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STATE OF MICHIGAN

COURT OF APPEALS

MAX W. FIRMAN, III, and DAWN M. KASNER, Plaintiffs/Counterdefendants-Appellants, v ANTONIO SANTOS, Defendant/Counterplaintiff-Appellee.	UNPUBLISHED October 09, 2026 12:05 PM No. 375326 Ogemaw Circuit Court LC No. 24-652677-CZ

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

In this property dispute case, plaintiffs appeal by leave granted[1] from an order of summary disposition in defendant's favor that dismissed plaintiffs' amended complaint seeking to quiet title to a disputed area of land located in Rose Township in Ogemaw County. We affirm, and remand for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL BACKGROUND

The disputed property in this case is adjacent to property both parties undisputedly own. In 2015, plaintiffs purchased a parcel of land through a tax sale described as follows:

[1] Plaintiffs filed this appeal as of right, but the order appealed from—an order granting summary disposition—was not a final order. It dismissed plaintiffs' amended complaint, but the order did not address all of defendant's counterclaims. Such orders are not appealable as of right before entry of final judgment and may be appealed through an application for leave to appeal only. MCR 2.604(A); *Adams v Adams*, 276 Mich App 704, 709; 742 NW2d 399 (2007). As such, this Court has no jurisdiction over this matter as an appeal of right. *Traverse City Area Convention and Visitors Bureau v Golden Swan Mgt, LLC*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 365541); slip op at 4. Regardless, we have elected to treat the case as if leave to appeal had been granted. *Schultz v Auto-Owners Ins Co*, 212 Mich App 199, 200 n 1; 536 NW2d 784 (1995).

SEC 12 T24N R2E 15 A

W 50 FT OF *E 450 FT* OF S 120 FT OF N 486 FT OF NE ¼ OF NE ¼. [Emphasis added.]

In 2021, defendant purchased property that surrounds plaintiffs' property. The legal description of defendant's property contains corresponding language regarding the boundary of plaintiffs' property.

Plaintiffs allege, however, that the legal description in their deed contains a mistake that originated with a 1965 tax sale deed. Specifically, plaintiffs provided a 1955 deed that described the boundary of their property at 400 feet. However, the aforementioned 1965 tax deed described the boundary of their property at 450 feet. This change has been included in all subsequent records related to plaintiffs' property since the 1965 deed was publicly recorded, though the record does not include every deed going back that far for defendant's property to confirm whether that property's legal description ever changed and, if so, when.

As a result, there is a 50-foot-wide strip of land (the "disputed area") that currently is part of defendant's property in his deed's legal description. Located on the disputed area is a structure. The record does not indicate when this structure was built, but plaintiffs claim that their predecessors in title built the structure, maintained it, and continuously used it until plaintiffs took ownership of the land in 2015. Plaintiffs claim that they have continued to use the disputed area, and the structure located within the area, as their own since 2015 and they allege that they, and their predecessors, have paid taxes to Ogemaw County for the disputed area.

However, after defendant purchased his property in 2021, he contested plaintiffs' claim to the disputed area. Defendant paid for two surveys to be conducted of the property, and both surveys showed that the disputed area was part of his property and not plaintiffs' property. Defendant claims that he and his predecessors in title have continuously possessed, maintained, and used the disputed area. To support his claim, defendant included a picture that was taken of the structure located within the disputed area sometime before the 2015 tax sale through which plaintiffs bought their land. In this picture, the words "NOT IN TAX SALE" were painted on a sign on the side of the structure. Defendant maintains that his immediate predecessor in title created this sign because the website listing the property plaintiffs later purchased included pictures of the disputed area and gave the false impression that the disputed area was part of that property.

Each party claims that the other has trespassed onto the disputed area multiple times since defendant purchased his property in 2021. The dispute escalated when the local sheriff was contacted in 2023 after defendant allegedly changed the locks on the structure and demolished interior walls. The sheriff informed plaintiffs that the property dispute had to be resolved in court.

Subsequently, in February 2024, plaintiffs filed their first complaint alleging two counts of quiet title and trespass. In March 2024, defendant filed an answer and counterclaim against plaintiffs, then in May 2024, defendant filed his first amended counterclaims alleging four counts: (1) trespass, (2) nuisance in fact, (3) quiet title, and (4) intentional trespass. In June 2024, defendant filed a motion asking the court to allow him to amend his counterclaims for a second

time. In his proposed second amended counterclaim, defendant added an additional count (5) of adverse possession and an additional count (6) of acquiescence. The record does not indicate whether the trial court granted or denied this motion.

The same day that defendant moved to amend his counterclaims, he also filed a motion for summary disposition regarding the parties' competing quiet title claims. He argued that plaintiffs' quiet title claim was barred under the applicable statute of limitations provided under MCL 600.5801(4). Because plaintiffs' predecessor in title had lost title to the disputed area when the 1965 deed was recorded with the new legal description, defendant argued that the predecessor had 15 years to bring an action to correct the change in the 1965 deed. Defendant argued that, because the predecessor had not acted within that period, plaintiffs could not bring a quiet title action, and that defendant owned the disputed area.

The trial court held a hearing in August 2024 and subsequently entered a written order granting defendant summary disposition on his count of quiet title. The trial court agreed with defendant's argument regarding the applicable statute of limitations and held that plaintiffs were barred from bringing an action to quiet title. This order dismissed plaintiffs' complaint but stated that plaintiffs could file an amended complaint within 21 days. Plaintiffs first moved for reconsideration of the order, and the trial court denied this motion in a written opinion and order.

Plaintiffs filed an amended complaint that included five counts of (1) quiet title, (2) injunctive relief, (3) reformation of deed, (4) trespass, and (5) acquiescence. Relevant to this appeal, plaintiffs included new allegations and attachments to support their claim that their predecessors in title had adversely possessed the disputed area before or after 1980. One of the attachments was a 1982 deed from Irene and Lawrence Momier to Richard and Norma Samuels. This deed contained the following language:

> The West 50 feet of the East 450 Feet of the South 120 feet of the North 486 feet of the Northeast Quarter of the Northeast Quarter of Section 12, Township 24 North, Range 2 East, Rose Township, Ogemaw County, Michigan.
>
> It is intended by this deed to transfer all right, title, and interest in and to real estate possessed by grantor for more than 15 years in this vicinity.

Notably, the 1982 deed contained the same legal description as the 1965 deed, but it also stated that it transferred title to "real estate possessed by grantor for more than 15 years *in this vicinity*." (Emphasis added.)

Plaintiffs also included an affidavit from 2013 prepared and recorded by James F. Pagels, an attorney who had represented prior owners of plaintiffs' land during the probate of the Estate of Richard F. Samuels, the son of Richard and Norma Samuels. The Samuels estate had evidently received title to plaintiffs' property sometime before 2012 and conveyed it to Richard F. Samuels's children, including Vianne Samuels in 2012, and his other children conveyed their interests to Vianne. The affidavit stated the following regarding the land that was conveyed through these deed transfers:

> That the purpose of this affidavit is to insure that anyone reviewing the public record will be aware that there may be a partial apparent break in the chain

> of title between the March 31, 1982 deed and the December 27, 2012 deed and that through the filing of the December 27, 2012 deed the January 2013 quit claim deed and the actions of possession of the property since March 31, 1982, *that Vianne Samuels is claiming adverse possession with regard to any part of the fee interest not evidenced by the recorded chain of title*. [Emphasis added.]

As with the 1982 deed, Pagels' affidavit used the legal description of the land given by the 1965 tax deed.

Defendant filed an answer and affirmative defenses to plaintiffs' amended complaint in late 2024. On March 3, 2025, defendants moved for summary disposition under MCR 2.116(C)(8) and (10) to dismiss plaintiffs' amended complaint. Defendant again argued that plaintiffs' quiet title claim was barred under MCL 600.5801(4). Regarding the 1982 deed and Pagels' affidavit, defendant argued that neither document indicated that plaintiffs' predecessors in title were adversely claiming the disputed area because the legal description used in those documents matched the 1965 deed. Moreover, defendant argued that terms such as "in this vicinity" used in the 1982 deed were too vague to provide notice that the predecessors were specifically possessing the disputed area.

Following oral argument on defendant's motion, the trial court granted defendant summary disposition. The trial court again agreed with defendant that the statute of limitations barred plaintiffs' quiet title claim because their predecessor had not brought an action within 15 years following the date when the 1965 deed was recorded. Addressing plaintiffs' new allegations and attachments, the trial court held that they had failed to raise a valid claim of adverse possession or acquiescence. The court found that the 1982 deed did not provide any notice of what land the predecessors had claimed title to by adverse possession and had not corrected the legal description from 1965. The trial court also found Pagels' affidavit lacking because it did not indicate any new land being added to the legal description through adverse possession. As such, the court held that there was no genuine issue of material fact related to plaintiffs' quiet title claim based on adverse possession or acquiescence. The trial court subsequently entered a written order prepared by defendant that dismissed plaintiffs' amended complaint but did not address defendant's outstanding counterclaims.

This appeal followed.

II. STANDARDS OF REVIEW

This Court reviews a grant or denial of summary disposition de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence submitted by the parties in the light most favorable to the nonmoving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 120.

The question of adverse possession is one of fact. *Port Huron Twp Park Comm v Bluska*, 1 Mich App 599, 600; 137 NW2d 738 (1965). "An action to quiet title is an equitable action, and

the findings of the trial court are reviewed for clear error while its holdings are reviewed de novo." *Fowler v Doan*, 261 Mich App 595, 598; 983 NW2d 682 (2004) (citation omitted). "Also, the applicability of a statute is a question of law that this Court reviews de novo." *Id*. at 598-599.

III. ANALYSIS

On appeal, plaintiffs do not contest that their predecessors were disseised of the disputed area in 1980, upon expiration of the statute of limitations based on the 1965 deed. Instead, they argue that the trial court erred by granting summary disposition to defendant because a genuine issue of material fact exists as to whether they and their predecessors in title regained title to the disputed area through adverse possession or acquiescence before or after 1980. To support this argument, plaintiffs rely on the 1982 deed, Pagels' affidavit, and their predecessors' and their conduct and claimed use of the disputed area to establish the elements of a viable adverse possession or acquiescence claim. For the reasons that follow, we are not persuaded by plaintiffs' arguments.

MCL 600.2932(1) provides for a quiet title action and states as follows:

> Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

In turn, "[a] party may lose title to real property when another claims ownership not under any deed, but through visible, open, notorious, hostile, and continuous possession of the premises for the statutory period." *Adams v Adams*, 276 Mich App 704, 719-720; 742 NW2d 399 (2007). The statutory period to bring a claim to quiet title in Michigan is 15 years. MCL 600.5801(4). The period to bring a claim does not begin to run "until the property owner of record has been disseised of the land." *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993), citing MCL 600.5829. "Disseisin occurs when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership." *Kipka*, 198 Mich App at 439. Under MCL 600.5829(1), "[t]he right to make an entry on, and the claim to recover land accrue . . . [w]henever any person is disseised, his right of entry on and claim to recover land accrue at the time of his disseisin." "However, a party may also be disseised by a claimant who asserts ownership not as an adverse possessor, but under color of deed." *Id*. at 720. "In cases in which the adverse claimant claims title under color of deed, disseisin occurs when the record owner first receives notice of the adverse deed." *Id*.

"The elements of adverse possession are . . . well established. A party claiming adverse possession must show clear and cogent proof of possession that is actual, continuous, open, notorious, exclusive, hostile, and uninterrupted for the relevant statutory period." *Marlette Auto Wash, LLC v Van Dyke SC Props, LLC*, 501 Mich 192, 202; 912 NW2d 161 (2018). "[S]ucessive periods of adverse possession by different parties can be joined or 'tacked' to satisfy the 15-year statutory period, but only if there was a privity of estate." *Houston v Mint Group, LLC*, 335 Mich App 545, 560; 968 NW2d 9 (2021) (citation omitted). "[T]he title acquired by adverse possession is neither record title nor marketable title until the adverse possessor files a lawsuit and obtains a

judicial decree." *Beach v Twp of Lima*, 489 Mich 99, 107; 802 NW2d 1 (2011). "Thus, until an adverse possessor obtains the necessary judicial decree, there is no record of the adverse possessor's ownership interest to verify whether the possessor actually satisfied the elements of adverse possession." *Id*. Moreover, "under a color-of-title claim, the claimant cannot adversely possess the disputed property without having been in actual possession of some portion thereof." *Jonkers v Summit Twp*, 278 Mich App 263, 271 n 1; 747 NW2d 901 (2008), citing *Westgate v Mathews*, 31 Mich App 480, 483; 188 NW2d 1 (1971).

The doctrine of acquiescence is a distinct legal doctrine of property law. "Under Michigan law, parties may acquiesce to a new property boundary line" that is distinct from the titled property line. *Houston*, 335 Mich App at 567. "The law of acquiescence is concerned with a specific application of the statute of limitations to cases of adjoining property owners who are mistaken about where the line between their property is." *Kipka*, 198 Mich App at 438. Michigan law recognizes three theories of acquiescence: "(1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from intention to deed to a marked boundary." *Walters v Snyder*, 239 Mich App 453, 457; 608 NW2d 97 (2000). "The underlying reason for the rule of acquiescence is the promotion of peaceful resolution of boundary disputes." *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001) (citations omitted). "The proper standard to a claim of acquiescence is proof by a preponderance of the evidence." *Id*. (citation omitted).

On appeal, rather than contest whether their predecessors were disseised of the disputed area in 1980, plaintiffs argue they (and their predecessors) re-acquired title to it via adverse possession. And they cite two theories for relief: (1) the documentary evidence and (2) they and their predecessors' actions on the disputed area, including the construction, occupation, and maintenance of a building. Regarding documents, they cite the 1982 deed and Pagels' affidavit to support a claim of adverse possession because the documents indicate that their predecessors in title had already satisfied the statutory period—15 years—to reacquire title at the time of the 1982 deed. And they cite *Taggart v Tiska*, 465 Mich 665, 671-672; 641 NW2d 240 (2002), for the proposition that "title by adverse possession vests at the expiration of the statutory period, not when a quiet title action is filed, and cannot be undone by later occasional assertions of right by the record owner." Alternatively, they argue that the 1982 deed marks the beginning of their predecessors' hostile possession for purposes of adverse possession.

As an initial matter, plaintiffs' reliance on *Taggart* is misplaced. *Taggart* construed the language of MCL 600.5868, but that statute has nothing to do with adverse possession and the trial court did not base its summary disposition decision on it. Instead, the trial court relied exclusively on MCL 600.5829(1) and the 15-year statute of limitations provided under MCL 600.5801(4). *Taggart*, therefore, is inapposite to this case. To the extent that *Taggart* applied, that opinion merely reiterates that the applicable limitations period is 15 years for adverse possession. *Taggart*, 465 Mich at 673. *Taggart* does not support the proposition that plaintiffs' predecessors in title had a vested ownership right in the disputed area through adverse possession based on the 1982 deed's "in the vicinity" language or because the Pagels' affidavit referred to "adverse possession" without identifying what specific land was adversely claimed.

Plaintiffs' complaint and documentary evidence do not otherwise support their requested relief. Plaintiffs allege the 1965 deed contains an incorrect legal description that set the boundary

of the land conveyed by that deed at 450 feet instead of 400 feet, but the 1982 deed contained the exact same legal description as the 1965 deed, which prompted the trial court to hold that the 1982 deed did not correct any mistake in plaintiffs' chain of title. The 1982 deed also stated that it was "intended . . . to transfer all right, title, and interest in and to real estate possessed by Grantor for more than 15 years in this vicinity," but it did not describe what "real estate" in the "vicinity" was adversely possessed.

And contrary to plaintiffs' arguments that Pagels' affidavit clarified this issue, the affidavit only stated that "Vianne Samuels [was] claiming adverse possession with regard to any part of the fee interest not evidenced by the recorded chain of title." It does not clarify what "part of the fee interest not evidenced by the recorded chain of title" means, and it contains the same legal description as the 1965 deed.

Neither the 1982 deed nor the affidavit acknowledges, recognizes, or otherwise corrects the legal description in the 1965 deed. As such, there is no indication that anyone reviewing these documents in the chain of title could have constructive notice that plaintiffs' predecessors in title were adversely possessing the disputed area. See *Richards v Tibaldi*, 272 Mich App 522, 539; 726 NW2d 770 (2006) (holding that constructive notice is "notice that is imputed to a person concerning all matters properly of record, whether there is actual knowledge of such matters or not."). Taken together, none of the documentary evidence creates a disputed issue of material fact that plaintiffs' predecessors in title adversely possessed the disputed area.

The same is true with respect to plaintiffs' and their predecessors' alleged conduct on the disputed area. Plaintiffs have not established any facts about when the structure was built on the disputed area, who built it, or who used it and how to create a disputed issue of material fact. There is evidence that plaintiffs and defendant have occasionally entered onto the disputed area, but there is little, if any, evidence to indicate that plaintiffs (and their predecessors) have treated the disputed area as their own, how they did so, and when, as would be necessary to establish a quiet title action based on adverse possession or acquiescence claim. Simply put, plaintiffs have not proffered facts that could establish that their predecessors in title openly and notoriously possessed the disputed area for the requisite 15-year period. See *Burns v Foster*, 348 Mich 8, 15; 81 NW2d 386 (1957) (*"*[T]he true owner must have actual knowledge of the hostile claim or *the possession must be so open, visible, and notorious as to raise the presumption of notice to the world that the right of the true owner is invaled intentionally.*") (emphasis added).

The only other evidence plaintiffs offer are county tax records that plaintiffs argue show that a "building [in the disputed area] itself had long belonged to [plaintiffs'] predecessors." These records indicate that an unoccupied structure has existed in the disputed area and that the local government seized the land from plaintiffs' predecessor in title for unpaid taxes. These documents do not prove, however, that plaintiffs' predecessors in title utilized the disputed area as part of their property for the required statutory period because they contain the same legal description from the 1965 deed. At most, the tax records indicate that plaintiffs' predecessors were assessed taxes on the land described in the 1965 deed. They do not provide notice and are not evidence that plaintiffs' predecessors were adversely possessing the disputed area. This evidence, therefore, does not create an issue of fact as to whether plaintiffs can satisfy the "open and notorious" requirement for a viable adverse possession claim. *Burns*, 348 Mich at 15; *Marlette Auto Wash*, 501 Mich at 202.

Likewise, plaintiffs have failed to establish that a genuine issue of material fact exists with respect to their acquiescence claim. "Unlike adverse possession, a claim of acquiescence does not require that possession of the land was hostile or without permission." *Houston*, 335 Mich App at 568. Instead, this Court has explained that " '[o]nly when there has been some agreement, whether tacit or overt, as to the location of the boundary does the question of acquiescence become important.' " *Id*., quoting *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974).

Plaintiffs' acquiescence claim fits the first theory of acquiescence—acquiescence for the statutory period of 15 years. MCL 600.5801(4). "A claim of acquiescence for the statutory period requires showing that the property owners treated a boundary line or marker as the property line for 15 years." *Houston*, 335 Mich App at 568. "The acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years." *Houston*, 325 Mich App at 568 (quotation marks and citation omitted). "Proof of privity is not necessary, however, to employ tacking of holdings to obtain the 15-year minimum under the doctrine of acquiescence[;] [t]herefore, when successive neighboring landowners use the property as marked by monuments . . . as if the monuments were accurate, for a period of 15 years, they have fixed the property line by acquiescence." *Id*., quoting *Siegel v Renkiewicz' Estate*, 373 Mich 421, 426; 129 NW2d 876 (1964).

But, in light of this legal standard, there is no evidence supporting plaintiffs' claim. For the reasons given above, neither the 1982 deed nor Pagels' affidavit support their argument, and the tax records do not either. The documents simply do not create an issue of fact as to whether there was a "tacit agreement and acquiescence" from defendant's predecessors in title that the disputed area was part of plaintiffs' predecessors' property. *Houston*, 335 Mich App at 570. As the trial court correctly held, plaintiffs cannot rely on tacking to support a quiet title claim based on acquiescence because there is no evidence regarding defendants' predecessors "thoughts, actions, acquiescence, or lack thereof." *Id*. at 571. The record only contains evidence related to defendant's most recent predecessor in title, and that evidence is that defendant's predecessor did not acquiesce to the boundary because he posted a sign stating "NOT IN TAX SALE" on the side of the building in the disputed area sometime around the 2015 tax sale.

Plaintiffs have failed to meet their evidentiary burden to establish a genuine issue of material fact as to their quiet title claim based on adverse possession or acquiescence. See *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 9; 890 NW2d 344 (2016) ("[T]he rule is well established that a moving party may be entitled to summary disposition as a result of the nonmoving party's failure to produce evidence sufficient to demonstrate an essential element of its claim."). And the trial court did not err by granting defendant's summary disposition and dismissing plaintiffs' amended complaint.

We affirm the judgment of the trial court granting defendant's motion for summary disposition. We do not, however, address defendant's outstanding counterclaims, which are matters for the trial court. Therefore, we remand this case to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense