



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

December 4, 2024

To:

Hon. Samantha R. Bastil
Circuit Court Judge
Electronic Notice

Herbert Conrad Humke
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Joseph J. Voelkner
Electronic Notice

James D. Kurtz
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP1940

James D. Kurtz v. Lemonade LLC (L.C. #2022CV460)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

James D. Kurtz appeals pro se from an order granting summary judgment in favor of defendants Lemonade LLC and Schwaller Family LLC and from an order denying his motion for reconsideration and prohibiting him from filing documents absent fulfillment of certain conditions. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ For the following reasons, we summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Kurtz filed suit on September 1, 2022, seeking title to two parcels of real property, one owned by Schwaller Family and one owned by Lemonade, based on adverse possession. Each parcel is adjacent to land once owned by Kurtz’s grandparents, Margaret and DeLyle Miller. Kurtz alleged that he was born in 1953, lived on his grandparents’ land until their deaths, and was an occupant of the farmhouse located on that land until 1988. He also alleged that his grandparents maintained a fence enclosing their land and including the parcels at issue from 1942 until the 1970s and that he maintained the fence until 2009. Kurtz, however, also admitted that he was incarcerated from 1988 through 2009. His adverse possession claim under WIS. STAT. § 893.25 was based on his and his grandparents’ (as his “predecessors in interest”) possession of the parcels at issue “continuously for the applicable statutory period of 20 years ... from 1942 until the 1970s, when the [land] was then conveyed to the Plaintiff, who had physical possession of the [land] from the 1970s until 1988.”

Both Lemonade and Schwaller Family moved for summary judgment, asserting that no facts in the Record supported Kurtz’s claim that he occupied, cultivated, and improved the land at issue and that his claim was barred by WIS. STAT. § 893.33, which provides a thirty-year statute of limitations for actions “affecting the possession or title of any real estate” unless such action is commenced by a “person who is in possession of the real estate involved as owner at the time the action is commenced.” Sec. 893.33(2), (5). After a hearing, the circuit court granted summary judgment to the defendants, determining that Kurtz’s adverse possession claim was indeed barred by the statute of limitations. Kurtz appeals from both the order granting summary judgment and the court’s subsequent denial of his motion for reconsideration.

Kurtz's appellate brief² purports to present five different issues. Four of these amount to attacks on and conspiracy claims against the litigants, their counsel, and various judges and court personnel with no developed legal argument. We decline to review these issues. *See, e.g., Associates Fin. Servs. Co. of Wis. v. Brown*, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56 (declining to address conclusory and undeveloped arguments). Thus, we address only Kurtz's assertion that there are genuine issues of material fact precluding summary judgment. We review a grant of summary judgment de novo, using the same methodology as the circuit court. *Pheasant West, LLC v. University of Wis. Med. Found., Inc.*, 2023 WI App 55, ¶14, 409 Wis. 2d 539, 998 N.W.2d 600 (citing *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶2, 275 Wis. 2d 397, 685 N.W.2d 853).

We must view all facts in dispute in the light most favorable to the party opposing summary judgment, *Pheasant West*, 409 Wis. 2d 539, ¶34, but there is no dispute that Kurtz was incarcerated from 1988-2009. He therefore could not have adversely possessed the land in question for an uninterrupted period of twenty years immediately prior to filing the underlying lawsuit in 2022. *See* WIS. STAT. § 893.25(1) ("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." (emphasis added)). The latest a claim based on adverse possession could have matured is 1988, before Kurtz went to prison.

² We note that Kurtz failed to file a reply brief in this appeal; he was granted one extension of time to do so, and his second request for extension was denied. Although failure to file a reply can be deemed a concession of the arguments made in an opposing party's response, *Apple Hill Farms Development, LLP v. Price*, 2012 WI App 69, ¶14, 342 Wis. 2d 162, 816 N.W.2d 914, we nevertheless decide Kurtz's appeal of summary judgment on the merits.

Even if Kurtz’s assertion that he (or he and his grandparents before him) exercised “hostile, open and notorious, exclusive and continuous” possession of the land to satisfy the requirements of adverse possession, *see Leciejewski v. Sedlak*, 116 Wis. 2d 629, 636, 342 N.W.2d 734 (1984), his claim for title must have been filed within thirty years of 1988 pursuant to WIS. STAT. § 893.33(2). That statute “bars an action affecting the possession or title of any real estate which is founded upon any event occurring more than thirty years prior to the date of the commencement of the action unless within that thirty years there is an instrument or notice of claim recorded with the register of deeds”—which Kurtz does not assert. *See O’Kon v. Laude*, 2004 WI App 200, ¶10, 276 Wis. 2d 666, 688 N.W.2d 747.

The only exception to this statute of limitations arises when the person asserting rights pursuant to adverse possession is “in possession of the real estate involved as owner at the time the action is commenced.” WIS. STAT. § 893.33(5). There are no facts in the Record supporting application of that exception in this case. Despite extensive litigation initiated by Kurtz, it is established that Kurtz’s mother has been the owner of the property formerly owned by the Millers since at least 1988. *Kurtz v. State*, No. 2020AP854, unpublished op. and order (WI App June 9, 2021) (adopting circuit court’s opinion granting summary judgment in favor of Janet Lammers). Kurtz alleges that his grandparents conveyed their property to him in 1984. The Record shows that Kurtz conveyed the same property to his mother by quit claim deed in 1988. Because Janet Lammers was indisputably the owner of the land when Kurtz filed this suit in 2022, his claim that he is entitled to the property at issue based on adverse possession is barred as a matter of law.

Therefore,

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to
WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals