear to argue that the area of permissive use that Northern States historically granted to owners of the Hattamers' property was, in fact, a small distance south of the location of parties' property boundary, which the circuit court concluded had not changed since 1950. We conclude the circuit court's finding that the parties' property line had not changed since 1950 was not clearly erroneous. We further conclude that the circuit court, in construing various documents authorizing the Hattamers' and their predecessors' permissive use, did not err when it interpreted those documents—consistent with its factual finding regarding the property line—as including use of Northern States' land up to that property line. Finally, the Hattamers have not shown the circuit court erroneously exercised its discretion when it denied their motion for reconsideration. We affirm.

BACKGROUND[1]

¶3 In October 1950, Otto and Avada Bartz purchased real property consisting of Lot 1, Block 2 in the Robert's Beach subdivision of the Town of Lake Holcombe, Chippewa County (Lot 1). Lot 1 is a nearly triangular lot bordered on the northwest by 263rd Street, on the northeast by a vacated street, and on the south by unplatted land owned by Northern States, as shown below.[2]



[1] The facts in this section are based on the circuit court's findings and trial evidence consistent with those findings.

[2] The image is a sketch prepared for the Hattamers by James Denzine, a surveyor, based on a survey he conducted in 2007, and was received as an exhibit at trial.

The Holcombe Flowage lies directly to the east of Lot 1 and Northern States' unplatted land. The circuit court specifically found the location of Lot 1 has not changed since the Bartzes purchased it in 1950.

¶4 By letter dated September 10, 1952, Northern States granted the Bartzes permission to use Northern States' land "which adjoins your property on the north and projects southerly into the Holcombe Pond." This permission was given with the understanding that the Bartzes would not build on the tract. The Bartzes acknowledged their permissive use of Northern States' land in writing on at least two occasions in 1960, following a letter from Northern States to the municipality regarding public use of the peninsula.

¶5 In June 1972, the Bartzes' permissive use of Northern States' land to the south of Lot 1 was converted to a written lease agreement. The leased area was directly to the south of Lot 1, abutting the Bartzes' property, as indicated by an area highlighted on a map attached to the agreement.[3] In exchange for annual rent of $5.00, the Bartzes were permitted to use Northern States' land for gardening and as an extension of their lawn. The lease specifically prohibited the Bartzes from erecting buildings or cutting trees on Northern States' land without permission. The lease was cancelled in 1974.

¶6 In 1977, the Bartzes sold Lot 1 to Clifford and Dorothy Hattamer, Randall Hattamer's parents.[4] Northern States entered into a new lease with

[3] The trial exhibit consisting of the 1972 lease agreement does not include a map, but the map was referenced in the body of the agreement as defining the leased area.

[4] The circuit court found the property was sold in 1972, but this appears to be a typographic error. The warranty deed is dated 1977.

Clifford and Dorothy in 1979, under the same terms as the earlier 1972 lease, except the annual rent increased to $25.00. The 1979 lease stated that the leased area was as highlighted in red on an attached map. The attached map was a copy of the 1951 plat of the Robert's Beach subdivision.[5]

¶7 In 1988, Clifford and Dorothy applied for a zoning variance to construct a basement walk-out and a wooden deck attached to their residence located on Lot 1 (the 1989 Residential Addition). The variance was granted and the project, which included concrete retaining walls and a concrete pad, was completed in 1989. Portions of a retaining wall, the concrete pad, and the deck encroach on Northern States' property to the south of Lot 1. The encroachment has been continuous since 1989.

¶8 In October 1999, the 1979 lease was cancelled and the Hattamers, who had since taken ownership of Lot 1, entered into a new license agreement with Northern States. In exchange for an annual fee, the Hattamers were granted the right to use Northern States' property south of Lot 1 for a "lawn extension, a boat docking area, and for all normal legal uses associated with Licensee's activities." The license agreement prohibited the Hattamers from cutting trees or erecting any buildings or structures on Northern States' property. The license agreement also included a map that delineated the area south of Lot 1 subject to the license.

[5] The trial exhibit consisting of the 1979 lease agreement, which uses the same language as the 1972 lease agreement, does include the 1951 plat map. However, the map is a black and white copy, although it appears the highlighted section was nearly the same as that indicated by the map attached to a subsequent 1999 license.

¶9 In 2005, Northern States evaluated its land holdings in the area. Northern States initially could not verify the Hattamers' property lines, which apparently included the southern boundary line of Lot 1. In 2006, Northern States hired John Mickesh to perform a survey. Mickesh discovered three original iron stakes near Lot 1, including stakes at Lot 1's northwestern and southwestern corners, and he confirmed that the dimensions of Lot 1 were as described by the 1951 plat. Mickesh concluded that a portion of the 1989 Residential Addition encroached on Northern States' land. The southern boundary of Lot 1 identified by Mickesh's 2006 survey was later confirmed by surveyor James Denzine in 2007, and by surveyor Eric Hauge in 2011, both of whom were hired by the Hattamers.[6]

¶10 In October 2007, Northern States demanded by letter that the Hattamers remove the encroachment on, and cease all unauthorized use of, Northern States' property. However, the letter also requested that the Hattamers cease activities arguably permitted by their license, such as mowing and gardening. The letter labeled such activities a "trespass." The Hattamers responded by letter dated December 5, 2007, reminding Northern States of the 1999 license agreement. The Hattamers refused to remove the encroaching 1989 Residential Addition and commenced this lawsuit on December 15, 2011, alleging they adversely possessed Northern States' land immediately to the south of Lot 1. By letter dated April 25, 2012, Northern States notified the Hattamers it was canceling the license agreement.

[6] We will refer to the 2006 Mickesh survey, the 2007 Denzine survey, and the 2011 Hauge survey collectively as the "modern surveys."

¶11 The matter proceeded to a bench trial, at which nine witnesses testified. The circuit court found that since 1952, and with the exception of a brief period in the 1970s, the Hattamers or their predecessors in interest had permissive use of, or a lease or license to use, Northern States' land immediately to the south of Lot 1. The court further found that all of the allegedly adverse acts established at trial, with the exception of the 1989 Residential Addition, were consistent with the scope of the authorized use. The 1989 Residential Addition was an adverse use of Northern States' property. However, the circuit court concluded that by operation of WIS. STAT. § 893.31, any adverse possession claim could not begin to accrue until 2009 at the earliest.[7] Because Northern States had demanded removal of the encroachment in 2007, two years prior to the commencement of the statutorily prescribed twenty-year period of adverse possession, the circuit court concluded the Hattamers' adverse possession claim failed in its entirety.

¶12 However, the circuit court nonetheless determined it would be inequitable to order the removal of such a longstanding and substantial encroachment. Instead, the court concluded it could, pursuant to its equitable authority, order Northern States to sell to the Hattamers the land underlying the 1989 Residential Addition, as well as land sufficient to satisfy the applicable setback requirements of the local zoning ordinance. The parties agreed to a sale price of $1.00.

¶13 The Hattamers filed a motion for reconsideration seeking relief from judgment under WIS. STAT. § 806.07, arguing that the circuit court's decision

[7] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

deprived their lot of water frontage and created a risk that they would lose additional property in the northern section of their lot. The motion was denied in an oral ruling, and the Hattamers now appeal.

DISCUSSION[8]

¶14 Our review of a circuit court's determination regarding adverse possession is subject to several standards of review. Critical to this appeal, we accept the circuit court's factual findings unless they are clearly erroneous. ***Peter H. & Barbara J. Steuck Living Trust v. Easley***, 2010 WI App 74, ¶11, 325 Wis. 2d 455, 785 N.W.2d 631. "We review de novo whether those facts fulfill the legal standard for adverse possession." ***Id.*** To the extent the Hattamers' arguments require the interpretation of written agreements, we also review that issue de novo. *See* ***Jones v. Jenkins***, 88 Wis. 2d 712, 722, 277 N.W.2d 815 (1979).

¶15 The Hattamers first argue the circuit court erred by concluding they failed to prove they satisfied the elements of adverse possession. Adverse possession is governed by WIS. STAT. § 893.25. "A person who, in connection with his or her predecessors in interest, is in uninterrupted adverse possession of real estate for 20 years … may commence an action to establish title under [WIS. STAT.] ch. 841." Subsec. 893.25(1). "In order to constitute adverse possession, 'the use of the land must be open, notorious, visible, exclusive, hostile and continuous, such as would apprise a reasonably diligent landowner and the public

[8] The Hattamers' appellate briefs generally lack precision and clarity, and are plagued by grammatical errors, such that, in some instances, it is not clear what, precisely, the Hattamers are attempting to argue. To the extent we have not sufficiently addressed an issue the Hattamers intended to raise in their briefs, any such omission is attributable to these deficiencies.

that the possessor claims the land as his [or her] own.'" ***Easley***, 325 Wis. 2d 455, ¶14 (quoting ***Pierz v. Gorski***, 88 Wis. 2d 131, 137, 276 N.W.2d 352 (Ct. App. 1979)). Adverse possession is available only to the extent the claimant is in "actual continued occupation under claim of title, exclusive of any other right," and only to the extent the real estate is protected by a substantial enclosure or usually cultivated or improved. Subsec. 893.25(2).

¶16 The crux of the Hattamers' argument is that the circuit court erroneously found that Lot 1's southern boundary has been the same since 1950. This argument implicates the circuit court's finding of permissive use, in the sense that the Hattamers assert the 1951 plat attached to those agreements in all cases shows the southern boundary line of Lot 1 (and, hence, the area of permissive use) to be further south than the boundary line shown on the modern surveys. As best we can tell, the Hattamers believe this would create a small section of Northern States' land between what the modern surveys show as the southern boundary line of Lot 1 and the area of permissive use shown on the 1951 plat map attached to the leases and license. The Hattamers apparently believe this small section of land was not subject to permissive use and was adversely possessed for the requisite time period.

¶17 To reach this conclusion, the Hattamers argue the 1951 plat and the modern surveys show different property lines, and, as such, the Hattamers specifically challenge the circuit court's second finding of fact:

> 2. The location of this parcel of real estate is fixed and has not changed since October of 1950. The four corners of the lot were [staked] as part of the plat. Two of these original stakes were found by Surveyor Mickesh in 2006. A third stake from the plat work was found by Mr. Mickesh to confirm the southern boundary of the lot. The southern line of the lot was later confirmed in 2007 by survey work

> done by Mr. Denzine. The southern line of the lot was confirmed a third time by the survey work done by Mr. Hauge. This southern line marks the southern boundary of the Hattamer's [sic] titled land.

(Exhibit citations omitted.) The Hattamers argue "[i]t is not possible for a quadrangular parcel of land [as indicated in the 1951 plat] with 40 feet on the easterly side facing the water, to be the same as the nearly-triangular parcel without water frontage that results from Mr. Mickesh's survey." They argue that a comparison of the 1951 plat and the modern surveys shows that the circuit court's finding is "geometrically untenable."[9]

¶18 We are not persuaded that the circuit court's findings regarding the location of Lot 1's southern boundary were clearly erroneous. The "clearly erroneous" standard is one of extreme deference to the circuit court. Under this standard,

> [t]he evidence supporting the findings of the trial court need not in itself constitute the great weight or clear preponderance of the evidence; nor is reversal required if there is evidence to support a contrary finding. Rather, to command a reversal, such evidence in support of a contrary finding must itself constitute the great weight and clear preponderance of the evidence.

Cogswell v. Robertshaw Controls Co., 87 Wis. 2d 243, 249-50, 274 N.W.2d 647 (1979) (citation omitted).[10] The circuit court is the arbiter of the witnesses'

[9] The Hattamers also argue that it is "not logical to presume that the southernmost lot of a subdivision called Robert's Beach, which is laid out on a peninsula that juts southerly into Lake Holcombe, would be configured so as to be the only lot in the subdivision without water access." This argument is entirely speculative and we will not address it.

[10] Although ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 274 N.W.2d 647 (1979), discussed the "great weight and clear preponderance" standard, which has since been abandoned in favor of the "clearly erroneous" standard, the two tests are essentially the same. ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983).

credibility and the weighing of all evidence, and its findings in these respects "will not be overturned on appeal unless they are inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts." ***Global Steel Prods. Corp. v. Ecklund Carriers, Inc.***, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269; *see also* ***State v. Webster***, 196 Wis. 2d 308, 320, 538 N.W.2d 810 (Ct. App. 1995) (The trial court "alone is charged with the duty of weighing the evidence.").

¶19 The Hattamers' argument relies on their own perceptions of Mickesh's testimony and the 1951 plat. In this case, we are solely concerned with the southern property line of Lot 1—not the shape of the lot as a whole. As we have explained, the Hattamers' theory is that the 1951 plat shows a different property line than that found by the modern surveys. The Hattamers insinuate that Mickesh altered the property's southern boundary in 2006 by setting stakes that did not correspond to the boundary as reflected on the 1951 plat. The Hattamers cite the following trial evidence: (1) Mickesh's testimony that he "set the stakes for [the] final survey"; (2) Northern States' 2007 letter notifying the Hattamers of the alleged encroachment, which letter stated that "the property line between the Project and adjacent properties was recently surveyed and staked … out"; and (3) the testimony of William Dixon, an assistant to the original surveyor from the 1950s, who testified that he could not locate any markers associated with Lot 1 during a 2001 site visit.[11] The Hattamers evidently believe Denzine and Hauge, the surveyors they hired after the Mickesh survey was completed, both erroneously relied on the stakes Mickesh set to confirm that the actual southern

[11] Dixon was not a licensed surveyor. The circuit court concluded he could testify only as a fact witness and could not provide expert testimony.

boundary line for the properties was at the location indicated by Mickesh's 2006 survey.

¶20 The Hattamers' theory of the case is not supported by the great weight or clear preponderance of the trial evidence. Indeed, the Hattamers cite no evidence for the notion that the 1951 plat and the modern surveys show a different property line, other than their own visual comparison of the documents. By contrast, Mickesh testified at trial that, in his opinion, the 1951 plat, his 2006 survey, and the 2007 Denzine survey "are trying to delineate the same parcel. I don't see any real discrepancy between all three of them." It is undisputed that Mickesh, during his 2006 survey, placed several stakes along the east-west line that he determined was the boundary line between the Hattamers' and Northern States' property. However, there is no evidence that by placing these stakes Mickesh changed the longstanding location of the boundary. Instead, Mickesh testified at trial that he determined the boundary line in part by using numerous iron stakes that he found already located on the land, some of which Mickesh had also found in 1993 while surveying for a private landowner on the east side of the bay. During the 2006 survey, Mickesh found two stakes denoting the southwest and northwest corners of Lot 1. The map of Mickesh's 2006 survey corroborates this testimony.

¶21 Based on this and other evidence, the circuit court quite reasonably concluded the boundary of Lot 1 and Northern States' property is—and has been since at least 1951—as reflected by every modern survey of the area. The Hattamers' apparently lay opinion that the 1951 plat and the modern surveys show a different line, as well as their theory—supported only by inferences based on their interpretation of some of the evidence adduced at trial—that Mickesh altered their property line during his 2006 survey, are insufficient to counter the

substantial evidence to the contrary. "It is not within our province to reject an inference drawn by a fact finder when the inference drawn is reasonable." ***Global Steel Prods.***, 253 Wis. 2d 588, ¶10.

¶22 The Hattamers next challenge the circuit court's conclusion that the Hattamers and their predecessors in interest had permissive use of all of Northern States' land up to the southern boundary of Lot 1, including the small section of land they now argue they adversely possessed, dating back to 1952. The Hattamers assert the lease and license agreements were "predicated on a Plat that unambiguously shows Lot 1 to be a quadrangle with water frontage." As a result, the Hattamers argue, the lease and license agreements were ambiguous as to the northern boundary of the Northern States land for which permissive use was granted, and the circuit court "should have interpreted any conflicts in the agreement[s] against [Northern States]." We understand the Hattamers to be arguing that such an interpretation would require the area of permissive use to be set a short distance south of what the modern surveys identify as the true boundary line between the parties' properties, thereby excluding the small section of land between the true boundary and the "boundary" as indicated by the 1951 plat. This small section of land would include some water frontage.

¶23 We reject any argument that the lease and license agreements were ambiguous because they did not clearly identify the area allowed to be used by the Hattamers or their predecessors. The Hattamers' argument regarding ambiguity, as it pertains to the land identified by the permissive use documents, once again implicates the circuit court's findings regarding the location of the southern boundary of Lot 1. The agreements sufficiently indicate—by virtue of the language used in the 1952 letter of permission, and by virtue of the highlighted map attached to the 1979 lease agreement and the 1999 license agreement, which

map was also apparently attached to the 1972 lease agreement—that the parties intended the Hattamers or their predecessors in interest to have use of *all of* Northern States' property immediately to the south of Lot 1.[12] As we have already explained, the circuit court's factual finding that the location of Lot 1 has not changed since 1950 was not clearly erroneous. The 1951 plat map, as attached to the various agreements, and the modern surveys describe the same southern boundary of the lot. Accordingly, the circuit court did not clearly err when it found that "the entire [area south of Lot 1's boundary] was subject to these permissions, leases, and license."

¶24 The Hattamers go into great detail describing their (and their predecessors') allegedly adverse uses of the land. These uses included placement of lawn fill, a fire pit, a water slide, a light pole, a cooking structure, and a sea wall. However, as the circuit court recognized, these uses were not clearly inconsistent with any of the relevant agreements, and did not put Northern States on notice of an adverse claim. "A use that is permissive in the beginning can be changed into one that is hostile only by the most unequivocal conduct on the part of the user." ***County of Langlade v. Kaster***, 202 Wis. 2d 448, 455, 550 N.W.2d 722 (Ct. App. 1996).

¶25 The Hattamers argue the circuit court's legal conclusion in this regard was wrong—that these are "precisely the kind of uses that [Northern States] itself deemed to be just as adverse as the encroachment [of the 1989 Residential

[12] The circuit court concluded the term "adjoins" in the 1952 letter confirming the Bartzes' permissive use of Northern States' property meant "the real estate up to the southerly line of Lot 1, Block 2 of the Replat of Robert's Beach." In the 1999 license agreement, the Hattamers specifically acknowledged they were "not relying on any oral or written representations" relating to the dimensions of the licensed parcel.

Addition] for which the court required an equitable sale." This argument dramatically overstates the significance of Northern States' 2007 letter labeling activities permitted under the 1999 license a "trespass." The circuit court was not bound by Northern States' characterization of the Hattamers' occupation, in particular because that characterization occurred years before the inception of litigation and was apparently sent in disregard of the 1999 license agreement. The Hattamers also argue the allegedly adverse activities could not have been within the scope of any permission because they "occurred on a land area not within the 'leased area'" as depicted on the maps accompanying the lease and license agreements. This argument is again contrary to the circuit court's factual findings regarding the location of the southern boundary of Lot 1, as well as the circuit court's reasonable interpretation of the lease and licensing agreements.

¶26 As the circuit court properly found, Clifford and Dorothy's construction of the 1989 Residential Addition was adverse because it was undertaken in clear violation of the 1979 lease agreement, which prohibited buildings. Northern States required the Hattamers to remove all encroachments in 2007, two years prior to the expiration of the twenty-year period of adverse possession required by WIS. STAT. § 893.25. The Hattamers do not challenge the circuit court's conclusion that this notification was sufficient to interrupt the continuity required to establish adverse possession.[13] *See* ***Otto v. Cornell***, 119

[13] Because the traditional twenty-year adverse possession period had not yet expired at the time of Northern States' interruption, we need not address the effect of WIS. STAT. § 893.31. Section 893.31 provides that where a landlord-tenant relationship exists, WIS. STAT. § 893.25's twenty-year limitations period does not commence until "the expiration of 10 years from the termination of the tenancy." The circuit court concluded that, by operation of § 893.31, the period of adverse possession did not commence until 2009, because the 1972 lease was not terminated until 1999.

Wis. 2d 4, 7, 349 N.W.2d 703 (Ct. App. 1984) (true owner's reentry, if a notorious, substantial, and material interruption for the purpose of dispossessing the adverse occupant, sufficient to defeat adverse possession claim).

¶27 Finally, the Hattamers argue the circuit court erred by denying their motion for reconsideration. The Hattamers once again argue there are discrepancies between the 1951 plat and the modern surveys. They also assert that they hired another surveyor, Peter Gartmann, who apparently "found significant problems suggesting that the 1951 Plat located *all* of its property boundaries to the south and west of where they should have been located." The Hattamers assert the circuit court "abused its discretion" by failing to take into account evidence, including the Gartmann affidavit, showing "that the court's decision creates problems for the Hattamers beyond the shrinkage of their property on its east side."[14]

¶28 As the Hattamers acknowledge, we deferentially review a circuit court's decision whether to grant relief from judgment under WIS. STAT. § 806.07. *See* ***Miller v. Hanover Ins. Co.***, 2010 WI 75, ¶29, 326 Wis. 2d 640, 785 N.W.2d 493. We will not reverse unless the circuit court has erroneously exercised its discretion. ***Id.*** A circuit court does not erroneously exercise its discretion if it reaches a reasonable decision based on the facts of record and on the application of the correct legal standard. *See* ***id.***

[14] Our supreme court abandoned the use of the phrase "abuse of discretion" in 1992. *See* ***City of Brookfield v. Milwaukee Metro. Sewerage Dist.***, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

¶29 The Hattamers' WIS. STAT. § 806.07 reconsideration motion was apparently based on newly discovered evidence.[15] *See* § 806.07(1)(b). Newly discovered evidence can only constitute grounds for a new trial if it meets four requirements: (1) the evidence came to the moving party's notice after trial; (2) the moving party's failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it; (3) the new evidence is material and not cumulative; and (4) the new evidence would probably change the result. WIS. STAT. § 805.15(3).

¶30 Even on appeal, after these requirements were specifically raised by Northern States, the Hattamers fail to meaningfully address them. The Hattamers merely claim they decided to have another survey done while they were investigating their options "after the court decision revealed to them that the adverse decision from the circuit court would put them at risk of losing land to the north as well as removing from them land they believed was theirs to the south." The Hattamers have not adequately explained the notion that they will now lose land in the northern section of their property nor is that notion self-evident, as the Hattamers commenced this action only to claim an adverse interest in Northern States' property to the south of Lot 1. Indeed, much of the Hattamers' argument appears once again in furtherance of their belief that there are discrepancies between the 1951 plat and the modern surveys. To this end, the Hattamers have

[15] The motion itself did not identify which bases within WIS. STAT. § 806.07 the Hattamers were relying on. However, the Hattamers did request that "the information and further explanation of the information, significantly the findings of surveyor Peter Gartmann, be presented be allowed hearing in a further proceeding [sic]." The circuit court construed the motion to be one based on newly discovered evidence.

not explained why any evidence regarding the allegedly erroneous modern surveys could not have been procured prior to trial.

¶31 In any event, we would conclude, as did the circuit court, that it is not probable that the Hattamers would prevail at a new trial even if the "new" evidence were presented. The evidence at trial included maps of the three modern surveys, including two prepared by the Hattamers' surveyors, all of which agreed as to the location of the southern boundary of Lot 1. The circuit court found the Gartmann survey to be of little persuasive value because it was not based on traditional surveying measures, but rather on the location of shore lines, which are known to vary, and because it ignored all three modern surveys, and in particular the stakes found during those surveys. The circuit court also determined that Lot 1's southern property line was "in no way dependent upon the property lot lines north of it." The Hattamers argue the circuit court's decision ignored portions of Gartmann's affidavit, but they never explain the significance of those sections. In short, the Hattamers have not demonstrated that the circuit court erroneously exercised its discretion in denying their motion for reconsideration.

By the Court.—Judgment affirmed.

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