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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1344**

In the Matter of the Application of:
Holiday House II, LLC,
to Register Title to the Following
Described Real Estate
in Hubbard County, Minnesota,
Namely: Lots Nine (9) and Ten (10) Idle Wild,
applicant,
Respondent,

vs.

The State of Minnesota, et al.,
Defendants,

Iowa EPS Products, Inc.,
Appellant.

**Filed June 9, 2009
Affirmed
Klaphake, Judge**

Hubbard County District Court
File No. 29-CV-07-540

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Lori J. Beck, Steven R. Peloquin, 432 Third Avenue SE, Perham, MN 56573 (for respondent Holiday House)

Considered and decided by Klaphake, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal from a torrens registration action, appellant Iowa EPS Products, Inc., challenges the district court's decision denying its claim of adverse possession to a piece of land owned by respondent Holiday House II, LLC. Appellant argues that the district court erred by concluding that (1) its use of the land was permissive, not hostile; (2) the boundaries were too indefinite to establish an adverse claim; and (3) appellant failed to sustain its burden of proof.

Because we conclude that the district court's determination that the original use was permissive is supported by the evidence and that appellant failed to establish by clear and convincing evidence a change in the nature of the use or of the boundaries of the disputed area, we affirm.

DECISION

In an adverse possession matter, the district court determines whether the elements of claim have been established as a question of fact. *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. Ap. 2003). We review those findings for clear error and determine whether the district court's findings of fact support its legal conclusions as a question of law subject to de novo review. *Id.*; Minn. R. Civ. P. 52.01. The law does not favor adverse possession; we strictly construe evidence in support of a claim of adverse possession with every presumption drawn against the adverse claimant. *Id.*

Law of Adverse Possession

To establish title in land by adverse possession, a disseizor must show by clear and convincing evidence an actual, open, hostile, continuous, and exclusive possession of land for 15 years. *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972). Intent to seize the land is not a requirement, but the disseizor must intend to exclude all others. *Id.* “Actual and open possession” means that the disseizor must openly possess the property by exercising visible and notorious acts of ownership over the land. *Ganje*, 659 N.W.2d at 266-67. “Continuity” requires 15 consecutive years of possession, although it can include the possession of successive occupants of the land. *Ebenroh v. Hodgman*, 642 N.W.2d 104, 109 (Minn. App. 2002). “Exclusivity” means that the disseizor “takes possession of the land as if it were his own with the intention of using it to the exclusion of others.” *Id.* at 108 (quotation omitted).

“Hostility,” which does not mean personal animosity or physical violence, is a sum of the other requirements: actual, open, continuous, and exclusive possession by the disseizor satisfies this requirement. *See Boldt v. Roth*, 618 N.W.2d 393, 396 (Minn. 2000) (discussing prescriptive easements, but concluding such easements involve the same elements of proof as adverse possession); *Ehle*, 293 Minn. at 190, 197 N.W.2d at 462. “Hostility is flexibly determined by examining the character of the possession and the acts of ownership of the occupant.” *Ebenroh*, 642 N.W.2d at 110-111 (quotation omitted).

A person’s use of another’s property with the permission of the owner does not constitute adverse possession, but if a property owner acquiesces in the use of the

property without asserting ownership, a claim of adverse possession is supported. *Ehle*, 293 Minn. at 190-91, 197 N.W.2d at 463.

Acquiescence . . . means . . . passive conduct on the part of the owner of the servient estate consisting of failure on his part to assert his paramount rights against the invasion thereof by the adverse use. Permission means more than mere acquiescence; it denotes the grant of a permission in fact or license.

Id. at 191, 197 N.W.2d at 463 (quotation omitted).

Here, the district court concluded that appellant's use of respondent's land was permissive. The original owners, Leo Stephan and Frank Cataldo, Sr., had a cordial relationship, and the successive and current owners of the properties have family or business connections to the original owners. According to the record evidence, Stephan permitted Cataldo to share a storage shed with him; Cataldo eventually added onto the shed, and appellant now claims that part of the shed by adverse possession. Both original and subsequent owners shared use of a dock, splitting maintenance duties and expenses, and both shared maintenance of the disputed shed. This evidence supports the district court's finding that Stephan allowed Cataldo to use the property with permission; the continued sharing of maintenance responsibilities and expenses suggests that appellant did not believe it was solely responsible for the property, thus failing to satisfy the element of exclusivity.

Appellant argues that respondent failed to prove that there was an agreement between Stephan and Cataldo establishing a permissive relationship. But the party asserting a claim of adverse possession must prove every element by clear and

convincing evidence. *Ganje*, 659 N.W.2d at 266. The district court here concluded that appellant “failed to carry its burden of rebutting this presumption [of permissive use] by clear and convincing evidence.”¹ We agree.

Once it has been established that an adverse claimant’s use of the property was initially permissive, the use continues to be permissive until it is conclusively shown that the nature of the use has changed and become hostile. *Wojahn v. Johnson*, 297 N.W.2d 298, 306 (Minn. 1980). Appellant has shown no change in the manner of use since Stephan sold his interest in the property; appellant and respondent continue to share maintenance duties and expenses.

The district court also determined that appellant had failed to sustain its burden of proving adverse possession of two other parts of the claimed property: a strip of land used to park boats and cars, and one-half of the yard between the two cabins. As to the driveway, the court noted that the boundaries were “not permanent, clearly identifiable, or definite,” and were not “delineated by a permanent material such as asphalt, concrete, or even gravel Occasional and sporadic trespasses for temporary purposes, because they do not indicate permanent occupation and appropriation of land, do not satisfy the requirements of hostility and continuity” for purposes of adverse possession. *Romans v. Nadler*, 217 Minn. 174, 178, 14 N.W.2d 482, 485 (1944). Because adverse possession

¹ The district court also relied on the presumption that family members use each other’s property permissively, concluding that the relationship between Stephan and Cataldo was as close as a family relationship and that the presumption raised the inference of permissive use. This presumption is strictly limited to close family members and does not apply to very friendly neighbors. *See Alstad v. Boyer*, 228 Minn. 307, 313-14, 37 N.W.2d 372, 376-77 (1949). We reject the use of this presumption but conclude that the evidence supports the district court’s conclusion that the use was permissive.

requires open, actual, hostile, and exclusive use of another's property, the area occupied must be identifiable, so that the true owner is put on notice. *Skala v. Lindbeck*, 171 Minn. 410, 413, 214 N.W. 271, 272 (1927). The record contains no definite description of the area claimed as a driveway by appellants. The district court's finding that the driveway borders are too indefinite to be clearly identifiable is supported by the evidence and is not clearly erroneous.

Finally, appellant's claim to one-half of the yard between the cabins is based on its mowing of the grass in that area. Generally, without additional acts supporting an ownership claim, mowing alone does not establish adverse possession. *Stanard v. Urban*, 453 N.W.2d 733, 736 (Minn. App. 1990), *review denied* (Minn. June 15, 1990); *Nash v. Mahan*, 377 N.W.2d 56, 58 (Minn. App. 1985).

We conclude that the district court was correct: appellant has failed to sustain its burden of proving adverse possession by clear and convincing evidence.

Affirmed.