ABEL K. SUZUKY,
Appellant,

v.

MODESTO PETRUS,
Appellee.

CIVIL APPEAL NO. 10-004
Civil Action No. 09-050

Supreme Court, Appellate Division
Republic of Palau

Decided: July 22, 2010

[1] **Property:** Adverse Possession

A claimant under adverse possession need not seek out the true owner of the land to provide express notice of his claim to the land for the 20-year countdown to commence. The 20-year time-frame begins to run when the claimant gains possession of the land that is actual, open, visible, notorious, continuous, hostile, and under a claim of title or right.

[2] **Property:** Adverse Possession

The "under a claim of right" requirement of adverse possession imposes little—or no—actual additional condition on an adverse possessor's claim beyond the otherwise-required "hostility."

Counsel for Appellant: Pro se

Counsel for Appellee: Susan Kenney-Pfalzer

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Abel Suzuky appeals the Trial Division's rejection of his adverse possession claim to land otherwise awarded to Modesto Petrus. Because the Trial Division's analysis erred in calculating the commencement of the adverse possession statutory period, we vacate that portion of its decision and remand for further consideration.[1]

BACKGROUND

This suit is rich in history, much of which is unnecessary for the purposes of the present appeal. We therefore condense our

[1] We note that the parties provided us with very little in the way of argument to review. The appellant spent more than half of his seven-and-a-half page pro se brief transcribing quotations from the record and the appellee's response weighed in at a less-than-weighty two pages, leaving us with approximately five total pages of background, legal authority, and discussion from both parties. We do not mean to recount the length of the briefs as a reflection of their quality (although, to be sure, the appellant provided precious little in the way of measured argument to which the appellee could respond), but only to highlight the dearth of analysis before us. We have endeavored to—and in our view succeeded in—toeing the line between liberally construing the filings of a pro se litigant to achieve better justice and taking on the impermissible advocatory role of argument-creator.

retelling of this appeal's provenance to the points pertinent to our review. For a more storied account, see Civ. Act. No. 09-050, Decision at 1-5, (Tr. Div. Feb. 4, 2010).

The Trial Division below adjudicated ownership of Lot No. 028 A 10 on Cadastral Plat No. 028 A 00 in favor of appellee Petrus.[2] Not only did the 2010 Trial Division decision award the land to Petrus, it found that the land had in actuality already been awarded to Petrus in a 1982 Land Court decision that neglected to identify the plot by lot number on the cadastral plat.

Appellant Suzuky based his claim to the land on the theory of adverse possession, claiming that he entered the land in 1984 and farmed it continuously from 1985 until 2006. The Trial Division rejected this claim, finding that Suzuky had not yet met the statutory period required to achieve adverse possession because he did not notify Petrus (the true owner of the property) of his claim until 2006.

STANDARD OF REVIEW

We focus our attention on the lower court's conclusions of law, review of which are *de novo*. *See, e.g.*, *Nakamura v. Uchelbang Clan*, 15 ROP 55, 57 (2008). The findings of facts below will not be disturbed except for clear error. *See id.*

DISCUSSION

In setting forth the basic law of adverse possession, we need not reinvent the wheel for it has turned many times before:

> To acquire title by adverse possession, the claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years. Where any one of these elements is lacking, adverse possession does not apply. A party claiming title by adverse possession bears the burden to affirmatively prove each element of adverse possession.

Children of Ngiramechelbang Ngeskesuk v. Brikul, 14 ROP 164, 166 (2007) (internal citations omitted).

The Trial Division disposed of Suzuky's adverse possession claim to the land with the following:

> One of the requirements of adverse possession is that occupation of the land must be open and hostile for twenty years. *See Children of Ngiramechelbang Ngeskesuk v. Brikul*, 14 ROP 164, 166 (2007). There was nothing to put Plaintiff on notice that Suzuky was possessing the land and claiming title thereto until 2006 at the latest, which is well within the 20-year period. He has not established the elements of adverse

[2] The land in question, commonly known as *Ngedengir*, is located in Ngerkebesang in Koror State.

> possession, and that argument fails.

Civ. Act. No. 09-050, Decision at 13, (Tr. Div. Feb. 4, 2010).

[1] The Trial Division, therefore, found that the adverse possession "clock" did not begin ticking until Suzuky, the adverse claimant, expressly communicated his intent to claim the land to Petrus, the true owner. This formulation is in error. The claimant need not seek out the true owner to provide notice of his claim to the land for the 20-year countdown to commence. The 20-year time-frame begins to run when the claimant gains possession of the land that is actual, open, visible, notorious, continuous, hostile, and under a claim of title or right. Nowhere has our case law imposed a "service of notice" requirement.[3]

[2] Indeed, as was the case here, an adverse possession claimant may not know the identity of the owner of the property for a portion—or the entire—statutory period and thus would be unable to expressly notify the true owner of his intent to claim the land.[4] It is the claimant's open, visible, notorious, and hostile presence that should notify the true owner that the claimant is staking a claim to the land. *See* 3 Am. Jur. 2d *Adverse Possession* § 119 ("[I]t is not necessary to establish a claim of right or claim of ownership that possession be accompanied by an express declaration or claim of title; it is sufficient if the proof shows that the party in possession has acted so as to clearly indicate a claim of title."). The "under a claim of right" requirement imposes little—or no—actual additional condition on an adverse possessor's claim:

> Terms such as "claim of right," "claim of title," and "claim of ownership," when used in connection with adverse possession, have been defined as the intention of the claimant to appropriate and use the land to the exclusion of all others, irrespective of any semblance or shadow of actual

[3] We have previously stated that "[t]he mere possession of land does not in and of itself show the possession is notorious or hostile." *Children of Ngeskesuk*, 14 ROP at 167. To clarify, the *Children of Ngeskesuk* decision does not mandate "verbal or written notice" by an adverse claimant to the true owner to achieve adverse possession. As the opinion states, other acts of hostility—for instance, "physical indication [of the adverse claimant's hostility under a claim of right] such as making improvements"—may raise a would-be adverse possessor's claim to the requisite level of notoriousness and hostility. *See id.*

[4] The Trial Division applied a stringent express notice requirement in this case—starting the statutory period only in 2006 when Suzuky gave oral notice of his claim personally to Petrus rather than when Suzuky's claim to the land was filed with the Land Court in 2005. Such an express notice requirement would force a would-be adverse possessor to track down and serve notice on the true owner of the land on the first day of their adverse possession to maximize their potential to fulfill the 20-year time-frame. The purpose behind adverse possession—vesting title in the party who makes use of property to the exclusion of others—does not require such proactive antagonism on the part of the adverse claimant.

> title or right. “Claim of right” also has been defined as the entry of an adverse claimant with an intent to claim and hold the land as the claimant’s own, to the exclusion of all others. Thus, the term “claim of right” means no more than the term “hostile;” and if possession is hostile, it is under a claim of right.

Id. § 118.

We do not have sufficient proof before us to determine whether Suzuky achieved possession of the land in question that was actual, open, visible, notorious, continuous, hostile, and under a claim of right for a period of 20 years. And, to be sure, it is the province of the Trial Division to make such determinations in the first instance. Our labor is only one of review. Having dispelled the apparent “express notice” requirement imposed by the Trial Division, we leave it to that able court to decide.

CONCLUSION

For the forgoing reasons, we VACATE and REMAND the Trial Division’s decision to the extent it denies Suzuky’s adverse possession claim. On remand, the Trial Division should, consistent with our opinion, re-adjudicate that issue.