STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2271

Jean Simat,
Appellants,

vs.

Carol Trytten, et al.,
Respondents.

Filed June 29, 2010
Reversed and remanded
Stauber, Judge

Itasca County District Court
File No. 31CV08452

Andrew M. Shaw, Shaw & Shaw, P.A., Deer River, Minnesota (for appellants)

Kent E. Nyberg, Kent E. Nyberg Law Office, Ltd., Grand Rapids, Minnesota (for respondents)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Stauber, Judge.

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

STAUBER, Judge

Appellants Jean and Bruce Simat, landowners, challenge the district court's determination that they lacked standing under Minn. Stat. § 559.23 (2008) to bring an action for practical location of boundaries against respondents, Carol Trytten et al., owners of the adjoining land. Because we conclude that appellants have standing to

bring the action, we reverse and remand for entry of the judgment to which the parties stipulated in the event that appellants were determined to have standing.

FACTS

In 1968, the State of Minnesota through Itasca County (the state) leased a tract of land to William Moren, appellants' predecessor-in-interest, under a special-use permit so he could build a cabin on the land. But Moren built his cabin not on the land he had leased but on a parcel (the disputed parcel) of an adjoining tract of land owned by the predecessor-in-interest of respondents. The parties stipulated that appellants and their predecessors have maintained the sole and exclusive use and occupancy of the disputed parcel since 1968.

In 1998, an Itasca County employee noticed that appellants' cabin and part of an outbuilding were on respondents' private property, not on the land appellants leased from the state. The employee communicated this information to one of the lessees and one of the respondents, telling the lessee, "[i]t is your responsibility to reconcile any differences with the private landowner [i.e., respondent]."

In 2007, the state conveyed to appellants fee title to the tract of land they were then leasing. In 2008, appellants brought this action against respondents, alleging that, for more than 15 years, appellants had been in open, actual, exclusive, continuous, and hostile possession of the disputed parcel of respondents' land, and that, because respondents had acquiesced to this common boundary line for more than 15 years, the

boundary was established by the doctrine of practical location of boundaries.[1] The complaint asked the district court to define the boundary as established by practical location and to determine that appellants were the owners in fee of the disputed parcel. Respondents answered that appellants lacked standing to bring the action because appellants had owned the property adjoining the disputed parcel for only a few months.

The parties stipulated to the facts; the issue, i.e., whether appellants had standing to bring an action for adverse ownership and the legal conclusion that, if the district court determined appellants to have standing, they had established the requisite factual basis for ownership of the disputed parcel and judgment would be entered giving them title to it.[2]

On July 6, 2009, after considering the parties' written arguments, the district court concluded that appellants lacked standing. Appellants moved for amended conclusions of law and order. Following a hearing, their motion was denied. They appeal from the denial, and we address the issue put to the district court: whether owners of real property who, prior to owning it, had the right to possess it under a lease, have standing to bring an action for practical location of boundaries against the owners of adjoining property.

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[1] *See Theros v. Phillips*, 256 N.W.2d 852, 858 (Minn. 1977) (stating that boundary by practical location can be established by acquiescing in the boundary for a sufficient period of time to bar a right of entry under the 15-year statute of limitations).

[2] The district court included in its July 6, 2009, Findings of Fact, Conclusion of Law, Order for Judgment, and Judgment the parties' stipulation that, if appellants were determined to have standing, they had "established the requisite factual basis for ownership of the disputed parcel of real property" and "judgment is to be entered by the Court vesting title to said parcel in [them]." This court regards that provision of the stipulation and the district court's order as binding.

D E C I S I O N

An issue of standing is reviewed de novo. *Longrie v. Luthen*, 662 N.W.2d 150, 153 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003). Appellants allege that they have standing under Minn. Stat. § 559.23 (2008), which provides that an action "may be brought *by any person owning land* or any interest therein *against the owner*, or persons interested *in adjoining land*, to have the boundary lines established . . . ." Minn. Stat. § 559.23 (emphasis added). At the time they brought this action in 2008, appellants were "person[s] owning land" suing "the owners . . . [of] adjoining land to have the boundary lines established." Thus, under Minn. Stat. § 559.23, appellants had standing to bring this action.

The district court determined that they lacked standing because "[n]o Minnesota case has decided whether the language 'any person owning land or any interest therein' in Minn. Stat. § 559.23 confers standing to persons claiming by virtue of a former leasehold and the tacking doctrine." The district court's reasoning presents three problems.

First, nothing in Minn. Stat. § 559.23 restricts why, how, or when "any person owning land" acquires ownership of the land, so the fact that appellants leased the land before they purchased has no effect on their standing.

Second, "tacking" is relevant to whether adverse possession or boundary by practical location can be established; it is not relevant to the issue of standing to bring an action. *See Ebenhoh v. Hodgman*, 642 N.W.2d 104, 109 (Minn. App. 2002) ("The possession of successive occupants, if there is privity between them, may be tacked to make adverse possession for the requisite period." (quotation omitted)).

Third, the district court does not explain why the phrase "any person owning land or any interest therein" would exclude appellants either now, when they own the adjoining land, or prior to their acquisition of fee title, when they owned a possessory interest in the adjoining land by virtue of their lease. *See Black's Law Dictionary* 1203 (8th ed. 2004) (defining possessory interest as "[t]he present right to control property, including the right to exclude others, by a person who is not necessarily the owner"). The district court construed the statute as follows: "the word 'owning' seems to modify the word 'land' as well as the phrase 'or any interest therein . . .'" and reasoned that "[u]ntil 2007, [appellants] were lessees, not owners of the property" and therefore lacked standing. But this construes Minn. Stat. § 559.23 to permit only "any person owning land" to bring an action and ignores the "or any interest therein" language. "Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2008). It is possible to construe Minn. Stat. § 559.23 as permitting both "any person owning land" and "[any person owning] . . . any interest therein" to bring an action. We therefore reject the district court's construction.

Appellants had a possessory interest in adjoining land prior to 2007, and, in any event, were owners of adjoining land when they brought the action. We reverse the district court's determination that Minn. Stat. § 559.23 did not confer standing on appellants and remand for entry of judgment giving them fee title to the disputed parcel.[3]

Reversed and remanded.

[3] Appellants also claim standing under common law. Because we conclude that they have standing under the statute, we do not address this claim.