COURT OF APPEALS
DECISION
DATED AND FILED

July 6, 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. 01-0391-FT

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

JEFF PETTIS,

PLAINTIFF-RESPONDENT,

AND KEN LYKE,

PLAINTIFF,

V.

JOHN CLOSE AND JO CLOSE,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed.*

Before Vergeront, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. John and Jo Close appeal from a judgment declaring that Jeff Pettis had acquired by adverse possession land previously titled to the Closes.[1] They challenge the trial court's findings that the disputed land had been substantially enclosed and cultivated or improved for a continuous period of twenty years. They also challenge the court's conclusion that Pettis's predecessors in interest had exercised exclusive control over the land during that period. We conclude that the trial court's findings were supported by the record and its legal conclusion represented a proper application of the relevant law. Accordingly, we affirm.

BACKGROUND

¶2 Pettis sought declaratory judgment establishing his ownership of a strip of land approximately ninety feet long and fourteen and a half feet deep along the backyard boundary between his residential property and an adjoining lot owned by the Closes.[2] The parties tried the matter to the court. They presented evidence that the disputed area had been enclosed as part of the Pettis lot by a barbed-wire fence sometime in the early 1950s. The area was gardened and mowed by one of Pettis's predecessors in interest during the 1960s and early 1970s. A subsequent predecessor in interest used the area for piling brush during the late 1970s and early 1980s. He picked raspberries that were growing in the area and cleared away branches, but did not mow or rake the area all the way to the fence due to the density of brush and trees there. The Pettis family bought

[1] This is an expedited appeal under WIS. STAT. RULE 809.17 (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] Ken Lyke sought title to another strip of land in the same suit, but his claim was dismissed by stipulation of the parties and is not before us on this appeal.

their lot in 1984 and planted and mowed grass, picked rhubarb, pulled out raspberry bushes, piled wood, erected a children's playhouse, and stored a motorcycle in the disputed area.

¶3 The barbed-wire fence had fallen into disrepair by the 1970s. In 1975, John Close began removing remnants of the barbed-wire fence, which he considered a hazard to his children. By 1978, he had removed the entire barbed-wire fence and erected a woven-wire fence, along the same line as the prior barbed-wire fence, to enclose a new swimming pool. Close removed the woven-wire fence to facilitate logging when he sold some pine trees along both sides of the fence line in 1996. The following year, he erected a new chain-link fence along approximately the same line as the previous two fences.

¶4 The trial court found that the series of fences, even when in disrepair, had clearly identified and marked a geographical boundary line from at least 1955 to the time of trial, with the exception of a one-year interruption beginning in 1996. It further found that five successive owners of the Pettis lot had believed, and behaved in various respects, as though they owned the disputed strip of land, while the owners of the Close lot had not exercised any dominion or control over the strip until the mid-1990s. The trial court concluded that Pettis's predecessors in interest had exercised open, continuous, exclusive, notorious, and hostile possession of the strip for more than twenty years and Pettis had therefore established ownership of the strip by adverse possession.

STANDARD OF REVIEW

¶5 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). We will sustain the trial court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); ***Becker v. Zoschke***, 76 Wis. 2d 336, 346, 251 N.W.2d 431 (1977). Furthermore, although we do not ordinarily defer to the trial court's conclusion of law, we will give weight to a legal determination that is intertwined with the factual findings in support of that determination. ***Wassenaar v. Panos***, 111 Wis. 2d 518, 525, 331 N.W.2d 357 (1983).

ANALYSIS

¶6 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/her own. ***Pierz v. Gorski***, 88 Wis. 2d 131, 136-37, 276 N.W.2d 352 (Ct. App. 1979).

¶7 The trial court's written decision demonstrates that it considered the evidence in this case according to the above-cited law. The Closes nonetheless assert that the trial court erred by finding that the disputed property had been substantially enclosed for a continuous period of twenty years, by finding that the disputed property had been cultivated or improved for a continuous period of twenty years, and by concluding that the possession by Pettis and his predecessors had been exclusive. We are not persuaded by any of these contentions.

¶8 First, the trial court's finding that the disputed area was substantially enclosed was not clearly erroneous. Close testified that he remembered the barbed-wire fence being erected in the early 1950s. Remnants of that fence remained in place until 1975, when Close began removing them. The trial court could reasonably determine from this evidence that the original fence was in place for at least twenty years and that it was a boundary marker visible enough to create a substantial enclosure, even when it had fallen into disrepair and lay on the ground in some places. The fact that there may have been subsequent interruptions in the enclosure was irrelevant, if adverse possession had already been established by 1975.

¶9 The trial court's alternate finding that the disputed area had been improved or cultivated by Pettis's predecessors for a continuous period of twenty years was also supported by the record. The Closes do not dispute that the area was cultivated by a garden from approximately 1960 to 1973. They argue, however, that subsequent owners of the Pettis lot failed to continue such cultivation efforts. The record shows otherwise. Although the maintenance of a garden is compelling evidence, it is not the only means by which to establish cultivation or improvement. The "usual" manner in which a particular land is cultivated or improved may vary with the nature of the land involved. Here, the disputed area was heavily covered by trees, shrubs, and bushes. Therefore, the trial court could reasonably have determined that activities such as clearing brush and mowing that part of the land that was accessible were all that was required to exercise control over the disputed area.

¶10 Finally, the Closes claim the trial court's conclusion that Pettis had established exclusive use of the disputed land was erroneous because there was no

evidence that the Closes had treated the fence line as the true boundary between their properties. The Closes point to John Close's testimony that he erected the second fence to enclose his swimming pool, not to mark the lot line. This argument is flawed in several respects, however. First, as discussed above, the second and third fences were irrelevant if adverse possession had already been established while the first fence was in place. Secondly, regardless of the intended purpose of the second fence, its placement along the original fence line suggests that the parties' mistaken belief about the true lot line was mutual. Furthermore, the overwhelming majority of the evidence showed that it was the owners of the Pettis lot, rather than the Closes, who had exclusively used the disputed area from at least 1955 to 1996 by gardening, mowing, clearing brush, and so forth. The trial court's conclusion of exclusive use for the requisite period was not erroneous.

By the Court.—Judgment affirmed.

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