STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1211

George F. Osgood, et al.,
Appellants,

vs.

Troy A. Stanton, et al.,
Respondents.

Filed June 9, 2009
Affirmed as modified
Hudson, Judge

Chisago County District Court
File No. 13-CV-07-386

Karen K. Kurth, Joan M. Quade, Barna, Guzy & Steffen, Ltd., 400 Northtown Financial Plaza, 200 Coon Rapids Boulevard, Coon Rapids, Minnesota 55433 (for appellants)

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Considered and decided by Klaphake, Presiding Judge; Hudson, Judge; and Harten, Judge.*

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

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

In this land-dispute case, appellants challenge the district court's grant of summary judgment in favor of respondents on the issues of adverse possession, ejectment, and judicial determination of the boundary lines. Appellants also argue that they were entitled to summary judgment on the ejectment issue. On notice of review, respondents contend that when appellants' adverse-possession claim was dismissed, it should have been dismissed with prejudice. We affirm as modified.

FACTS

Appellants George and Gloria Osgood and respondents Troy and Mindy Jo Stanton own lots with homes adjacent to each other in the Township of Wyoming. Wyoming Street runs between appellants' and respondents' lots. In December of 1985, the Township of Wyoming vacated Wyoming Street. Appellants subsequently moved a shed and other property onto the vacated street and also erected a fence on the vacated street. Respondents believed that the shed and fence encroached upon the portion of Wyoming Street that became their property when the township vacated the road.

In June of 1991, respondent Troy Stanton commenced a lawsuit against appellants, alleging that appellants "have treated the entire vacated twenty-five (25) [feet] of [the] vacated strip of Wyoming Street as their own, have exercised exclusive control over the vacated street and have denied [respondent] the right to enjoy the use of any portion of

the vacated street."[1] Mr. Stanton sought a declaratory judgment stating that he owned the portion of Wyoming Street lying east of the street's center line. He also sought damages for trespass and to enjoin appellants from further trespassing on his portion of Wyoming Street.

On November 27, 1991, the district court awarded both parties an equal portion of the vacated street. The district court denied appellants' motion to vacate the November 27 judgment. In its order denying appellants' motion to vacate, the district court specified that Mr. Stanton owned the 12 1/2 feet of Wyoming Street abutting his home, and appellants owned the 12 1/2 feet of Wyoming Street abutting their home. On appeal, this court affirmed the denial of appellants' motion to vacate. *Stanton v. Osgood*, No. C7-92-2575 (Minn. App. May 18, 1993).

By August of 1994, appellants had not yet removed their property from Mr. Stanton's part of Wyoming Street. On August 7, 1994, Mr. Stanton wrote a letter to appellants asking appellants to either remove their things from his portion of the vacated street or pay rent. Appellants declined to pay rent and did not remove their property from the street.

On August 29, 2001, respondents sent a summons, complaint, quit-claim deed, and request for admissions to appellants. The complaint alleged that respondents were awarded one-half of Wyoming Street and that appellants were trespassing on respondents' portion of the street. In addition to damages, respondents sought an order

[1] Respondents were not yet married at the time of the 1991 lawsuit and the suit was filed in Troy Stanton's name alone.

requiring appellants to remove any fixtures, improvements, or other encroachments that intruded upon respondents' parcel. Respondents also sought a legal description of their interest in Wyoming Street that established the physical boundaries of the street.

In an attempt to avoid further litigation, respondents agreed not to file the complaint if appellants signed the quit-claim deed. Respondents also extended the deadline for appellants to answer the complaint to December 3, 2001. No agreement was reached, and respondents filed the complaint on February 20, 2003. Appellants did not answer the complaint, and respondents moved the district court for a default judgment. On March 25, 2003, the district court entered default judgment against appellants, providing a legal description of respondents' interest in Wyoming Street and finding that appellants were trespassing on respondents' parcel. The district court ordered appellants to remove any encroachments.

On June 28, 2007, appellants filed a complaint seeking to set aside the March 2003 default judgment. Appellants alleged that they did not receive notice of filing the February 2003 complaint with the district court or respondents' associated motion for a default judgment. Appellants also alleged that they did not receive notice of the default judgment until August 30, 2006. Appellants claimed that respondents misled the district court at the default hearing by indicating that appellants had been notified of the hearing.

Respondents counterclaimed against appellants for trespass, ejectment, an action to place judicial landmarks on the boundary lines, and damages for attorney fees awarded to respondents but unpaid since 1992. Appellants subsequently amended their complaint

to include a claim for adverse possession, and respondents amended their counterclaim to include a claim for punitive damages.

Respondents moved the district court for partial summary judgment dismissing appellants' claim to vacate the default judgment and granting their claims for ejectment and an interlocutory determination of the boundary lines of Wyoming Street. Appellants also moved for summary judgment, arguing that the default judgment against them was obtained by fraud and should be set aside and that respondents' claim for trespass was barred by the statute of limitations and their claim for ejectment was barred by the doctrine of laches. Appellants further asserted that respondents' claim to enforce the 1992 judgment for attorney fees should be dismissed because more than ten years had passed since the judgment was entered.

On January 4, 2008, the district court referred the fraud issue to the judge who presided over the 2003 default hearing, finding that only the judge who presided over the default hearing could determine whether the 2003 judgment was obtained by fraud. The district court also dismissed respondents' counterclaim to enforce the 1992 attorney-fees judgment, which the parties agreed had become unenforceable. On April 7, 2008, the judge considering the fraud issue found that the 2003 judgment was obtained by fraud and vacated the default judgment.

The district court then considered respondents' motion for summary judgment on the issue of adverse possession, noting that, although respondents did not formally request summary judgment, they spent a "great deal of time arguing in their submissions that summary judgment should be granted in their favor on this claim." The district court

stated that under Minn. Stat. § 541.02 (2008), the adverse possession of real property ripens into title in the adverse possessor where possession is continuous for a period of 15 years. But the district court, relying on *St. Paul, M. & M. Ry. Co. v. Olson*, 87 Minn. 117, 91 N.W. 294 (1902), held that when there is a pending action between parties to a land dispute, the time during which the action is pending cannot be counted toward the period of adverse possession.

Applying *Olson* and Minn. Stat. § 541.02 to appellants' claim for adverse possession, the district court held that appellants could not establish possession of the disputed property for the required 15 years. According to the district court, appellants could claim adverse possession of the land from December 1985 to June 1991. But because there was a pending action between the parties concerning the disputed land from June 1991 to May 1993, appellants could not claim adverse possession of the land during that time period.

Similarly, the district court found that appellants could claim adverse possession of the land from May 1993 to August 2001. But the complaint and summons that respondents sent to appellants in August 2001 tolled the period of adverse possession. Moreover, because the judgment from the 2001 complaint—the 2003 default judgment—was vacated, the 2001 complaint was still pending as of May 2008. Accordingly, appellants could not count the time between August 2001 and May 2008 toward their period of adverse possession. Thus, appellants could only establish adverse possession of the disputed land for a period of 5 years and 7 months between December 1985 and June 1991, and a period of 8 years and 3 months between May 1993 and August 2001, for a

total of 13 years and 10 months. And because appellants' possession fell short of the required 15 years, the district court granted respondents' motion for summary judgment and dismissed, without prejudice, appellants' claim for adverse possession.

The district court also granted summary judgment to respondents on their request for an interlocutory determination of the boundary lines. The district court held that because the 1991 judgment determined that Wyoming Street was 25 feet wide and because this court affirmed that judgment on appeal, appellants were precluded under res judicata from disputing the location and width of the street. As a result, the district court adopted the 1991 finding that Wyoming Street is 25 feet wide and issued a legal description of the street's boundaries consistent with the 1991 judgment. Because the length and width of Wyoming Street could no longer be disputed and because the 1991 judgment awarded one-half of the street to respondents, the district court also partially granted respondents' motion for summary judgment on their ejectment claim, reserving the issue of damages for trial. This appeal follows.

D E C I S I O N

I

Appellants first challenge the district court's grant of summary judgment in favor of respondents on the issue of adverse possession. On appeal from summary judgment, we review the record to determine whether there is any genuine issue of material fact for trial and whether, in granting summary judgment, the district court committed an error of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review the evidence

in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any submitted, 'show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.'" *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quoting Minn. R. Civ. P. 56.03) There is no genuine issue of material fact when the evidence does not "permit reasonable persons to draw different conclusions." *Id.* at 71.

The moving party must show the absence of a genuine issue of material fact. *Anderson v. Minn. Dep't of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005). To defeat a summary-judgment motion, the non-moving party cannot rely on denials or general averments, but must offer specific facts to show that there is a genuine issue of material fact for trial. *See DLH, Inc.*, 566 N.W.2d at 69 (requiring the nonmoving party to respondent to a summary-judgment motion with specific facts). No genuine issue of material fact exists when "the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *Id.* at 71; *see also Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006) (stating that "[a] party need not show *substantial evidence* to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions.").

Appellants argue that the district court incorrectly relied on *Olson* to toll their adverse possession of Wyoming Street. We agree. In *Olson*, the plaintiff claimed title to land that the defendant possessed. 87 Minn. at 118, 91 N.W. at 295. The defendant applied to homestead the property through a United States land office. *Id*. at 119, 91 N.W. at 295. After being denied homestead status, the defendant initiated an appeal that took 11 years to complete. *Id*. During the 11-year period, the land department had exclusive jurisdiction over claims relating to the property such that the plaintiff could not bring a claim in state court to recover the land. *Id.* at 121, 91 N.W. at 296.

After the appeal, the plaintiff brought an action to recover the land. *Id*. at 118, 91 N.W. at 295. The defendant argued that the plaintiff could have maintained an action to recover the property all along, but that the plaintiff was now barred by the statute of limitations. *Id.* at 119, 91 N.W. at 295. The supreme court held that "[w]henever a person is prevented from exercising his legal remedy by some paramount authority, the time during which he is thus prevented is not to be counted against him in determining whether the statute of limitation has barred his right." *Id.* at 120, 91 N.W. at 296.

Here, the district court relied on *Olson* for the general proposition that when there is a pending action between parties to a land dispute, the time during which the action is pending cannot be included in the period of adverse possession. But *Olson* does not stand for this general proposition. *Olson* only prohibits counting the time during which a party is prevented from seeking recovery of disputed land—it does not address whether a party may count the time during which a land action is pending toward the requisite 15-year adverse possession requirement. Further, *Olson* only applies when a party is

prevented from seeking recovery of disputed land by some "paramount authority." *See Holmgren v. Isaacson*, 104 Minn. 84, 86–87, 116 N.W. 205, 206 (1908) (holding *Olson* inapplicable where the plaintiff was at no time prevented by any paramount authority from exercising her legal remedy to have the defendant's claim to the land, and her own title thereto, determined). Because respondents were not prevented by some paramount authority from seeking recovery of their portion of Wyoming Street, *Olson* is inapplicable here and the district court erred by applying *Olson* to toll appellants' period of adverse possession.

But the erroneous application of *Olson* does not require reversal if the district court's decision is otherwise correct. *See In re the Marriage of Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that a reviewing court "will not reverse a correct decision simply because it is based on incorrect reasons"). Although *Olson* does not support the district court's decision, *Holmgren* states the general rule that, in the adverse-possession context, "the commencement of an action [to quiet title and recover property] interrupts the running of the statute of limitations during its pendency, provided the action is prosecuted to final judgment." 104 Minn. at 87, 116 N.W. at 206. Accordingly, appellants' period of adverse possession was properly tolled if either the June 1991 – May 1993 suit or the reopened August 2001 complaint was an action to quiet title and recover possession of disputed land that was prosecuted to final judgment.

Because the August 2001 complaint was reopened, the complaint was not prosecuted to final judgment and does not toll appellants' period of adverse possession. But the June 1991 –May 1993 suit was prosecuted to final judgment. Therefore, if the

June 1991 – May 1993 suit was an action to quiet title and recover the disputed land, the suit tolled appellants' period of adverse possession. Appellants contend that this suit was not an action to quiet title and recover the disputed land. Appellants' claim is contrary to the record.

In the June 1991 – May 1993 suit, respondents alleged that appellants "have exercised exclusive control over the vacated street and have denied [respondent] the right to enjoy the use of any portion of the vacated street." Mr. Stanton sought a declaratory judgment stating that he owned the portion of Wyoming Street lying east of the street's center line, and to enjoin appellants from further trespassing on his portion of Wyoming Street. By asking for equitable relief in the form of a declaratory determination of ownership, Mr. Stanton effectively sought to quiet title in his favor. *See Gabler v. Fedoruk*, 756 N.W.2d 725, 730 (Minn. App. 2008) (stating that an action to quiet title is an equitable action) (citing *Miller v. Hennen*, 438 N.W.2d 366, 371 (Minn. 1989)); *Maeser v. Cook, Voegele & Nelson, P.A.*, 446 N.W.2d 697, 698 (Minn. App. 1989) (noting that there is no sole method of quieting title). Further, by seeking to enjoin appellants from further trespassing on respondents' portion of Wyoming Street, respondents sought to recover the disputed land. As a result, the June 1991 – May 1993 suit was an action to quiet title and recover the disputed land that was prosecuted to final judgment; therefore, the suit tolled appellants' period of adverse possession.

Having concluded that the June 1991 – May 1993 suit tolled appellants' period of adverse possession, we must now determine whether appellants can establish possession

of the disputed land for the 15 years required to state a viable claim under Minn. Stat. § 541.02.

In calculating appellants' period of adverse possession, the district court combined appellant's possession of Wyoming Street before and after the June 1991 – May 1993 suit. But to establish a claim of adverse possession, the disseizor must show that the property was possessed *continuously* for at least 15 years. *See Rogers v. Moore*, 603 N.W.2d 650, 657 (Minn. 1999) (stating the elements necessary for adverse possession). Once the June 1991 – May 1993 suit tolled appellants' period of adverse possession, appellants' possession of Wyoming Street ceased to be continuous. When the continuity of adverse possession is cut off by an action to quiet title, the period of possession prior to the action cannot be tacked on to any post-action possession. *Ford Consumer Fin. Co. v. Carlson & Breese, Inc.*, 611 N.W.2d 75, 77–78 (Minn. App. 2000), *review denied* (Minn. Aug. 17, 2000) . Therefore, appellants' possession before and after the June 1991 – May 1993 suit cannot be tacked together.

Instead, appellants must rely solely on their possession after the June 1991 – May 1993 suit to establish the required 15 years of continuous possession. A 15-year period of continuous possession that commenced in May 1993 would ripen into title in May 2008. But appellants' claim for adverse possession was filed in June 2007—11 months short of May 2008 and the required 15 years.[2] As a result, it is clear from the record that

[2] Although appellants did not amend their complaint to include a claim for adverse possession until November 28, 2007, the amended complaint relates back to the date of the original complaint. Minn. R. Civ. P. 15.03. Even if the amended complaint does not

appellants cannot establish the 15 years of continuous possession required to state a viable claim under Minn. Stat. § 541.02.

Because appellants cannot show that they possessed the disputed portion of Wyoming Street for at least 15 years, they cannot establish a genuine issue of material fact as to their claim for adverse possession. We therefore affirm the district court's grant of summary judgment in favor of respondents on the issue of adverse possession, notwithstanding the district court's erroneous application of *Olson* and improper calculation of appellant's period of possession. *See In re Katz*, 408 N.W.2d at 839 (stating that a reviewing court "will not reverse a correct decision simply because it is based on incorrect reasons.").

Finally, appellants contend that even if the 1991 suit tolled their possession of the land, the period of appeal from October 1992 to May 1993 does not toll their possession. In support of their assertion, appellants rely on *Kane v. Locke*, 218 Minn. 486, 16 N.W.2d 545 (1944). We find *Kane* unavailing to appellants' argument. Further, even if appellants' argument is correct and their post-suit period of possession started in October 1992, they still cannot establish the required 15 years of possession. A 15-year period of adverse possession beginning October 1992 would ripen into title in October 2007. As noted above, appellants brought their adverse possession claim in June 2007—4 months short of October 2007.

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relate back, the November 2007 amended claim was brought 7 months before May 2008 and the required 15 years of possession.

II

Appellants also challenge the district court's grant of summary judgment for respondents on the issues of ejectment and judicial determination of the boundary lines. The district court held that because the 1991 judgment determined that Wyoming Street was 25 feet wide and awarded half of the street to respondents, and because this court affirmed that judgment on appeal, appellants were precluded under res judicata from disputing the location and width of the street. Thus, appellants were prohibited from disputing the boundary lines and respondents' claim for ejectment. The availability of the doctrine of res judicata is a question of law, which we review de novo. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004).

Res judicata is a finality doctrine mandating an end to litigation. *Id*. A final judgment on the merits bars a second lawsuit for the same cause of action. *Id.* Res judicata precludes a party from relitigating a cause of action in a second lawsuit if: "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privities; (3) there was a final judgment on the merits; [and] (4) the estopped party had a full and fair opportunity to litigate the matter." *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007) (quotation omitted). "Res judicata not only applies to all claims actually litigated, but [also] to all claims that could have been litigated in the earlier action." *Hauschildt*, 686 N.W.2d at 840.

Appellants argue that the issues they currently raise in defending against respondents' claims for ejectment and determination of the boundary lines are not based

on the same factual circumstances as were the claims raised in the 1991 suit. We disagree. In their motion opposing summary judgment on the issues of ejectment and determination of the boundary lines, appellants argued that there were "material facts in dispute regarding the vacated road, how wide it was, where the centerline was located, and the parties' respective shares of the vacated road." These "material facts," however, were adjudicated in the 1991 suit.

In the 1991 complaint, respondent Troy Stanton alleged that Wyoming Street was "situated upon the east twenty-five (25) feet of the plat of Comfort Place, and is abutted on the west by [appellants'] real property, and on the east by [respondents'] real property." This allegation pertains to "the vacated road, how wide it was, [and] where the centerline was located." Not only did appellants fail to challenge this allegation, they admitted the allegation in their answer. Because appellants admitted respondents' allegation regarding the vacated road, its width, and placement of the centerline, appellants are precluded under the doctrine of res judicata from relitigating those issues.

In the 1991 suit, the district court also awarded respondents ownership of the 12 1/2 feet of Wyoming Street abutting their land, and awarded appellants ownership of the 12 1/2 feet of road abutting their land, thereby adjudicating the "material issue" of each party's "respective shares of the vacated road." Appellants, therefore, are also precluded from relitigating this issue.

Finally, appellants argue that res judicata is inapplicable here because the 1991 action only determined ownership of the disputed land, not its boundary lines. We rejected a similar claim in *In re Hofstad*, 376 N.W.2d 698, 701 (Minn. App. 1985),

stating that when a district court determines ownership of a disputed property, it necessarily fixes the property's boundary lines. Thus, appellants' claim here is without merit.

In summary, the district court did not err by holding that res judicata precludes appellants from relitigating issues regarding the vacated road, its width, the location of the road's centerline, and each party's share of the road. The district court properly granted summary judgment for respondents on their claims for ejectment and judicial determination of the boundary lines.

III

Appellants argue that their motion for summary judgment on the issue of ejectment should have been granted because respondents' ejectment claim is barred by the doctrine of laches. We review a district court's decision on an issue of laches for an abuse of discretion. *In re the Marriage of Opp v. Opp*, 516 N.W.2d 193, 196 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994).

The purpose of the doctrine of laches is "to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Aronovitch v. Levy*, 238 Minn. 237, 242, 56 N.W.2d 570, 574 (1953). "Application of the doctrine of laches depends on a factual determination in each case." *Harr v. City of Edina*, 541 N.W.2d 603, 606 (Minn. App. 1996). In deciding whether to apply laches, a district court must determine whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, that it would be inequitable to grant the relief requested. *Id.*

The district court found that respondents made several attempts to enforce the 1992 judgment, including writing a letter to appellants in 1994, filing the second lawsuit in 2003, and filing a counterclaim to appellants' 2007 complaint. The district court also found that respondent Troy Stanton attempted to enforce the judgment in 1992 but that led to an altercation between the parties. As a result, the district court declined to apply the doctrine of laches to respondents' claim for ejectment, finding that any alleged delay in respondents' attempt to enforce the 1992 order was not unnecessary or unreasonable. On this record, we cannot say that the district court abused its discretion by declining to apply the doctrine of laches to respondents' claim for ejectment.

IV

The district court dismissed appellants' adverse possession claim without prejudice. On notice of review, respondents contend, and appellants agree, that the dismissal should have been with prejudice.

A district court's designation of "with prejudice" or "without prejudice" must be viewed in light of the basis for the dismissal and is not automatically dispositive of whether a second suit is barred. *Branstrom & Assocs., Inc. v. Cmty. Mem'l Hosp.*, 296 Minn. 366, 367 n.1, 209 N.W.2d 389, 390 n.1 (1973). When an order dismissing an action is final as to a party's right to bring the action again, the dismissal is with prejudice, notwithstanding the designation provided by the district court. *Id.*

Here, as both parties agree, appellants' claim for adverse possession was dismissed on its merits. As such, the dismissal is final as to appellants' right to bring the claim again. Accordingly, we modify the district court judgment to provide that

appellants' adverse-possession claim was dismissed with prejudice. *Cf. Unbank Co. v. Merwin Drug Co.*, 677 N.W.2d 105, 109 (Minn. App. 2004) (holding that a dismissal for failure to join a party did not constitute an adjudication on the merits and was not a dismissal with prejudice).

Affirmed as modified.

Dated: _____ _____
Judge Natalie E. Hudson