

STATE OF MICHIGAN
COURT OF APPEALS

HUNTERS SQUARE OFFICE BUILDING, LLC,

Plaintiff-Appellee,

v

HARTMAN & TYNER, INC., and HUNTERS
RIDGE OF FARMINGTON HILLS
CONDOMINIUM ASSOCIATION,

Defendants-Appellants.

UNPUBLISHED

June 29, 2001

No. 220175

Oakland Circuit Court

LC No. 95-500208-CH

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court order, issued on remand, quieting title in favor of plaintiff and enjoining defendants from further trespass on the disputed property. We affirm.

Defendants first argue that the trial court improperly disregarded this Court's prior opinion by finding on remand that defendants failed to establish the exclusive possession element of their adverse possession claim. We disagree.

Actions to quiet title are equitable and are reviewed de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993). However, we review a trial court's findings of fact for clear error. *Id.* A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997).

To establish adverse possession, a party must show, by clear and cogent proof, that possession has been actual, visible, open, notorious, exclusive and uninterrupted for the statutory period of fifteen years. *Gorte, supra* at 170; *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993); see MCL 600.5801(4). The possession must also be hostile to the title of the true owner. *Gorte, supra*.

Defendants claim that the trial court erred in finding that defendants did not have exclusive possession of the disputed property so as to establish their claim of adverse possession. Defendants assert that this Court previously determined that element was satisfied and, therefore,

the trial court was precluded from finding otherwise on remand. See *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000) (discussing the law of the case doctrine).

This Court did not address the exclusive possession element of defendants' adverse possession claim in connection to the previous appeal, but instead only addressed whether defendant's use of the property was hostile. *Hunters Square Office Bldg LLC v Hartman & Tyner, Inc*, unpublished opinion per curiam of the Court of Appeals, issued 3/26/99 (Docket No. 203362), slip op p 2 (stating: "The sole element of adverse possession that is at issue on appeal is whether defendants' use of the disputed strip of land was hostile.") This Court specifically instructed that on remand, the trial court must consider the remaining elements of adverse possession, including whether defendants' hostile possession existed for the statutory period. *Id.* at slip op p 3. We find nothing to indicate that the trial court's finding regarding the exclusive possession element was inconsistent with this Court's prior holding. Thus, we find no error in regard to this issue.

Defendants next argue that the trial court erred when it concluded defendants failed to establish that they adversely possessed the disputed property for the required length of time. Specifically, defendants claim that the statutory period of fifteen years could have been satisfied by tacking their period of possession to that of their predecessor in interest.

To prevail on an adverse possession claim, the party must show that the property owner had a cause of action for recovery of the land for the fifteen-year statutory period. *Kipka, supra*; see MCL 600.5801(4). "A cause of action does not accrue until the property owner of record has been disseised of the land. Disseisin occurs when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership." *Kipka, supra*, citations omitted.

In the present case, the evidence supports a finding that defendants disseised plaintiff or its predecessor in interest, at the earliest, in June 1980. Defendant condominium association was formed in June 1980, and according to the trial testimony, maintained the fence and the grounds of the disputed piece of land since that time. The evidence further supports a finding that plaintiff removed the fence in March 1995, thereby halting the running of the statutory period short of fifteen years. Accordingly, the evidence suggests that defendants' possession of the property, alone, cannot satisfy the statutory period.

Insofar as defendants claim that the fifteen-year period of possession is established by tacking, that claim lacks merit. "An adverse claimant is permitted to add his predecessor's period of possession if he can establish privity of estate by mention of the disputed lands in the instrument of conveyance or parol references at the time of the conveyance." *Connelly v Buckingham*, 136 Mich App 462, 474; 357 NW2d 70 (1984).

Here, there is no evidence that the disputed land was mentioned in any instrument of conveyance involving defendants. Although there was testimony by an officer of defendant Hartman & Tyner that "[t]he real estate broker and some officials from the bank" told him that the fence was part of the condominium association's property, there is no indication the statement was made at the time of conveyance. The testimony also refers simply to the fence and does not indicate that the entire property in dispute was referenced. Moreover, there is no

indication that the bank officials or the real estate broker were authorized by a predecessor in interest to make such a representation. Thus, this testimony is insufficient to allow tacking. See *Siegel v Renkiewicz Estate*, 373 Mich 421, 425-426; 129 NW2d 876 (1964) (tacking impermissible where there was no reference to the claimed property in any of the instruments of conveyance in the record and no proof was offered to indicate that a parol reference was made at the time of any of the successive conveyances). Under these circumstances, we cannot say that the trial court clearly erred in finding that defendants had not adversely possessed the disputed land for the requisite period.

Last, defendants argue that the trial court's opinion on remand ignored this Court's previous holding that defendants' possession of the disputed property was hostile. We conclude that the trial court's finding that defendants did not engage in hostile use of the property until the fence was removed in March 1995 is inconsistent with this Court's holding that defendants' open acts of ownership over the fence and surrounding grounds prior to the removal of the fence constituted hostile use. However, that error does not require reversal in this case. Given the trial court's conclusion that defendants had not proved the necessary element that they continuously and exclusively used the property for the statutory period, it is clear that the court's erroneous statement regarding defendants' hostile was not dispositive of the court's ruling.

Affirmed.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Brian K. Zahra