STATE OF MICHIGAN

COURT OF APPEALS

GUY BEAUCHAMP and BARBARA BEAUCHAMP, Plaintiffs/Counter Defendants-Appellees, v GRANT C. YEO and WILLIAM D. YEO, Defendants/Counter Plaintiffs-Appellants.	UNPUBLISHED June 13, 2006 No. 259940 St. Clair Circuit Court LC No. 03-000832-CH

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Defendants Grant and William Yeo (the Yeos) appeal as of right from the trial court's judgment for plaintiffs Guy and Barbara Beauchamp (the Beauchamps) after a bench trial, which awarded the Beauchamps title to the property at issue by adverse possession. We affirm.

I. Basic Facts And Procedural History

The Beauchamps purchased their home located at 909 Eighth Street in Port Huron on November 9, 1957. Their property abutted property directly behind their backyard, which Rachel Yeo owned and which contained a house that Rachel Yeo rented to a tenant from 1957 to 1969.[1] Rachel Yeo and her family moved to Arizona in 1960. Sometime in August 1971, a storm caused a tree to fall on the Yeo house, and a person that Barbara Beauchamp believed to be Rachel Yeo stopped by the Yeo property to inspect the damage. Barbara Beauchamp then asked Rachel Yeo if she would be interested in selling the property, and "she said: 15,000" and walked away. The Beauchamps admitted that they were willing to purchase the property, but they never heard from the owners again. A few months later, a demolition crew tore down and removed the house and the fallen tree, and the Yeo property was thereafter a vacant lot.

[1] The trial court and the parties occasionally referred to the disputed property as the Howard Street yard.

The Beauchamps then began to treat the property as their own backyard and maintained the property by regularly cutting the grass; trimming and clearing trees; planting flower gardens, rosebushes, and trees; and removing snow from both the lot and the adjacent sidewalk. They erected poles and a clothesline that had been up for at least 30 years by the time of the trial; one pole of the clothesline was on the vacant lot while the other was on the Beauchamps' own property. Some of the trees that they had planted had been growing for over 20 years and a flower garden planted in a tire that Guy Beauchamp placed on the lot had been there for about 25 years before trial. The Beauchamps also posted a no-trespassing sign, hired people to work on the lot, parked their cars and a boat on the lot, constructed ice ponds on the lot for skating about 31 years before trial,[2] and erected a flagpole on the lot sometime after the attacks on September 11, 2001. About 20 years before trial, the Beauchamps erected a fence along the back line of the lot to keep out drug dealers, and a photo allegedly showed that the fence had already been constructed by 1985. They planted a forsythia bush along the fence around 1985, and held various family events on the lot such as graduation parties, reunions, barbeques, and yard sales. Neighbors did not attempt to use the vacant lot because they recognized it as the Beauchamps' yard. In 2001, a pear tree on the vacant lot fell onto a fence owned by the Beauchamps' neighbors and the Beauchamps themselves repaired the neighbors' fence. From 1971 to 2003, no one ever told the Beauchamps to stop using or leave the lot, or that it was not their property. The Beauchamps admitted that they never notified the Yeos of their use of the lot. It was undisputed that the Yeos paid all property taxes on the lot.

After Rachel Yeo died on November 30, 2000, the Yeos inherited her interest in the lot. The Yeos hired a real estate agent who placed a for sale sign on the lot in the spring of 2002. Neighbors began asking the Beauchamps why they were selling their property. The Beauchamps then filed the instant quiet title action. The Yeos filed a counterclaim, arguing that if the Beauchamps were entitled to the lot under adverse possession, then, under an unjust enrichment theory, they would have to pay the Yeos for any property taxes that the Yeos paid. The Yeos also claimed slander of title because the Beauchamps filed a lis pendens that interfered with the Yeos' ability to sell the lot.

Based on the Beauchamps admissions through interrogatories, the Yeos moved for summary disposition,[3] arguing that the Beauchamps' inquiry about a possible sale in 1971 was a recognition that the Yeos' predecessors held superior title, that they were thus entitled to believe that any possession was not hostile, and that the Beauchamps gave the Yeos no actual or constructive notice of their hostile intent. The Beauchamps responded with affidavits from three of their children and ten of their neighbors claiming essentially that the Beauchamps used the lot as their own for well over 15 years, excluded others, and that the affiants believed that the lot belonged to the Beauchamps. The trial court denied the motion, ruling that the Beauchamps

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[2] The ice ponds were not permanent structures but were apparently remade every winter for about ten years straight, formed by spraying water on areas of the lot to freeze. There is no indication that excavation took place to construct any ice ponds.

[3] Defendants incorrectly referred to MCR 2.116(B)(8) and (B)(10) in their motion.

presented "evidence [] sufficient to state a claim and create an issue of fact as to whether [their] acts of ownership satisfy the requirements to establish adverse possession."

In addition to their previous arguments, the Yeos argued at trial that the defense of laches should bar the Beauchamps' claim because they could have brought the claim 15 years after taking possession, but by bringing the claim after Rachel Yeo died, the Yeos were unfairly prejudiced by the loss of Rachel Yeo as a potential witness. The trial court rejected the laches defense and ruled as follows:

> At least since the starting of the lawsuit going back fifteen years that *by a preponderance of the evidence* this [c]ourt would determine that their claim was hostile and adverse and, and open to the general public at large and also to . . . the [record] owner[s] of the land. [Emphasis added].

The trial court conditioned its award of title to the Beauchamps on their paying the Yeos the property taxes paid from 1974 until the date of trial (which were estimated at about $3,090) and $2,000 "for leasing of the property up until the time of the 15 years that runs only backwards from now, in this [c]ourt's opinion." The trial court stated that the $2,000 leasing fee, which it appears that the Yeos never requested, was calculated "[f]rom the appropriate lease arrangement on the $15,000.00 evaluation of a piece of property and the time frame of 1971 up until 15 years from when the lawsuit --" [sic].[4]

II. Motion for Summary Disposition

A. Standard Of Review

The Yeos argue that the trial court erred when it denied their motion for summary disposition. We review de novo a denial of summary disposition.[5] A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone, and documentary evidence is not considered.[6] All factual allegations in support of the claim are accepted as true, and all reasonable inferences or conclusions that can be drawn from the facts are construed in the light most favorable to the nonmoving party.[7] In reviewing a decision under MCR 2.116(C)(10), we consider all documentary evidence in the light most favorable to the nonmoving party,

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[4] Although the Beauchamps question the appropriateness of the lease-fee and property tax awards, they have not filed a cross-appeal and therefore any arguments relating to those awards are not properly before us. See *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 221; 625 NW2d 93 (2000), quoting *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1998) ("a cross appeal is necessary to obtain a decision more favorable than that rendered by the lower tribunal . . . .").

[5] *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 357; 597 NW2d 250 (1999).

[6] *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

[7] *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

affording all reasonable inferences to the nonmovant, to determine whether there is any genuine issue of material fact that would entitle the non-moving party to judgment as a matter of law.[8]

B. Abandonment Of The Issue

Although the Yeos' statement of questions presented includes the issue of whether the trial court erred in denying their motion for summary disposition, the argument section of the Yeos' brief on appeal does not address this issue. Besides the Yeos' issue statement, the only place where their brief on appeal mentions the motion for summary disposition is in the statement of facts section, where they state that the motion was brought, summarize the arguments made below, and note that the motion was denied. Accordingly, the Yeos have abandoned the issue.[9]

III. The Evidence of Adverse Possession

A. Standard Of Review

The Yeos argue that because the Beauchamps asked Rachel Yeo about buying the lot *before* they entered the lot with intent to possess it, this acknowledgement of superior title somehow destroys the element of hostility necessary for an adverse possession claim. Thus, the Yeos argue that they were somehow entitled to believe that any subsequent possession was not hostile but rather permissive, even though the Yeos concede that they had no knowledge of the Beauchamps' use of the lot. The Yeos argue that the Beauchamps were required to give the Yeos actual and express notice of their intent in order to support an adverse possession claim. Because quiet title actions are equitable actions, we review de novo the holding of the trial court, but we review for clear error the trial court's findings of fact.[10]

B. Constructive Notice And Permission

"To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years."[11] It is not necessary for the party asserting an adverse possession claim to expressly notify the record owner of his intent to adversely possess the other's property as long as the possessor's action and conduct with regard

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[8] *Knauff v Oscoda Co Drain Comm'r*, 240 Mich App 485, 488; 618 NW2d 1 (2000).

[9] See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not sufficient for a party 'simply to . . . assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments . . . .'").

[10] *McFerren v B & B Investment Group* (*After Remand*), 253 Mich App 517, 522; 655 NW2d 779 (2002).

[11] *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995) (citation omitted).

to the property clearly demonstrate that the possessor is asserting ownership.[12] Put another way, the record owner must have either actual knowledge of the adverse use, or the possession and claim of exclusive ownership must be so open and notorious to the world that the record owner can be charged with constructive knowledge of the adverse use.[13] Permissive use of property, however, cannot support a claim of adverse possession.[14] "To change a permissive use into an adverse one, a claimant must make a distinct and positive assertion of a right hostile to the rights of the owner; this assertion must be brought to the owner's attention."[15]

First, the Yeos do not challenge the elements of adverse possession beyond claiming that the Beauchamps' inquiry about purchasing the lot before entering with hostile intent somehow required the Beauchamps to give the Yeos actual notice of their intent. Although the Yeos assert, without explanation, that the Beauchamps' use was "occasional," this assertion ignores the undisputed evidence that the Beauchamps maintained structures on the lot such as a fence and a clothesline pole for longer than the statutory period, parked their vehicles on the lot daily, and posted a no-trespassing sign, which would alert any diligent landowner of the Beauchamps' hostile intent, regardless of how often they used the lot. Further, the Yeos presented no evidence and cited no authority for the proposition that occasional use should defeat the adverse possession claim. Thus, the Yeos waived this argument by failing to cite authority to support it.[16]

Moreover, we are not persuaded by the Yeos' assertion that the Beauchamp's possession and use was permissive. The trial court expressly found that the Beauchamps did not have permission to use the lot, and this finding was not clearly erroneous because it was supported by evidence. Indeed, the evidence only supports a conclusion that the Beauchamps' use was without permission. Barbara Beauchamp not only testified that she never sought permission, there is no indication that she ever received any. The Yeos have not offered any evidence or even argued that permission was ever requested by the Beauchamps or given by the Yeos. Without evidence that a claimant ever asked or received permission from the record owner, the claimant's assertion that he did not seek permission would necessarily demonstrate that he lacked permission and that his use was hostile.[17] Thus, the trial court did not err in holding that

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[12] *Connelly v Buckingham*, 136 Mich App 462, 469; 357 NW2d 70 (1984).

[13] *Ennis v Stanley*, 346 Mich 296, 301; 78 NW2d 114 (1956).

[14] *Connelly*, *supra* at 466.

[15] *Dunlop v Twin Beach Park Ass'n, Inc*, 111 Mich App 261, 266; 314 NW2d 578 (1981).

[16] See *McCartney v Attorney General*, 231 Mich App 722, 725; 587 NW2d 824 (1998) (holding that this Court need not consider a position or argument when the appellant fails to provide any authority to support it). Although we acknowledge that under certain circumstances, occasional use might not satisfy the element of continuous possession necessary for an adverse possession claim, *Ennis*, *supra* at 301, by planting trees and flower gardens, erecting a fence and clothesline pole, and parking their vehicles daily on the lot all for over fifteen years, the Beauchamps continuously possessed the lot for the statutory period.

[17] *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976).

the evidence established the hostility necessary for the Beauchamps' claim of adverse possession.

IV. The Standard Of Proof

A. Standard Of Review

The Yeos next argue that the trial court incorrectly applied a preponderance of evidence standard of proof when it should have provided a clear and cogent evidence standard of proof to this adverse possession claim. We agree, but conclude the error was harmless.[18]

B. Unrefuted Evidence

To support an adverse possession claim, "[t]he correct standard is 'clear and cogent evidence of possession,' not a mere preponderance of the evidence."[19]

> "[C]lear and cogent evidence" is more than a preponderance of evidence, approaching the level of proof beyond a reasonable doubt. That is to say, the standard is much like "clear and convincing evidence." Thus, in an adverse possession case, for a party to establish possession by "clear and cogent evidence," the evidence must clearly establish the fact of possession and there must be little doubt left in the mind of the trier of fact as to the proper resolution of the issue. Thus, where there is any reasonable dispute, in light of the evidence, over the question of possession, the party has failed to meet his burden of proof.[20]

The Beauchamps concede that the trial court applied the wrong standard of proof and should have applied the clear and cogent proof standard, but argue that this Court should affirm the judgment of the trial court because it reached the correct result for a wrong reason.[21]

Here, all of the Beauchamps' evidence regarding their use of the property was and is completely unrefuted by the Yeos, and the Yeos do not attack the credibility of the Beauchamps' sole witness, Barbara Beauchamp. Further, the Yeos' only witness testified essentially that he knew the Yeos' parents had moved out of the state permanently and would thus be unaware of the Beauchamps' use of the property. The Yeos never clarify how the Yeos' lack of diligence or knowledge with respect to the property should defeat the Beauchamps' claim, nor are we aware of any controlling authority that would support such an argument. Thus, we hold that because

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[18] While one might speculate that the trial court's reference to a preponderance of the evidence standard was a mere misstatement, we conclude that we must accept it as the standard applied by the trial court for purposes of our review.

[19] *McQueen v Black*, 168 Mich App 641, 645; 425 NW2d 203 (1988).

[20] *Id.* at n 2 (citations omitted).

[21] See *Outdoor Systems, Inc v Clawson*, 262 Mich App 716, 721 n 4; 686 NW2d 815 (2004).

the Beauchamps' evidence of adverse possession is unrefuted, and the unrefuted evidence would clearly support a finding as to the disputed elements of their claim under the appropriate standard of proof, any error in applying the incorrect standard of proof amounts to harmless error that does not require reversal. Put another way, the Beauchamps' evidence meets the clear and cogent standard of proof because it cannot be said that "there is any reasonable dispute, in light of the evidence, over the question of possession . . . ."[22]

Moreover, the Yeos' arguments that the evidence was insufficient amount to legal arguments that this Court may appropriately reject under de novo review. For example, the Yeos' argue, incorrectly, that asking the record owner about buying the property *before* making hostile entry destroys the element of hostility and requires express notice in order to sustain an adverse possession claim, which we reject for reasons previously stated. In other words, rather than challenging the Beauchamps' evidence, the Yeos merely assert that the evidence did not support the trial court's decision because there was no evidence that the Beauchamps gave the Yeos actual notice of their hostile intent, which the Beauchamps presumably could have easily done. However, while it is true that the Beauchamps never gave the Yeos *express* notice and relied at trial on constructive notice stemming from their open use of the lot, as previously discussed, express notice was not required because the Beauchamps never had permission to use the lot. Thus, we decline to reverse the decision of the trial court despite its application of an incorrect standard of proof.

We also note that although the Yeos include an issue regarding the great weight of the evidence in their statement of questions presented, they completely fail to address the issue in the argument section of their brief on appeal. Thus, the Yeos have abandoned this issue.[23]

V. Laches

A. Standard Of Review

The Yeos argue that the trial court erred in refusing to apply the doctrine of laches to bar the Beauchamps' adverse possession claim. "[W]hile a trial court's decisions regarding application of the equitable doctrine of laches are reviewed de novo, its findings of fact supporting such a decision are reviewed for clear error."[24]

B. Change In Position

The Yeos argue that the Beauchamps waited until 19 years after they could have first brought their claim, by which time the Yeos' only potential witness had died and she *might* have offered evidence sufficient to rebut the Beauchamps' evidence. "The doctrine [of laches] is concerned with unreasonable delay, and the defendant must prove a lack of due diligence on the

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[22] *McQueen*, *supra* at 645 n 2.

[23] *Wilson*, *supra* at 243.

[24] *Charter Twp of Shelby v Papesh*, 267 Mich App 92, 108; 704 NW2d 92 (2005).

part of the plaintiff resulted in some prejudice to the defendant."[25] The party asserting a laches defense "has the burden of proving that lack of due diligence by plaintiff prejudiced defendant."[26] We hold that the Yeos cannot meet this burden of proof by presenting mere speculation and conclusory arguments. In other words, the trial court did not err in refusing to apply the doctrine because "[n]o significant change of position to the detriment of defendant is in evidence."[27]

Further, the Yeos' argument that the Beauchamps could have brought the claim 15 years after they entered the lot ignores the trial court's finding that the claim "had [not] ripened into an adverse possession claim until [plaintiffs] had developed [the lot] to the extent that they had" during the last 15 years of possession. Thus, because the Yeos have not challenged the trial court's finding that the period before the last 15 years was insufficient to support an adverse possession claim, their argument that the claim could have been brought 19 years previously is without merit. Nor are the trial court's findings in this regard clearly erroneous. The trial court opined that the Beauchamps originally entered the lot without the intent to possess the land and merely intended to maintain it to protect their own land and gain some benefit. The trial court further opined that, as the Beauchamps later began exercising more dominion, their intent changed as evidenced by their actions toward the lot. Because these findings are supported by evidence, the trial court did not clearly err in this regard. The Yeos' argument that the claim could have been brought 19 years previously is not in accord with the trial court's unchallenged findings of fact.

C. Clean Hands

The Yeos also imply that this Court should deny the Beauchamps' claim because the delay in bringing the claim amounts to unclean hands. However, this issue has not been presented for appellate review because it has not been stated in the Yeos' statement of questions presented.[28] Further, the Yeos have cited no authority for the clean hands doctrine, so we need not address the issue.[29]

In any event, the clean-hands doctrine does not bar the Beauchamps' claim. "'The clean hands maxim . . . "closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief."'"[30] There is no evidence that the Beauchamps delayed bringing their claim in bad faith. The record indicates merely that they

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[25] *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 504; 608 NW2d 105 (2000) (citations omitted).

[26] *Papesh*, *supra* at 108.

[27] *Rose v Fuller*, 21 Mich App 172, 176; 175 NW2d 344 (1970).

[28] *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

[29] See *McCartney*, *supra* at 725.

[30] *McFerren*, *supra* at 522, quoting *Rose v Nat'l Auction Group*, 466 Mich 453, 462-463; 646 NW2d 455 (2002), quoting *Stachnik v Winkel*, 394 Mich 375, 382; 230 NW2d 529 (1975).

never brought any prior action simply because the Yeos never asserted superior title after the Beauchamps took possession until after the potential witness had died. Further, the Yeos do not argue that the Beauchamps delayed bringing their claim in bad faith or for any improper purpose.[31]

Affirmed.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Pat M. Donofrio

[31] Finally, the Beauchamps ask that this Court award them "$7,500 for the necessity to defend against this appeal." Not only have they failed to cite any authority to support this argument, see *McCartney*, *supra* at 725, they have not stated what theory would support such an award. Further, they do not allege that this appeal is frivolous or was brought for an improper purpose, nor do they state how they arrived at the figure of $7,500. Thus, the Beauchamps have abandoned this argument. *Wilson*, *supra* at 243.