

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 10, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1874

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ROY U. SCHENK,

PLAINTIFF-APPELLANT,

V.

MICHAEL CLARK AND TAMMY CLARK,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Crawford County:
MICHAEL J. KIRCHMAN, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Roy Schenk appeals the judgment in his quiet title action. Schenk claims ownership of land used and occupied by his neighbor

Tammy Clark.¹ The trial court declared Clark the owner of the disputed property by equitable deed reformation, resulting in this appeal. We affirm.

¶2 The dispute concerns adjacent lots now owned by Clark and Schenk. Both were once part of a larger parcel owned by Winfield and Minnie Dodge. The Dodges divided their parcel and created the present lots in 1951. However, the legal descriptions of the parcels were based on an erroneous survey, which erred by some 250 feet in placing a section line. Consequently, where the Dodges believed and intended the boundary between the lots to be was not where the legal description actually places it.

¶3 After 1951, the lots passed down through divergent chains of title. Clark bought her 3.7 acre lot in 1994, and Schenk bought the 5 acre lot immediately to her west in 1996. All deeds in the lines of succession contained legal descriptions based on the erroneous section line. However, none of the owners realized this, and continued to believe the boundary was where the Dodges intended to put it.

¶4 No one discovered the error until, shortly after his purchase, Schenk commissioned a survey that revealed the true section line. It also revealed that measuring from the true section line created a boundary between Clark's lot and Schenk's lot some 250 feet to the east. Basing ownership on the description in the deeds therefore would give Schenk approximately 8 acres of land rather than the 5 acres he intended to purchase, and would take away approximately 3 acres of

¹ Tammy Clark was formerly married to Michael Clark, and he is also named as a defendant and respondent.

Clark's 3.7 acre parcel, leaving her with a thin sliver of land and putting her home on Schenk's side of the boundary.

¶5 Schenk commenced this action when Clark refused to recognize the adjusted boundary line. Upon hearing the facts at trial, which were essentially undisputed, the trial court concluded that all of the lot owners from the Dodges to the present shared in a mutual, good faith mistake as to where the lot descriptions placed the boundary line. The court therefore ordered the deeds reformed to create the 5 and 3.7 acre lots Schenk and Clark believed they were purchasing and were now occupying. On appeal, Schenk argues that the adverse possession statutes supplant the remedy of deed reformation, and that only by proving adverse possession could Clark lay claim to property not in her lot description.

¶6 Schenk does not contend that the facts found by the trial court were clearly erroneous, nor could he. He has conceded that he initially shared the mistake made in good faith by all of the lot owners since 1951. A court may reform a deed on grounds of mutual mistake. *See Lange v. Andrus*, 1 Wis. 2d 13, 16, 83 N.W.2d 140 (1957). Instead, Schenk contends that, as a matter of law, the trial court had no authority to reform the deed because adverse possession was Clark's only remedy. He relies on the principle that when a statute conflicts with common law, the statute must prevail. *See Kensington Dev. Corp. v. Israel*, 139 Wis. 2d 159, 167, 407 N.W.2d 269 (Ct. App. 1987), *aff'd*, 142 Wis. 2d 894, 419 N.W.2d 241 (1988).

¶7 We conclude, however, that there is no conflict between the statutory remedy of adverse possession and the equitable doctrine of reformation in case of mutual mistake. They coexist as separate remedies. No authority exists

for the proposition that one precludes or conflicts with the other. Accordingly, we affirm the appealed judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

