

**MODESTO PETRUS,
Appellant,**

v.

**ABEL SUZUKY,
Appellee.**

CIVIL APPEAL NO. 10-044
Civil Action No. 09-50

Supreme Court, Appellate Division
Republic of Palau

Decided: November 23, 2011

[1] **Appeal and Error:** Standard of Review; **Property:** Adverse Possession

Common law adverse possession presents a mixed question of law and fact. The lower court's conclusions of law are reviewed de novo, while the lower court's factual conclusions are reviewed using the clearly erroneous standard. Findings of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion.

[2] **Property:** Adverse Possession

The elements of adverse possession must be established by clear proofs of acts and conduct fit to put a person of ordinary prudence, and particularly the true owner, on notice that the estate in question is actually, visibly, and exclusively held by a claimant in antagonistic purpose.

[3] Property: Adverse Possession

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.

[4] Property: Adverse Possession

The party seeking title by adverse possession bears the burden to prove affirmatively each element of the doctrine

[5] Property: Adverse Possession

Possession is hostile if the party seeking title holds and claims the property as his or her own, whether by mistake or willfully.

[6] Property: Adverse Possession

Possession is visible if it is so obvious that the true owner is presumed to know of it.

[7] Property: Adverse Possession

Possession is exclusive where the party seeking title over the land shows an exclusive dominion over it and an appropriation of the land to his or her own use and benefit.

[8] Property: Adverse Possession

Possession is notorious when a claim of ownership is sufficient to put a person of ordinary prudence on notice of the fact that the land in question is held by the claimant as his or her own, including notice both to the record owner and to the public.

Counsel for Appellant: Ronald Ledgerwood
Counsel for Appellee: Pro se

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

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

PER CURIAM:

Modesto Petrus appeals the Trial Division's October 26, 2010, award of land known as Ngedengir located in Ngerkebesang, just above the junction of the main road and the turnoff to the Cliffside Hotel and Echang Hamlet, in Koror State. Appellee Abel K. Suzuki filed no opposition. We are not persuaded by Petrus' arguments and accordingly, we affirm the Trial Division.¹

BACKGROUND

The issue of this appeal is whether Suzuki may claim title to Ngedengir under the doctrine of adverse possession. We provide a limited factual background here and refer curious readers to the "more storied account" of the facts presented in the Trial Division Decision, Civ. No. 09-050, at 1-5 (Feb. 4, 2010). The land at issue is Lot No. 028 A 10

¹ Petrus requests oral argument. After reviewing the briefs and record, the Court finds this case appropriate for submission without oral argument. ROP R. Civ. P. 34(a) ("The Appellate Division on its own motion may order a case submitted on briefs without oral argument.").

on Cadastral Plat No. 028 A 00 (Lot No. 028 A 10). The disputed land is adjacent to land that Suzuki purchased in 1984.

Suzuky's theory of recovery has been, and continues to be, that he entered the disputed land in 1984, made physical improvements to it through farming, and farmed continuously until 2006. On July 6, 2005, the Bureau of Lands and Surveys issued a Notice of Monumentation; Suzuki was one of the claimants. Petrus filed an action with the Trial Division to quiet title to Lot No. 028 A 10. Suzuki and several others claimed ownership of this lot. The Trial Division found that Petrus was the rightful owner of Lot No. 028 A 10 and that Suzuki did not meet the twenty-year statutory period required for successful adverse possession claims because he did not notify Petrus of his claim until 2006. Suzuki appealed.

We concluded that adverse possession does not require "service of notice" and thus Suzuki was not required to notify Petrus of his presence on the land. *Suzuky v. Petrus*, 17 ROP 244, 246-47 (2010). We reversed and remanded on the issue of whether Suzuki achieved possession of the land through actions that were actual, open, visible, notorious, continuous, hostile, and under a claim of right for twenty years. *Id.* at 247.

On remand, the Trial Division found that Suzuki's "clearing and planting on the land was not done covertly" and that he had met the requirements for an adverse possession claim. Petrus now appeals, arguing the Trial Division applied the wrong standard to the adverse possession claim; the Trial Division failed to "recognize and consider legal presumptions in Petrus' favor;

and the Trial Division failed to recognize that the adverse possession period was tolled by Petrus' original claim to the land."

STANDARD OF REVIEW

[1, 2] Common law adverse possession presents a mixed question of law and fact. *Seventh Day Adventist Mission of Palau, Inc. v. Elsau Clan*, 11 ROP 191, 193 (2004). The lower court's conclusions of law are reviewed de novo. *Nakamura v. Uchelbang Clan*, 15 ROP 55, 57 (2008). Factual findings of the lower court are reviewed using the clearly erroneous standard. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). Under this standard, the findings of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Id.*

ANALYSIS

[2-4] Petrus appeals the Trial Division's award to Suzuki of that portion of Lot No. 028 A 10 that he occupies by virtue of adverse possession. Generally, "[t]he elements of adverse possession must be established by clear proofs of acts and conduct fit to put [a] person of ordinary prudence, and particularly the true owner, on notice that [the] estate in question is actually, visibly, and exclusively held by a claimant in antagonistic purpose." 3 Am. Jur. 2d Adverse Possession § 296 (2002). 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. *Brikul v. Matsutaro*, 13 ROP 22, 25 (2005). A party claiming title by adverse possession bears the

burden to prove affirmatively each element of adverse possession. *Seventh Day Adventist Mission*, 11 ROP at 193-94.

I. Elements of Adverse Possession

In our earlier opinion, we stated that there was insufficient evidence as to whether Suzuki established the requirements necessary for an adverse possession claim. We found that Suzuki was not required to give notice to the true owner and remanded to determine whether Suzuki met the elements to acquire parts of Ngedengir by adverse possession. *Suzuky*, 17 ROP at 246-47.

Petrus argues that there is conflicting evidence about whether he granted Suzuki permission to build a right-of-way on Petrus' land. Petrus argues that several elements of the adverse possession doctrine, such as visibility, exclusivity, and whether possession is open and notorious, have not been met.² We examine each below.

A. Hostile Possession

² Petrus argues that the Trial Division failed to apply the clear and convincing evidence standard when considering Suzuki's adverse possession claim. Petrus points to the Trial Division's first decision, in which it purported to apply a preponderance standard. But the decision on appeal here contains no such reference. Upon our review of the record, we are satisfied that the court applied the correct standard. *United States v. Morton*, 957 F.2d 577, 581 (8th Cir. 1992) (“[H]aving reviewed the [trial court’s] transcript, we conclude the district court’s findings would have been the same under the [higher] standard. Thus, the district court’s factfinding satisfied due process.”)

[5] “The requirement for adverse possession that the possession be hostile does not require ill will or malice, but an assertion of ownership adverse to that of the true owner and all others. Possession is hostile if the possessor holds and claims the property as his or her own, whether by mistake or willfully.” 3 Am. Jur. 2d Adverse Possession § 43 (2002). “It is not mere occupancy or possession that must be known to the true owner to establish title by adverse possession, but an occupancy that is in opposition to the owner’s rights and in defiance of, or inconsistent with, legal title.” *Children of Ngiramechelbang Ngeskesuk v. Brikul*, 14 ROP 164, 166-67 (2007) (internal citations omitted). “The mere possession of land does not in and of itself show the possession is notorious or hostile There must be some additional act or circumstance indicating that the use is hostile to the owner’s rights.” *Id.* (internal citations omitted).

In his brief, Petrus argues that the evidence was not “clear and convincing” that Suzuki acted in a hostile way because Petrus granted Suzuki permission to use his land. The evidence showed that Petrus granted Suzuki permission to build a right-of-way but not to do anything else. Any action Suzuki took outside of Petrus’ permission would be hostile.

Petrus testified that Suzuki sought permission to build a right-of-way to Suzuki’s property and that Petrus granted permission and also forbade Suzuki from building a house or farming. This evidence satisfies the hostile requirement, because Suzuki farmed in direct opposition to the admonition from Petrus. Suzuki testified that he did not ask Petrus for permission to build an access road,

but that he instead asked Francisco Gibbons, the son of a defendant not party to this appeal, for permission to build a right-of-way. Suzuki also testified that he was shown the boundaries of his land, and he inquired with the Land Commission as to who owns Lot No. 028 A 10. He was told the land was unclaimed.

Petrus argues that there was “as much evidence supporting that Suzuki’s use of the land was permissive as there was otherwise.” Although there is a dispute as to whom Suzuki asked for permission to build a road to his property, there is no dispute that Suzuki’s actions of clearing, planting, erecting a pigpen, and using the land as a parking lot were and are hostile to the true owner of Ngedengir. Suzuki began clearing a portion of Lot 028 A 10 in 1985. He planted mangos, coconuts, lemon or lime trees, and betel nut trees. He burned down some of the trees that he planted and planted new ones. He has farmed the land continuously for twenty years. In the late 1980s, he erected a pigpen and raised pigs before they were outlawed in 1990. Today, he continues to maintain the trees he planted. He also uses the land as a parking lot.

The facts of this case stand in stark contrast to *Children of Ngiramechelbang Ngeskesuk*, which Petrus cites for the proposition that Suzuki’s actions are insufficient to meet the hostile element. There, we held that the parties seeking title through adverse possession had not committed any “additional act or circumstance indicating that the use is hostile to the owner’s rights.” *Children of Ngiramechelbang Ngeskesuk*, 14 ROP at 167. We concluded that the appellees had “numerous opportunities . . . to either

claim the land or demonstrate the adverse nature of [their] occupancy” but they gave “no verbal or written notice to the [rightful owner] nor did they make any physical indication such as making improvements.” *Id.*

Here, Suzuki made numerous physical improvements to the land, which demonstrates the adverse nature of his occupancy. Based on this evidence, we conclude that Suzuki has satisfied the hostile element of the adverse possession statute and that the Trial Division applied the correct evidentiary standard.

B. Visibility

[6] Petrus argues that the Trial Division’s decision should be set aside because there is no evidence the possession was visible or open to the common observer such that “the owner or an agent, on visiting the premises, might readily see that the owner’s rights are being invaded.” 3 Am. Jur. 2d Adverse Possession § 63 (2002). “Possession is visible if it is so obvious that the true owner is presumed to know of it.” *Id.*

Petrus argues that the Trial Division erred in finding that the plants and trees are visible from the road. Petrus also argues that he had no knowledge of Suzuki’s use of or planting on the land at issue. Whether the public could see the trees from the road leading to the property is of little import. The issue is whether the “common observer” (and the owner) would be able to see, upon visiting the premises, that, over the course of twenty years, someone had cleared part of Petrus’ land, had planted several types of trees, had built and then razed a pigpen, and later was using the land as a parking lot. The overwhelming evidence indicates that the

common observer would have seen such visible, physical changes to the land had they visited the property at issue. Each of Suzuki's activities would put the true owner on notice regarding his use of the property. We hold that the evidence is sufficient to meet the visibility requirement.

C. Exclusivity

[7] Petrus also contends that there is insufficient evidence to meet the "exclusivity" element of the doctrine of adverse possession. " 'Exclusive possession' means that the claimant must show an exclusive dominion over the land and an appropriation of it to his or her own use and benefit." 3 Am. Jur. 2d Adverse Possession § 67 (2002).

Petrus presented evidence that he gave permission for two women to farm the land. However, there is no evidence that the women were farming Suzuki's portion of the land, a fact that would, if established, destroy exclusivity. Suzuki testified that the women were not farming on the portion of the property that he was farming. Therefore, Suzuki has proved exclusive possession. The Court affirms the Trial Division's finding that Suzuki has met the exclusivity element of the adverse possession doctrine.

D. Open & Notorious Possession

[8] Finally, Petrus argues that the Trial Division erred in finding that Suzuki proved his possession was open and notorious. The words "open and notorious" mean "that an adverse claim of ownership must be evidenced by such conduct as is sufficient to put a person of ordinary prudence on notice of the fact that the land in question is held by the claimant as

his or her own, including notice both to the record owner and to the public." 3 Am. Jur. 2d Adverse Possession § 63 (2002).

Petrus argues that the Trial Division rewarded Suzuki for "masking his adverse possession claim from 1985 to 2006." Moreover, Petrus emphasizes that "it is the legal owner's knowledge, either actual or imputable, of another's possession of lands that is required for adverse possession." We agree with the Trial Division's finding that knowledge of the physical changes to the property, which were visible to the common observer, would be imputed to the legal owner. Suzuki's actions on the property were and are sufficient to put the legal owner and the public on notice of his actions. To find otherwise would mean that an owner could prevail as long as he never visited his property. Therefore, we determine that Suzuki has satisfied the open and notorious element of the adverse possession doctrine. Because Suzuki proved all the elements of adverse possession by clear and convincing evidence, we affirm the Trial Division's conclusion to that effect.

II. Presumptions in Petrus's Favor

Petrus correctly notes that he is entitled to several presumptions because he is the legal owner of the land, and he argues that Suzuki has not rebutted the presumptions of his ownership. Petrus argues that Suzuki cannot merely take possession of the land but must instead "rebut the legal presumptions in favor of Petrus." Suzuki has acted as though he were the true legal owner of the land. He has satisfied, through clear and convincing evidence discussed above, the elements of the doctrine of adverse possession. We affirm the

Trial Division's conclusion that Suzuki has rebutted the presumptions that Petrus owns the land through the doctrine of adverse possession.

III. Tolling

Finally, Petrus argues that the applicable statute of limitations in adverse possession is tolled because Petrus "did not learn that someone else was claiming his land until 2006." Petrus cites to *Lulk Clan v. Estate of Tubeito*, 7 ROP Intrm. 17, 21 n.5 (1998) for the proposition that filing claims with the Land Commission is sufficient to toll the statute of limitations. In *Lulk Clan*, the statute was tolled because the appellees there filed claims with the Land Commission instead of with the court. *Id.* at 21. We held that filing claims with the Land Commission was sufficient to toll the statute.

Petrus appears to argue that because the Land Commission rendered its adjudication awarding the land at issue to Petrus in 1982, the statute was tolled until 2006. This is because Petrus was waiting for his certificate of title on the land and he was doing all that was expected to perfect his claim while he waited. Petrus argues that he was entitled to notice of any subsequent legal proceedings involving the land.

We affirm the determination by the Trial Division that the statutory period was not tolled. As discussed above, Suzuki took decisive steps to clear and farm the land at issue. His actions were sufficient to provide notice to the true owner. Petrus should have seen, well before 2006, that someone was clearing, planting trees, raising livestock, and making a parking lot on his land. Petrus

cannot seek relief from the entire statutory period simply because he was waiting for the certificate of title from the Land Commission. Accordingly, we hold that the statute of limitations was not tolled and affirm the Trial Division's conclusion.

CONCLUSION

We hold that the findings of the Trial Division were not clearly erroneous and its legal conclusions were correct. Appellee Suzuki has properly claimed the land in question under the doctrine of adverse possession. Accordingly, we **AFFIRM** the Trial Division's award of land to Abel Suzuki.