COURT OF APPEALS
DECISION
DATED AND FILED

September 5, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 00-2302

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

FRED MEYER, MAUREEN MEYER, MAURICE F. SECORE AND LILLIAN R. SECORE,

PLAINTIFFS-RESPONDENTS,

V.

DAVID PALMQUIST AND RICKY L. PALMQUIST,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Barron County: EDWARD R. BRUNNER, Judge. *Affirmed*.

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

¶1 PER CURIAM. David and Ricky Palmquist appeal a judgment declaring that Fred and Maureen Meyer, and Maurice and Lillian Secore acquired by adverse possession land previously titled to the Palmquists. The Palmquists argue that the evidence was insufficient to support the jury's special verdict.

Alternatively, the Palmquists argue that the trial court erred by denying their motion for judgment notwithstanding the verdict. We reject the Palmquists' arguments and affirm the judgment.

BACKGROUND

¶2 The Meyers and the Secores own adjacent lots immediately to the north of undeveloped land owned by the Palmquists. The Secores obtained their lot in 1967 and the Meyers obtained their lot, located immediately to the west of the Secores' lot, in 1974. Believing that their property extended thirty-five feet past what was, in fact, the southern boundary of their respective properties, the Meyers and the Secores improved the disputed property as if it were their own—planting trees, as well as establishing and maintaining lawns and gardens. In March of 1999, the Meyers and the Secores commenced the underlying action to establish ownership of the disputed property by adverse possession.

¶3 After a trial, the jury found that the Meyers and the Secores had occupied the disputed land as their lawns and gardens exclusively and continuously for twenty years. The trial court denied the Palmquists' motion for judgment notwithstanding the verdict and concluded that title had passed to the Meyers and the Secores by adverse possession. This appeal followed.

ANALYSIS

¶4 An adverse possession determination presents a mixed question of fact and law, requiring findings concerning the sequence of events and a conclusion as to the legal significance of those events. *See* ***Perpignani v. Vonasek***, 139 Wis. 2d 695, 728, 408 N.W.2d 1 (1987). Here, the jury was asked by virtue of the special verdict whether the Secores and Meyers, "under claim of

title, occupied the disputed 35 foot strip as their lawn and/or garden exclusively and continuously for the 20 years preceding the filing of this case." The jury agreed that the Secores and Meyers had occupied the disputed land for the requisite twenty-year period. The court, however, reserved to itself the question whether such occupancy constituted adverse possession as a matter of law.

I. THE SPECIAL VERDICT

¶5 The Palmquists argue that the evidence was insufficient to support the jury's special verdict. Appellate review of a challenged jury verdict is limited to a search for credible evidence, *see* WIS. STAT. § 805.14(1);[1] we do not search for evidence that might sustain a verdict the jury could have, but did not reach. Rather, we look only for evidence supporting the verdict returned by the jury. *See* ***Richards v. Mendivil***, 200 Wis. 2d 665, 671, 548 N.W.2d 85 (Ct. App. 1996). Thus, if the record contains any credible evidence that, under any reasonable view, fairly admits of an inference that supports a jury's finding, that finding will stand. *See* ***Ferraro v. Koelsch***, 119 Wis. 2d 407, 410-11, 350 N.W.2d 735 (Ct. App. 1984).

¶6 At trial, Maurice Secore testified that after purchasing the lot in 1967, he built a house and established both a lawn and garden that, as is now known, extended thirty-five feet into the Palmquists' property to the south. Maurice further testified that he kept a strip of mowed grass between the garden and the adjacent farm field to the south in order to keep seed from the fields out of the garden.

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶7 Fred Meyer testified that after purchasing his lot in 1974, he also built a home and ultimately hired a landscaper to sod the lawn, establishing the southern lot line by following the line already established by the Secores. Both the Secores and the Meyers, as well as a neighbor, testified that the lawns and gardens remained the same since they were established in 1968 and 1974, respectively. In addition to testimony and pictorial evidence, there was also evidence by the telephone company that an underground cable was diverted to go around what the Secores considered the southern line of their lot. We are satisfied that there was sufficient evidence in the record to support the jury's verdict.

II. JUDGMENT NOTWITHSTANDING THE VERDICT

¶8 The Palmquists nevertheless argue that the trial court erred by denying their motion for judgment notwithstanding the verdict. Specifically, they contend that the exclusive and continuous occupation of the disputed land was not hostile, open and notorious so as to give sufficient notice of adverse possession as a matter of law. Rather, they contend that the Secores' and Meyers' use of the property was benign, permissive and consistent with the Palmquists' ownership of the undeveloped land.[2] We are not persuaded. Although we do not ordinarily defer to a trial court's conclusion of law, we will give weight to a legal determination that is intertwined with factual findings in support of that determination. ***Wassenaar v. Panos***, 111 Wis. 2d 518, 525, 331 N.W.2d 357 (1983).

[2] In connection with this argument, the Palmquists cite ***Harwick v. Black***, 230 Wis. 2d 186, 603 N.W.2d 749 (Ct. App. 1999), an unpublished opinion of this court. With limited exceptions that are inapplicable here, it violates appellate procedure to cite an unpublished opinion. *See* WIS. STAT. RULE 809.23.(3).

¶9 WISCONSIN STAT. § 893.25 permits a person to acquire title to real property by adverse possession uninterrupted for a period of twenty years. The statute requires the land to be actually occupied and either protected by a substantial enclosure or usually cultivated or improved. WIS. STAT. § 893.25(2). The person claiming adverse possession must show that the disputed property was used for the requisite period of time in an open, notorious, visible, exclusive, hostile, and continuous manner that would apprise a reasonably diligent landowner and the public that the possessor claims the land as his or her own. ***Pierz v. Gorski***, 88 Wis. 2d 131, 136-37, 276 N.W.2d 352 (Ct. App. 1979).

¶10 Here, the Palmquists argue that the evidence, as a matter of law, does not establish "hostile physical possession" of the disputed land. The term "hostile," however, as used in this context, is not equated with any "deliberate willful [or] unfriendly animus." ***Burkhardt v. Smith***, 17 Wis. 2d 132, 139, 115 N.W.2d 540 (1962). Rather, an act is hostile in the context of an adverse possession claim, when it is "inconsistent with the right of the owner and not done in subordination thereto." ***Shellow v. Hagen***, 9 Wis. 2d 506, 511, 101 N.W.2d 694 (1960). It is an intention to "usurp the possession"—to claim exclusive right to property that one possesses physically, but not by record title. ***Cuskey v. McShane***, 2 Wis. 2d 607, 610, 87 N.W.2d 497 (1958). To evince hostility, an adverse claimant must only do something which "clearly brings home to his [or her] neighbor the fact that he [or she] intends to claim the property against his [or her] neighbor and the world." ***Id.*** at 609. Further, "[i]f the elements of open, notorious, continuous, and exclusive possession are satisfied, the law presumes the element of hostile intent." ***Burkhardt***, 17 Wis. 2d at 139.

¶11 Our supreme court has held that using property for "the ordinary use to which the land is capable and such as an owner would make of it" in the usual

course of events, and in a way that indicates the boundaries of the adverse claim, provides sufficient notice of actual and exclusive adverse possession. ***Id.*** at 138. The placement of "structural encroachments" on the land is not a requirement of adverse possession. Rather, "[a]ny actual visible means … which give notice of exclusion from the property to the [record] owner or to the public and of the defendant's domination over it, is sufficient." ***Id.***

¶12 Here, the trial court concluded that the flag of hostility was established by the definitive line between the Palmquists' undeveloped property and the Secores' and Meyers' maintained lawns and gardens.[3] The trial court contemplated the difference between abutting farmlands and residential property, noting:

> The difference is that the flag of hostility, the flag of ownership is this is a lawn and a garden that I take care of. It is sodded and seeded. It is not left to be tilled, it is not left to be used in some other agricultural way, it is defined as a city lot. That's the … clear distinguishing feature. It is a back yard versus a cornfield. And when a person establishes that, they say to the owner of the farm field this is lawn. This is my lot. And that's what they did.
>
> …
>
> They treated this property as their own. They didn't ask permission to be on this property from the very beginning. They thought this is where their lot lines were and treated it as such. And they treated it well longer than the 20 years necessary to make that claim.

[3] The Palmquists' property was occasionally farmed by third parties pending its development. Citing these instances of permissive use of their land, the Palmquists contend that the Secores' and Meyers' use of the land was likewise tantamount to permissive use. Unlike the individuals that farmed the Palmquists' land, however, the Secores and Meyers never obtained the Palmquists' permission to establish and maintain their lawns and gardens.

¶13 We conclude that these open improvements to what was the Palmquists' undeveloped land were sufficient to establish "hostile physical possession" of the disputed land. Because the requisite elements of WIS. STAT. § 893.25 were satisfied, the trial court properly determined that the Secores and the Meyers had established ownership of the disputed property by adverse possession.

By the Court.—Judgment affirmed.

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