COURT OF APPEALS
DECISION
DATED AND FILED

November 1, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1465 **Cir. Ct. No. 2009CV48**

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

GREGORY VANEMAN,

PLAINTIFF-APPELLANT,

V.

ROLAND REED, DIANA REED AND COUNTY OF PEPIN, WISCONSIN,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Pepin County: JOSEPH D. BOLES, Judge. *Affirmed.*

Before Lundsten, P.J., Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Gregory Vaneman appeals a judgment of the circuit court granting Roland and Diana Reed's (the Reeds) motion for summary judgment. The effect of the judgment was to deny Vaneman's claim of adverse

possession of a parcel of land in Pepin County and to deny issuance of an injunction against the Reeds. We affirm the judgment of the circuit court.

BACKGROUND

¶2 This is an adverse possession case concerning a parcel of land in Pepin County described as follows: "All that part of the NE ¼ of the NW ¼ of Sec. 11, T 25 N, R 14 W lying Northerly and Easterly of Co. Rd. 'X'" (the Property). The County of Pepin took title to the Property by a deed recorded on June 2, 1958. By an easement deed recorded on August 28, 1998, the County granted a perpetual easement to Loren Reed and Cheryl Reed over a forty-foot wide strip of the Property for purposes of ingress and egress over the "old Pepin County Highway 'X.'" Loren and Cheryl Reed later conveyed real estate benefitted by the easement to the respondents, Roland and Diana Reed.

¶3 Vaneman asserts that he, along with his brother, is the owner of the Property, and that he and his predecessors-in-interest acquired their interest in the Property through adverse possession. Vaneman brought an action in circuit court for declaratory judgment to confirm his interest in the Property and obtain an injunction to prohibit the Reeds from entering the Property.

¶4 Vaneman and the Reeds each filed cross-motions for summary judgment. The circuit court granted summary judgment in favor of the Reeds and against Vaneman, concluding that Vaneman's possession of the Property was not exclusive, as required to establish a claim of adverse possession. Vaneman now appeals.

DISCUSSION

¶5 Vaneman argues that the circuit court improperly determined that the exclusivity requirement of his adverse possession claim had not been met and therefore he had not established a claim for adverse possession. We affirm the judgment of the circuit court on the basis that Vaneman failed to establish that he had exclusive, uninterrupted use of the Property, as required for a claim of adverse possession.

¶6 Whether the circuit court properly granted the Reeds' motion for summary judgment is a question of law that we review de novo. *See* ***Hocking v. City of Dodgeville***, 2009 WI 70, ¶7, 318 Wis. 2d 681, 768 N.W.2d 552. We apply the same standards used by the circuit court, which are set forth in WIS. STAT. § 802.08 (2009-10). ***Id.***

¶7 Vaneman asserts that his predecessors in interest began their adverse possession of the Property in 1964. At that time, the relevant adverse possession statute provided, "No title to real property belonging to the state shall be obtained by adverse possession, prescription or user unless such adverse possession, prescription or user has been continued uninterruptedly for more than 40 years." WIS. STAT. § 330.10 (1963). In 1980, the time period for an adverse possession claim against a governmental entity was amended to twenty years. *See* WIS. STAT. § 893.29 (1979-80). Both versions of the adverse possession statute require uninterrupted use, and Wisconsin courts have long held that the use must be exclusive. *See* ***Meyer v. Hope***, 101 Wis. 123, 77 N.W. 720 (1898); ***Allie v. Russo***, 88 Wis. 2d 334, 276 N.W.2d 730 (1979).

¶8 Vaneman argues that the twenty-year time period under the 1980 version of the adverse possession statute applies to this case. *See* WIS. STAT.

§ 893.29 (1979-80). He further argues that, regardless of which version of the statute applies, he has met the requirements for acquiring title to the Property by adverse possession. He asserts that, under the version of the statute in effect in 1964, he and his predecessors in interest would have had to adversely possess the Property until 2004. *See* WIS. STAT. § 330.10 (1963). He further asserts that, under the later version of the statute, he and his predecessors would have had to adversely possess the Property from 1980, when the twenty-year time requirement for adverse possession went into effect, until the year 2000. *See* WIS. STAT. § 893.29 (1979-80). Vaneman argues that, during these time frames, the County never re-entered the Property and, therefore, his occupancy of the Property was exclusive and uninterrupted.

¶9 The Reeds argue that, under either the 1964 or 1980 version of the statute, Vaneman's adverse possession claim must fail. The Reeds assert that any exclusive occupancy of the Property that Vaneman and his predecessors in interest may have established was interrupted on August 10, 1998, when the easement was granted and the Reeds and their invitees began to enter onto the Property with vehicles, ATVs, motorcycles, and farm equipment.

¶10 The fact that the Reeds and their invitees have been entering the Property for over ten years is undisputed. Vaneman concedes in his appellant's brief that the Reeds have come onto the disputed Property during the period of his claimed adverse possession. He stated during his deposition that the Reeds began entering onto the Property more than ten years prior to when the lawsuit was commenced in 2009. Vaneman admitted that he had not been using the Property exclusively for those ten years. He stated that the Reeds "moved in" and would travel over the driveway located on the easement and also through the yard at all times of the day or night. Vaneman further stated during his deposition that the

Reeds allowed a logging company, hunters, and "numerous people" he didn't know to travel across the Property in order to access the Reeds' land. In light of these record facts, we conclude, as did the circuit court, that Vaneman cannot establish that he used the Property exclusively for the time period specified under the adverse possession statutes in effect in either 1980 or 1964. *See* WIS. STAT. § 893.29 (1979-80), WIS. STAT. § 330.10 (1963).

¶11 Vaneman attempts to reconcile the fact of the Reeds' continuing use of the Property with his adverse possession claim by arguing that the Reeds' entries onto the Property were merely "casual" use and should not defeat the exclusivity or continuity component of his claim. *See* ***Otto v. Cornell***, 119 Wis. 2d 4, 7, 349 N.W.2d 703 (1984). However, the facts in the record do not support Vaneman's argument that the Reeds' use of the Property was casual. Vaneman admitted in his deposition that the Reeds and their invitees have been using the Property and driving vehicles on it, at many different times of day and night, and that they have "been a nuisance for the last ten years or more." We cannot conclude, given these facts, that the Reeds' use was casual.

¶12 Vaneman also argues that he has a claim of adverse possession because he maintained and improved the Property. He did landscaping, mowed the grass, placed a septic system on the Property, and plowed and kept up the driveway. Vaneman relies on ***Burkhardt v. Smith***, 17 Wis. 2d 132, 138, 115 N.W.2d 540 (1962), which states, "'usually improved' means to put to the exclusive use of the occupant as the true owner might use such land in the usual course of events." We conclude that this argument fails because, regardless of maintenance and improvement, Vaneman must establish exclusive use, which he has failed to do.

¶13 Vaneman also raises an additional issue in his reply brief, arguing that the Reeds use other parts of the Property that fall outside of the easement and that the Reeds have no interest in the Property other than the easement for purposes of ingress and egress. As a general rule, we do not review issues raised for the first time in a reply brief and, therefore, will not address Vaneman's argument regarding use of other portions of the Property. *See* ***Schaeffer v. State Personnel Comm'n***, 150 Wis. 2d 132, 144, 441 N.W.2d 292 (Ct. App. 1989).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2009-10).