COURT OF APPEALS
DECISION
DATED AND FILED

January 18, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2212-FT **Cir. Ct. No. 2004CV124**

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

BRUCE TOWNSEND AND NANCY TOWNSEND,

PLAINTIFFS-RESPONDENTS,

V.

PETER GLASHAUSER,

DEFENDANT-APPELLANT,

UNKNOWN HUSBANDS, WIVES, WIDOWS, WIDOWERS, HEIRS, DEVISEES, LEGATEES, GRANTEES, REPRESENTATIVES, ASSIGNS AND ALL PERSONS TO WHOM IT MAY CONCERN,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Door County: PETER C. DILTZ, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Peter Glashauser appeals a judgment awarding Bruce and Nancy Townsend title to a disputed strip of land by adverse possession.[1] He argues that the Townsends did not present sufficient evidence to support the findings. We reject that argument and affirm the judgment.

¶2 The trial court's findings of fact are upheld on appeal unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). Whether those facts meet a legal standard is a question of law that this court decides without deference to the trial court. *See* ***Klinefelter v. Dutch***, 161 Wis. 2d 28, 33, 467 N.W.2d 192 (Ct. App. 1991).

¶3 To establish adverse possession, the Townsends were required to overcome presumptions in favor of the true owner and TO prove that they physically possessed the disputed strip, either by enclosure, cultivation or improvement that was hostile, open and notorious, exclusive and continuous for twenty years. *See* WIS. STAT. § 893.25; ***Allie v. Russo***, 88 Wis. 2d 334, 343, 276 N.W.2d 730 (1979). The term "hostile" is not equated with any deliberate, willful or unfriendly animus. *See* ***Burkhardt v. Smith***, 17 Wis. 2d 132, 139, 115 N.W.2d 540 (1962). Rather, it is conduct inconsistent with the true owner's right to use the land. *See* ***Shallow v. Hagen***, 9 Wis. 2d 506, 511, 101 N.W.2d 694 (1960). Glashauser argues that the Townsends' use of the disputed property was not so hostile, open and notorious as to put him on notice of the Townsends' possession.

¶4 Sufficient evidence supports the trial court's finding. When the Townsends purchased their property in 1977, it and the adjacent property were

[1] This is an expedited appeal under WIS. STAT. RULE 809.17 (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

vacant lots filled with stone, rock and other debris. The Townsends built a home and created a yard, incorrectly believing that stakes marked the boundaries of their property. They removed the debris, rocks and boulders, brought in top soil, prepared and maintained a lawn up to the stakes, which included a ten-foot by thirty-foot strip of the adjacent property now owned by Glashauser. The Townsends also cemented in a clothesline post in the disputed area. Then, for more than twenty years, they used the property as a true owner would. Their activities visibly improved the disputed property such that Glashauser and his predecessors in title should have known that the Townsends claimed the property as their own.

¶5 Contrary to Glashauser's argument, the Townsends did not merely mow a neighbor's lawn, an activity consistent with benign trespass. Rather, they created the lawn and improved the property to an extent that the true owners should have recognized their activities as a claim of ownership. That finding is also supported by the Townsends' neighbors who believed the entire area maintained by the Townsends was their improved property, and not a part of the quasi-abandoned adjacent lot.

By the Court.—Judgment affirmed.

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