

Case No. A-24-794

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IN THE NEBRASKA COURT OF APPEALS

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ALAN KORTMEYER and CAROLYN KORTMEYER, husband and  
wife,  
Plaintiffs-Appellants,

vs.

ALYSSA HENDRIX and CAREY HENDRIX wife and husband; KACH  
510, LLC; KACH ROBERTS BLDG., LLC; KACH420M, LLC; and C&A  
COMPLEX MANAGEMENT, LLC, and GLEN HAVEN SUBDIVISION  
UTILITY SERVICE, LLC,  
Defendants-Appellees

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APPEAL FROM THE DISTRICT COURT OF  
SEWARD COUNTY, NEBRASKA  
HONORABLE RACHEL A. DAUGHERTY, DISTRICT COURT JUDGE

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**REPLY BRIEF OF APPELLANTS**

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## TABLE OF CONTENTS

Table of Authorities .....	3
Statement of the Basis of Jurisdiction .....	3
Statement of the Case.....	3
Propositions of Law .....	3
Statement of Facts .....	4
Summary of Argument .....	4
Argument .....	4
Conclusion .....	7

## TABLE OF AUTHORITIES

### Cases

<i>Ballard v. Hansen</i> , 33 Neb. 861, 51 N.W.2d 295 (1892) .....	5
<i>Kraft v. Mettenbrink</i> , 5 Neb. App. 344, 349 (1997) .....	6
<i>Petsch v. Widger</i> , 214 Neb. 390, 400 (1983).....	6
<i>Olson v. Fedde</i> , 171 Neb. 704, 107 N.W.2d 663 (1961).....	7
<i>Poulllos v. Pine Crest Homes, LLC</i> , 293 Neb. 115, 118 (2016) .....	7
<i>Siedlik v. Nissen</i> , 303 Neb. 784, 794 (2019).....	8

## STATEMENT OF THE BASIS OF JURISDICTION

Appellants incorporate by reference and reassert their statement of jurisdiction contained in their original brief.

## STATEMENT OF THE CASE

Appellants incorporate by reference and reassert their statement of the case contained in their original brief.

## PROPOSITIONS OF LAW

### I.

The “adverse” element of an adverse possession refers to a “hostile” claim of ownership. An adverse possessor must occupy the land in opposition to any other claimant of the land. *Ballard v. Hansen*, 33 Neb. 861, 51 N.W.2d 295 (1892). The hostile or adverse nature of the occupation ought to give notice to the real owner that their title or ownership is in danger so that he may, within the period of limitations, take action to protect his interest. *Id.*

### II.

An adverse possessor can succeed in his claim even if he does not know he is occupying land not included in his deed or chain of title. *Kraft v. Mettenbrink*, 5 Neb. App. 344, 349 (1997). Although a party does not intend to claim more land than that described by deed, even mistaken intent is sufficient where a party occupies to the wrong line believing it to be the true line. *Id.*

### III.

Intent satisfies the “hostile” or “adverse” requirement of adverse possession. *Petsch v. Widger*, 214 Neb. 390, 400 (1983).

### IV.

No particular act is required to establish “actual possession.” *Olson v. Fedde*, 171 Neb. 704, 107 N.W.2d 663 (1961).

### V.

If an occupier’s physical actions on the land constitute visible and conspicuous evidence of possession and use of the land, that will generally be sufficient to establish that possession was notorious. *Poulllos v. Pine Crest Homes, LLC*, 293 Neb. 115, 118 (2016).

Nonenclosing improvements to land, such as erecting buildings or planting groves or trees, which show an intention to appropriate the land to some useful purpose, are sufficient. *Id* at 119.

## **VI.**

“A claimant of title by adverse possession must show the extent of his or her possession, the exact property which was the subject of the claim of ownership, the exact property which was the subject of the claim of ownership, that his or her entry covered the land up to the line of his or her claim, and that he or she occupied adversely a definite area sufficiently described to found a verdict upon the description. This standard requires that the claimant provide to the trial court a precise legal description rather than general descriptions based on landmarks.” *Siedlik v. Nissen*, 303 Neb. 784, 794 (2019) (citations omitted).

## **STATEMENT OF FACTS**

Appellants incorporate by reference and reassert their statement of facts contained in their original brief.

## **REPLY ARGUMENT**

Appellants incorporate by reference the argument contained in their original brief and provide the argument herein in reply to Appellees’ brief.

## **ARGUMENT**

### **I. APPELLANTS ESTABLISHED THE ADVERSE ELEMENT OF ADVERSE POSSESSION**

Appellees maintain that the focal point of their argument is that the Appellants have failed to establish the “adverse” element of their claim. Appellees allege that the Appellants use of the Disputed Property was permissive.

The “adverse” element of an adverse possession refers to a “hostile” claim of ownership. An adverse possessor must occupy the land in opposition to any other claimant of the land. *Ballard v. Hansen*, 33 Neb. 861, 51 N.W.2d 295 (1892). The hostile or adverse nature of the occupation ought to give notice to the real owner that their title or ownership is in danger so that he may, within the period of limitations, take action to protect his interest. *Id.*

Appellants have presented evidence that they adversely possessed the Disputed Property from approximately 1990 until the time of trial. Appellees have suggested that this court consider two distinct periods: (a) from 1990 when the Appellants purchased Lot 27 until approximately 2004 when they erected the retaining walls and (b) from approximately 2004 until 2021.

Appellants gave notice to other claimants of their occupation of the Disputed Property from 1990 through approximately 2004. Appellants testified that they planted trees in the Disputed Property within this period of time. (138:1-8). The Appellants also maintained underground plumbing fixtures and used it to store campers, vehicles, and trailers. (10:13-21). Carolyn Kortmeyer also testified that the Appellants plants between 25 and 30 trees, built a three-tiered flower garden, a fence, and an arch with vines. (133:15-23). A reasonable owner or claimant would likely see this as a claim of ownership.

After the Appellants improved and maintained the Disputed Property for 14 years, they erected an extensive, multi-layered, retaining wall and did a myriad of landscaping on the Disputed Property. (82:2-25; 83:1-21; Ex. 9, pg. 31). At this point in time, the trees that the Appellants had previously planted, were as tall as the house. (Ex.9, pg. 33). Appellants produced evidence that the retaining wall was erected some time in 2004 or 2005 and was still being maintained and improved in 2014. (Ex. 9, pg. 31-33). Appellants testified at trial that they had maintained, improved, and otherwise

acted as owners of the Disputed Property from 1990 until the date of trial. (82:7-18).

Throughout the period of time material to this dispute, the Appellants did believe they were the rightful owners in fee of the Disputed Property. (77:3-23). An adverse possessor can succeed in his claim even if he does not know he is occupying land not included in his deed or chain of title. *Kraft v. Mettenbrink*, 5 Neb. App. 344, 349 (1997). Although a party does not intend to claim more land than that described by deed, even mistaken intent is sufficient where a party occupies to the wrong line believing it to be the true line. *Id.* Intent satisfies the “hostile” or “adverse” requirement of adverse possession. *Petsch v. Widger*, 214 Neb. 390, 400 (1983).

Appellees apparent argument that the Appellants used the Disputed Property with permission evades all logic. Appellants have testified that they believed they owned the Disputed Property, therefore they would need not ask any party for permission to use the Disputed Property. Further, Appellants have met their burden of establishing the adverse element of their adverse possession claim through their maintenance, improvement, and occupation of the Disputed Property.

## **II. APPELLANTS ESTABLISHED ADVERSE POSSESSION PRIOR TO ANY ALLEGED LANDLORD-TENANT RELATIONSHIP**

Appellees further argue that the Appellants’ claim for adverse possession fails to establish the “adverse” element because the Appellants leased Lot 26 from the Appellees. Alan Kortmeyer testified that he and his wife did not start leasing Lot 26 until 2018. (99:12-16). Appellees also presented evidence at trial alluding to the fact that a landlord-tenant relationship began in 2013. (Ex. 47, pg. 255-260).

In either case, Appellants established the adverse possession under a claim of ownership for the statutory period of 10 years well

before any alleged relationship began. Additionally, Appellants have testified that through the time period in dispute, they never understood any such landlord-tenant relationship to include the Disputed Property.

### **III. APPELLANTS ESTABLISHED THE NOTORIOUS ELEMENT OF ADVERSE POSSESSION**

Appellants have produced ample evidence to establish the notorious element of their adverse possession claim from 1990 to 2000 and from 2000 after. No particular act is required to establish “actual possession.” *Olson v. Fedde*, 171 Neb. 704, 107 N.W.2d 663 (1961). If an occupier’s physical actions on the land constitute visible and conspicuous evidence of possession and use of the land, that will generally be sufficient to establish that possession was notorious. *Poulllos v. Pine Crest Homes, LLC*, 293 Neb. 115, 118 (2016). Nonenclosing improvements to land, such as erecting buildings or planting groves or trees, which show an intention to appropriate the land to some useful purpose, are sufficient. *Id* at 119.

Contrary to the Appellees arguments, the Appellants have established notorious occupation of the Disputed Property through their planting of trees, creation of garden beds, construction of a retaining wall, and other improvements done. (138:1-8; Ex. 9, pg. 31-33). Appellants have evidenced more than routine yard maintenance and have established the notorious element of their adverse possession claim.

### **IV. APPELLANTS PROVIDED A PRECISE LEGAL DESCRIPTION TO THE TRIAL COURT**

The District Court did not decide the issue of whether or not the Appellants ample description of the Disputed Property. “A claimant of title by adverse possession must show the extent of his or her possession, the exact property which was the subject of the claim of ownership, the exact property which was the subject of the claim of

ownership, that his or her entry covered the land up to the line of his or her claim, and that he or she occupied adversely a definite area sufficiently described to found a verdict upon the description. This standard requires that the claimant provide to the trial court a precise legal description rather than general descriptions based on landmarks.” *Siedlik v. Nissen*, 303 Neb. 784, 794 (2019) (citations omitted). In *Siedlik*, the Court found a lack of a description due to the Plaintiffs’ argument that the disputed property was an imperfect line, relevant to sprinkler heads that were installed over the actual property line, and therefore the legal description of which the Plaintiffs argued was adversely possessed, did not match the actual property presented as being so possessed. *See generally Siedlik v. Nissen*.

To the contrary, Appellants produced evidence in the form of what is titled “Kortmeyer Addition Replat”. (Ex. 16, pg. 49). Alan Kortmeyer testified that Exhibit 16 illustrated Lots 27, 28, and 29, Block 3, Glen Haven Subdivision Replat in part of the Southeast Quarter of the southeast Quarter of Section 20, Township 10 North, Range 3 East of the sixth P.M., Seward County, Nebraska. (75:1-25). Exhibit 16 clearly illustrates the exact dimension of the Disputed Property and provides the trial court with a precise legal description of the same.

### **CONCLUSION**

For all the foregoing reasons, Appellant respectfully requests this Court to reverse the lower court’s decision. Appellants have satisfied all necessary elements of adverse possession of the Disputed Property. They have shown that they actually, continuously, exclusively, notoriously, and adversely possessed the Disputed Property under a claim of ownership for a period of at least 10 years, beginning in 1990.

Respectfully submitted,



ALAN KORTMEYER, and CAROLYN  
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### **PROOF OF SERVICE**

I hereby certify that a true and correct copy of the foregoing  
Reply Brief of Appellants was e-filed on the 2nd day of April, 2025.  
Proof of service will be made and provided by e-service on the  
Appellees' attorney.

/s/Liam R. Wakeman  
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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the word count and  
typeface requirements set forth in Neb. Ct. R. §2-103. This brief was  
prepared using Microsoft Word 365 and contains 1,824 words (1,880  
words in total less the 56 words in this Certificate of Compliance).

/s/Liam R. Wakeman  
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# Certificate of Service

I hereby certify that on Wednesday, April 02, 2025 I provided a true and correct copy of this *Reply Brief* to the following:

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