

A-24-0794, Alan Kortmeyer and Carolyn Kortmeyer (Appellants) v. Alyssa Hendrix and Carey Hendrix; Kach 510, LLC; and C&A Complex Management, LLC, and Glen Haven Subdivision Utility Service, LLC. (Appellees)

Seward County, District Judge Rachel A. Daugherty

Attorney for Appellant: Gina M. Elliott (Morrow, Poppe, Watermeier & Lonowski, P.C.)

Attorney for Appellee: Stephen D. Mossman and Andrew R. Spader (Mattson Ricketts Law Firm, LLP)

Civil Action: Adverse Possession

Action taken by Trial Court: Neighboring landowners, the Kortmeyers and the Hendrixes, disputed the boundary between their adjacent residential lots. In July 2023, the Kortmeyers brought an action against the Hendrixes seeking to quiet title to the disputed area on the theory of adverse possession. A party claiming title through adverse possession (which allows a person to claim ownership of land owned by someone else) must prove by a preponderance of the evidence that the adverse possessor has been in (1) actual, (2) continuous, (3) exclusive, (4) notorious, and (5) adverse possession under a claim of ownership for a statutory period of ten (10) consecutive years. The Hendrixes filed a counterclaim also seeking to quiet title to the disputed area.

Following a bench trial, the district court found that the Kortmeyers had failed to prove the necessary elements to support their claim of adverse possession. It reasoned that there was credible evidence that the Kortmeyers commenced improvements to the disputed area beyond routine yard maintenance in the fall of 2003 at the earliest. In Nebraska, routine yard maintenance alone is generally not enough to establish a claim of adverse possession, as it does not constitute a "notorious act" that would alert the titleholder of a claim of ownership. Additionally, the Kortmeyers began to rent the disputed area by at least October 2009 and as a tenant could not claim adverse possession. Therefore, considering the period of the land improvements to the period of renting, the Kortmeyers had not adversely possessed the disputed area for the statutory period of 10 years. The district court also quieted title to the Hendrixes.

Assignments of Error on Appeal: The Kortmeyers assign that the district court erred in finding that they failed to meet their burden to support a claim of adverse possession.

The Kortmeyers' argument centers on whether their possession of the disputed area was notorious and adverse. The Kortmeyers characterize their improvements to the disputed area including the installation of trees, a retaining wall, a multi-tiered garden, and a decorative arch, as more than routine maintenance. As to their rent payments, the Kortmeyers claim that they did not believe the lot they were renting included the disputed area and therefore their possession of the disputed area continued to be adverse.

In their appellate brief, the Hendrixes argue that the Kortmeyers failed to prove the "adverse" element as their use of lot which was inclusive of the disputed area was permissive. The Hendrixes also cite recent legal authority for the proposition that routine lawn maintenance does not establish adverse possession. The Hendrixes assert that the factual and legal conclusions of the district court are correct.