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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0558**

Nancy L. Holzer, as Trustee of the Nancy L. Holzer Trust
dated September 2, 2005, et al.,
Respondents,

vs.

Richard L. Alm, et al.,
Appellants.

**Filed January 27, 2025
Affirmed
Bentley, Judge**

Cass County District Court
File No. 11-CV-21-2026

Kurt W. Porter, Severson Porter Law, Brainerd, Minnesota (for respondents)

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(for appellants)

Considered and decided by Slieter, Presiding Judge; Bentley, Judge; and Reilly,
Judge.*

NONPRECEDENTIAL OPINION

BENTLEY, Judge

For decades, two families, including multiple generations of children and grandchildren, enjoyed a neighborly relationship at their adjacent lakefront cabin

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

properties. Then, when one family installed a pickleball court on what they believed was their property but turned out to be mostly on the other side of the original property line, the relationship soured.

In this property dispute, the district court found that the family that constructed the pickleball court, respondents, had acquired a portion of the property of the other family, appellants, by adverse possession and secured a prescriptive easement over appellants' driveway. Appellants challenge both determinations, arguing that the district court clearly erred in finding that respondents proved the elements of adverse possession and prescriptive easement by clear and convincing evidence. We do not discern clear error in the district court's findings and, therefore, affirm.

FACTS

The relevant facts, based on a bench trial, and procedural history follow.

Appellants (the Alms) are all members of the Alm family. Among them, as relevant here, are Richard Alm, Richard's niece Jody Riegert, and her husband David Riegert. The Alm property is a lakefront cabin property in Cass County that Richard's family members first acquired in 1973 by warranty deed. Since then, interest in the Alm property has been conveyed among different family members. At the time of the bench trial, the Alms collectively held title to the Alm property.

Respondents (the Scribners) are Doug Scribner, his sister Nancy Holzer, and Nancy's husband Scott Holzer. The Scribner property sits immediately to the northeast of the Alm property. In 1973, Albert and Marlys Shallbetter conveyed a partial interest in the Scribner property to Doug and Nancy's parents, Paul and Mimi Scribner. By 1989, Paul

The following survey image from the record, as marked up by the district court, depicts: the Scribner property (as indicated by bolded black lines); the part of the Alm property that was initially disputed in the case (hereinafter called the “disputed property,” but labeled on the survey as the “total proposed area to be acquired”); the disputed driveway (located within the disputed property and labeled “gravel driveway”); and the smaller part of land that the district court ultimately found that the Scribners obtained through adverse possession (hereinafter called “the designated area,” and indicated by the district court with lines that connect the letters A, B, C, and D). The rest of the Alm property is not depicted but continues to the southeast of the survey image.



Since Nancy and Doug were children, the Scribners visited their cabin year-round. Growing up, Nancy went to the Scribner property between “three to eight times” every summer, where she swam, fished, and played games with the Alms. During the fall and spring, her family would play volleyball and other yard games, ride dirt bikes, and set up tents around their cabin—all on the disputed property. In the winter, the Scribners would go to the cabin “frequently” to “[s]nowmobile to restaurants, cook food in the cabin, [and] play cards.” They also snowmobiled “quite often” on the lake.

Both the Alms and the Scribners accessed their properties via a driveway located on the Alm side of the original property line. The Shallbetters constructed the driveway in 1973 before conveying their property to the Scribners, and they did so without obtaining the Alms’ permission.¹ Over the years, the Scribners maintained the driveway. They mowed both sides of the driveway during the summer months, and they plowed the driveway to access their cabin during the winter months. They also resurfaced the driveway twice and split the cost with the Alms.

The Scribners’ cabin is built over the property line, such that approximately one-third of the cabin sits on the Alm side of the line. The Alms do not dispute that the Scribners have obtained title by adverse possession to the portion of land on which the cabin is located. But the Alms do challenge the Scribners’ right to the “backyard” area on

¹ Richard Alm testified at trial that he gave the Shallbetters permission to use the driveway after it was installed, under an agreement that both parties would use the driveway. However, the district court did not credit that testimony or make a finding on the issue of permission because it determined that any prior permission given to the Shallbetters was severed when the Shallbetters transferred the property to the Scribners.

the disputed property between the Scribners' cabin and the garage (labeled "shed" on the survey image) and the area southeast of the garage that the Scribners called the volleyball court (now, the pickleball court, labeled "concrete pad" on the survey image).

The Scribners' garage abuts the disputed property at the point where the driveway turns to face the Scribner property. The southeast corner of the garage is near or on the property line, and the Scribners pull up to the garage via the driveway and then park their cars on the disputed property in front of the garage door. Paul Scribner built the garage in 1983, while the Alms were not at their property, without asking for the Alms' permission to construct it in that location.

The Scribners used the volleyball court "a lot" during the summer months. The family never asked the Alms for permission to do so because they "perceived it was [their] land." Indeed, at one point, the Alms asked the Scribners for permission to store a boat on a portion of the volleyball court area, even though the Scribners were not actively using it at that time.

The Scribners also regularly used the backyard area. They played games, did yard work, and otherwise "maintained" it by raking leaves and mowing the grass. Frequently, Nancy Holzer's children camped overnight in tents in the backyard. And the backyard had an underground gas pump that the Scribners used for a time to fill their snowmobiles with gas. The Alms did not maintain, fill, or use the gas pump, even though it was technically on their side of the original property line. At some point, the Scribners paid to remove the pump without consulting the Alms.

In the spring of 2020, the Scribners began to take steps to install a pickleball court over the volleyball court by clearing the court and its surrounding area and placing stakes. A few months later, Jody and David Riegert first heard of the Scribners' plan to install the pickleball court. At that point, David asked the Holzers whether they needed a permit for the pickleball court and would obtain a property survey. Scott Holzer said that they would. Richard Alm only learned about the pickleball court when he saw it for the first time.

The Scribners obtained a survey to determine the original property line after they poured the pickleball court. Upon learning that the pickleball court was substantially south of the original property line, the Scribners tried to resolve the issue by asking if the Alms would give them the part of the property underlying the pickleball court, give them an easement to use it, or accept an offer to purchase that part of the land. Unsuccessful in those attempts to reach a solution, the Scribners brought a quiet title and declaratory judgment action against the Alms, seeking all title and interest to the disputed property under a theory of adverse possession and, alternatively, seeking a prescriptive easement over the disputed property.

After a two-day bench trial, the district court issued its findings of fact, conclusions of law, and order for judgment granting the Scribners “[t]itle to that portion of the ‘Disputed Area’ lying within the area delineated by points [A, B, C, and D in the image above (the designated area)] . . . free and clear of any claims or rights of” the Alms. The rest of the disputed property would remain the property of the Alms. And, given that the Alm property continued to include most of the driveway, the court granted the Scribners “a prescriptive easement that runs with the land, over and across the driving surface of the existing shared

driveway, extending 3 feet on either side of the driving surface to accommodate snow removal, as well as that portion of the disputed area lying generally [s]outh of points B and C.” The Alms filed a motion requesting that the district court make amendments to its factual findings and order for judgment, which the court denied in full.

The Alms appeal.

DECISION

The Alms argue that the district court erred in finding that the Scribners proved by clear and convincing evidence each element of (1) adverse possession over the designated area and (2) a prescriptive easement over the driveway.

“Whether the adverse possession elements have been established is a question of fact,” *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. App. 2003), as is whether the elements of a prescriptive easement have been met, *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). Appellate courts review findings of fact for clear error, viewing the record “in the light most favorable to the judgment of the district court.” *Rogers*, 603 N.W.2d at 656. It follows that, “[i]f there is reasonable evidence to support the trial court’s findings of fact, [we] should not disturb those findings.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). We reverse a district court’s findings “only if [its] findings are clearly erroneous or ‘manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.’” *Magnuson v. Cossette*, 707 N.W.2d 738, 744 (Minn. App. 2006) (quoting *Rogers*, 603 N.W.2d at 656). That is, we will only conclude that a finding of fact is clearly erroneous if we are “left with the definite and firm

conviction that a mistake has been made.” *Fletcher*, 589 N.W.2d at 101 (quotation omitted).

We conclude there is reasonable evidence to support the district court’s findings, both as to adverse possession and the prescriptive easement.

I

In Minnesota, a party claiming title to real property by adverse possession must show by clear and convincing evidence actual, open, hostile, continuous, and exclusive possession for the statutory period, *Engquist v. Wirtjes*, 68 N.W.2d 412, 415 (Minn. 1955), which is 15 years, Minn. Stat. § 541.02 (2024). “The evidence must be strictly construed, without resort to any inference or presumption in favor of the [claimant],” with “every presumption against [them].” *Lechner v. Adelman*, 369 N.W.2d 331, 334 (Minn. App. 1985), *rev. denied* (Minn. Aug. 29, 1985) (quotation omitted).

Actual and Open Possession

Turning first to the actual-and-open-possession requirement, the district court found that the Scribners met their burden. Although there is no “particular manner by which an adverse possessor must possess a disputed tract of property,” *Ganje*, 659 N.W.2d at 266, it must be sufficient to give “unequivocal notice to the true owner” that someone is in possession of the property in hostility to the true owner’s title, *Skala v. Lindbeck*, 214 N.W. 271, 272 (Minn. 1927). The district court began its discussion on actual and open possession with the fact that approximately one-third of the Scribner cabin is located on the legally described Alm property, which, “at least with respect to the portion that crosses the line, has not changed since [the Scribners] and their predecessor in title took possession

of the property.” With respect to that footprint of the cabin and the land immediately surrounding it, the court easily found that the Scribners met the open-and-actual-possession requirement—and the Alms do not dispute that finding.

In addition to the footprint of the cabin, the district court then proceeded to identify only a portion of the disputed property—the designated area (labeled A-B-C-D on the image above)—as having been in the Scribners’ actual and open possession. In carving out the designated area, the district court found that the Scribners “enjoyed that area as their yard and continuously used the area for general purposes of a yard at a cabin. They have recreated, played, camped, mowed, trimmed, raked, and removed leaves, and generally maintained [the area], utilizing it as their own.” The district court cited the Scribners’ “undisputed testimony that they were the only ones to snowmobile, ride dirt bikes, play yard games, camp, and generally congregate in the [area],” including where the gas pump was located. The Scribners used the gas pump and then removed it without the Alms’ permission. They also “played volleyball, and horseshoes, and parked and stored boats and other vehicles” and camped overnight in the area “[f]or nearly forty years.”

The district court’s findings about the Scribners’ use of the designated area have ample support in the record. The Scribners not only consistently used the backyard and volleyball court, but they also built a garage at the end of the driveway, facing the designated area. And they consistently parked their cars in front of the garage in the designated area.

The Alms counter that the Scribners’ use of the disputed property was “only occasional and sporadic,” which is insufficient to establish actual and open possession.

Stanard v. Urban, 453 N.W.2d 733, 736 (Minn. App. 1990), *rev. denied* (Minn. June 15, 1990). They primarily rely on *Stanard*, in which we concluded that “the storing of lake equipment in the winter and the playing of children on the property” or occasional yard work, such as “mowing and maintaining the property,” were insufficient to establish title by adverse possession. *Id.* at 735-36. But this case is different. The district court’s decision is consistent with *Stanard*, in that the district court found that most of the disputed property—where the Scribners sporadically played, did yard work, and parked snowmobiles—was *not* sufficient to establish actual and open possession. The district court instead carefully delineated the designated area as the only portion of the disputed property where the Scribners’ use rose to the level of actual and open possession. The record reasonably supports the district court’s finding that the Scribners actually and openly possessed the designated area, so we will not disturb them. *Fletcher*, 589 N.W.2d at 101.

Hostile Possession

We turn next to the hostility requirement. Hostile possession “does not refer to personal animosity or physical overt acts against the record owner of the property.” *Ehle v. Prosser*, 197 N.W.2d 458, 462 (Minn. 1972). Rather, it refers to an “intention . . . to claim exclusive ownership as against the world and to treat the property in dispute in a manner generally associated with the ownership of similar type property in the particular area involved.” *Id.* “Hostility is flexibly determined by examining the character of the possession and the acts of ownership of the occupant.” *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 110-11 (Minn. App. 2002) (quotation omitted). And, as the district court recognized,

the parties’ “neighborly relationship prior to the commencement of this action is irrelevant to the element of hostility.” *See also Ganje*, 659 N.W.2d at 268.

Here, the district court’s finding that the Scribners held the designated area in hostility against the Alms is reasonably supported by the record. *See Fletcher*, 589 N.W.2d at 101. Again, the fact that the Scribers built the garage without permission, such that it was on the property line and facing the designated area, revealed that they claimed the property in front of it as their own. The Scribners’ use of the designated area—including playing volleyball, performing yard work, and camping overnight on the designated property—was consistent with the Scribners’ perception that it “was [their] land.” The Scribners also used a gas pump on the designated area and then removed it without consulting the Alms. And the Scribners treated the designated property so much like their own that the Alms asked for permission before storing a boat on the designated property. Finally, the Scribners prepared part of the designated area for a pickleball court without obtaining the Alms’ permission and went ahead with installing it before obtaining a survey, even though David Riegert had suggested that they get one. Together, these actions reflect the Scribners’ continuing intention to claim “exclusive ownership” over the disputed property and to treat it “in a manner generally associated with the ownership of similar type of property” in the area. *Ehle*, 197 N.W.2d at 462.

The Alms counter that the Scribners’ use of the designated area was permissive, and not hostile, because the Alms never objected to it. But that argument is unpersuasive. In this context, “permission” requires “more than mere acquiescence; it denotes the grant of a permission in fact or a license.” *Id.* at 463 (quotation omitted). The Alms’ “passive

conduct . . . consisting of failure on [their] part to assert [their] . . . rights against” the Scribners is not enough to disprove the district court’s finding that the Scribners’ possession of the designated area was hostile. *Id.* (quotation omitted).

Exclusive Possession

Turning to the exclusivity requirement, we conclude that the district court’s finding that the Scribners’ possession of the designated area was exclusive—in addition to open, actual, and hostile—is reasonably supported by the record. Exclusivity requires the adverse possessor to “take[] possession of the land as if it were his own with the intention of using it to the exclusion of others.” *Ebenhoh*, 642 N.W.2d at 108 (quotation omitted). Here, the record supports a determination that the Scribners “were the only individuals to use the [designated area], save for [any] brief and insubstantial entries onto the property” by the Alms. *Id.* at 109. Doug Scribner testified that “the Alms never maintained [the designated area],” “didn’t remove the environmentally dangerous underground gasoline tank,” “didn’t mow that area,” and “didn’t park cars in front of [the] garage or even before the garage in that area.” Additionally, Jody testified that she asked the Scribners for permission to store the Alms’ boat on “the area where the pickleball court is,” even when the Scribners were not using the area.

The Alms point out that the Scribners “never even attempted to exclude the Alm family” from using the designated property and that the Scribners “admitted that the Alms used” the designated property. However, neither of these facts suggest that the district court committed clear error in its findings regarding exclusivity. The Alms provide no support for the position that an adverse possessor must affirmatively and categorically exclude the

property's title owners from their property. And, to the contrary, we have held that "brief and insubstantial entries onto the property" are insufficient to defeat the finding that the claimant held exclusive possession over the disputed property. *Ebenhoh*, 642 N.W.2d at 108-09. Such "intermittent entries" include the Alms' occasional entries to mow portions of the designated area or to walk briefly through it, and those cannot defeat the Scribners' claim that they held exclusive possession over the designated area. *Id.* In the absence of evidence that the Alms entered and used the designated property more extensively, we conclude there is reasonable evidence to support the district court's finding that the Scribners had exclusive possession over the disputed property.

Continuous Possession

We turn to the final requirement, that the Scribners' possession of the disputed area was continuous for the 15-year statutory period. For adverse possession, "any consecutive 15 year period is sufficient to establish continuity of use." *Id.* (citing *Kelley v. Green*, 170 N.W. 922, 923 (Minn. 1919)). That uninterrupted period must be completed before the claimant brings an adverse-possession action. *Id.* And, although there is no "bright-line test for how much activity constitutes continuous possession of a property for adverse-possession purposes," the claimant generally "must be using the property as his or her own, i.e., regularly and matched to the land's intended use." *Ganje*, 659 N.W.2d at 268. "[I]t is sufficient if visible and notorious acts of ownership have been continuously exercised over the land for the time limited by the statute." *Young v. Grieb*, 104 N.W. 131, 131 (Minn. 1905).

Here, the Scribners met the requirements for adverse possession of the designated area at least since they built the garage in 1983. In *Stanard*, we held that “put[ting] up a building or other permanent or semi-permanent structure”—there, a storage shed—is sufficient to begin the statutory period for adverse possession. 453 N.W.2d at 735, 736 n.1. But even setting the garage aside, the district court discussed evidence establishing that the Scribners adversely possessed the designated area since they acquired the Scribner property in 1973.

In an attempt to defeat the continuous-possession period, the Alms point out that the Scribners offered to purchase the land on which they installed the pickleball court and argue that the offer broke any continuity. *See Stanard*, 453 N.W.2d at 736 (“Urban’s offer [to purchase] . . . broke the needed 15-year continuity.”). That would have been true if the Scribners had made the offer to purchase “before the statute ha[d] run in [their] favor.” *Id.* But because the purchase offer was made in 2020, when the Scribners already held actual, open, hostile, and exclusive possession for a “consecutive 15 year period,” *Ebenhoh*, 642 N.W.2d at 109, the Scribners’ effort to avoid costly litigation does not defeat the satisfaction of the continuity requirement.

In sum, there is reasonable evidence to support the district court’s findings that the Scribners proved each element of adverse possession over the designated area by clear and convincing evidence.

II

The Alms also challenge the district court’s findings that the Scribners satisfied the requirements of a prescriptive easement over the portion of the driveway that runs through

the disputed property but is not included in the designated area. “A prescriptive easement is based on prior continuous use and grants a right to use the property of another.” *Rogers*, 603 N.W.2d at 657. The party claiming a prescriptive easement must prove by clear and convincing evidence “that the property has been used in an actual, open, continuous, exclusive, and hostile manner for 15 years.” *Id.* (citing *Ehle*, 197 N.W.2d at 462). But unlike adverse possession, a prescriptive easement “does not carry with it title or a right of possession in the land itself.” *Id.* And, because of the “fundamental difference between possessing land in the case of adverse possession and using land in the case of a prescriptive easement,” *id.* at 656, “[h]ostility is presumed . . . once a claimant to a prescriptive easement has established actual, open, continuous, and exclusive use for the required length of time,” *Oliver v. State ex rel. Comm’r of Transp.*, 760 N.W.2d 912, 918 (Minn. App. 2009), *rev. granted* (Minn. Apr. 29, 2009) and *appeal dismissed* (Minn. Nov. 16, 2009). Then, the burden of proof shifts to the owner of the servient estate to rebut that presumption by showing that the use was permissive. *Dozier v. Krmpotich*, 35 N.W.2d 696, 699 (Minn. 1949). The Alms’ challenge to the prescriptive easement turns on that last issue—whether they have established that the Scribners’ use of the driveway was permissive.

There is no dispute that the Alms did not give express permission to the Scribners to use the driveway. And the Alms’ acquiescence to the Scribners’ use is insufficient to defeat a presumption of hostility for purposes of establishing the prescriptive easement. *Ehle*, 197 N.W.2d at 463 (noting that “[p]ermission means more than mere acquiescence; it denotes the grant of a permission in fact or a license” (quotation omitted)). So, instead of focusing on any permission granted to the Scribners, the Alms rely primarily on Richard

Alm’s testimony that he gave permission to use the driveway to the prior owners—the Shallbetters—and that such permission transferred to the Scribners. The district court did not agree that the testimony was material, though, because the court determined that, even if such permission had been granted, it was severed when the Shallbetters transferred the property to the Scribners. We agree with the district court’s reasoning.

Even if the use was “permissive in its inception,” i.e., when the Alms purportedly gave permission to the Shallbetters, it may “become adverse” such that “prescriptive rights can arise.” *Ehle*, 197 N.W.2d at 463 (quotation omitted). One way that a prior permissive use can turn hostile is if one of the estates is transferred to a stranger and permission is not renewed. *See, e.g., Boldt v. Roth*, 618 N.W.2d 393, 398 (Minn. 2000) (transfer of servient estate to a third-party stranger severed prior permissive use by dominant estate). That is because, “when the owners of adjoining parcels of real property are strangers, . . . the servient estate owner should know simply by the actual and open use by the dominant estate claimant that the use is hostile.” *Id.* Here, that means that the Alms should have known after the Shallbetters sold their property to the Scribners that, regardless of any permission granted to the Shallbetters, the Scribners’ actual and open use of the driveway was hostile.

The Alms attempt to distinguish *Boldt* by focusing on the fact it dealt with permissive use resulting out of a familial relationship (as compared to permission expressly granted to a neighbor). But that distinction is immaterial to the ultimate holding in *Boldt* that the transfer of property to a third party severs prior permissive use. *Id.* *Boldt* recognized that any presumption of permissive use disappears when the property is transferred to a

nonfamily member, who would have no reason to assume that the original owners' use was permissive. *Id.* at 396-97. Here, the district court's finding—that the Scribners “never asked for permission, nor was permission ever granted, to use the shared driveway to access their property”—is reasonably supported by the record. The Alms did not rebut the presumption that the Scribners' use of the driveway was hostile. Therefore, because the remaining factors relating to the prescriptive easement analysis are undisputed, the district court did not clearly err in finding that the Scribners satisfied the requirements of a prescriptive easement over the driveway.

Affirmed.