

SUPREME COURT OF SOUTH DAKOTA

Ashby v. Oolman

748 N.W.2d 132 (S.D. 2008) · No. No. 24534 · Decided April 2, 2008

SUMMARY

The Supreme Court of South Dakota affirmed the circuit court's judgment for Jon and Carol Oolman in a dispute over a strip of land between the parties' properties in Lead, South Dakota. The court held that Eugene and Judith Ashby failed to establish ownership through adverse possession under SDCL 15-3-15, 15-3-10, or 15-3-12 because they lacked qualifying claim and color of title, proof that taxes were paid on the disputed strip, a substantial enclosure, and sufficient actual, continuous use.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Sabers, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	April 2, 2008
DOCKET	No. 24534
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ashby appealed from a circuit court judgment entered after a bench trial that rejected his claims to establish a property boundary, trespass, wrongful occupation, and adverse possession, and dismissed his complaint.
STANDARD OF REVIEW	The trial court's findings of fact are reviewed for clear error, while conclusions of law are reviewed de novo. Issues of statutory interpretation and application are also reviewed de novo.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential
PARTIES	Eugene R. Ashby, Judith A. Ashby v. Jon Oolman, Carol Oolman

TOPICS

- adverse possession
- title disputes
- real estate
- standard of review
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Ashby established adverse possession under SDCL 15-3-15 based on claim and color of title, ten years of possession, and payment of taxes.
2. Whether Ashby established adverse possession under SDCL 15-3-10 or SDCL 15-3-12 through the required possession, substantial enclosure, cultivation, improvement, and other traditional elements of adverse possession.

HOLDINGS

1. Ashby did not establish adverse possession under SDCL 15-3-15 because he failed to prove possession under a good-faith claim and color of title and failed to prove that taxes had been assessed and paid on the disputed strip.
2. Ashby did not establish adverse possession under SDCL 15-3-10 because the disputed strip was not protected by a substantial enclosure and the evidence did not otherwise establish the statutory requirements.
3. Ashby did not establish adverse possession under SDCL 15-3-12 because he failed to prove actual, open, visible, notorious, continuous, and hostile occupation of the disputed strip, or that it was substantially enclosed, usually cultivated, or improved.

KEY QUOTATIONS

“Proof of the individual elements of adverse possession present questions of fact for the trial court, while the ultimate conclusion of whether they are sufficient to constitute adverse possession is a question of law.” (¶ 10)

“An invisible line from stump to pine tree to a hidden run-down fence is not largely enclosing the property and does not meet the definition of substantial enclosure.” (¶ 21)

“The evidence in the record demonstrates Ashby's deed did not include the disputed property, nor has Ashby fulfilled the elements of adverse possession under any statute.” (¶ 25)

FACTUAL BACKGROUND

Ashby owned 803 Searle Street in Lead, South Dakota, adjacent to property owned by Oolman at 809 Searle Street. Ashby claimed that a roughly twenty-five-foot strip between the properties belonged to him based on the description in an earlier deed, historical use, and remnants of a fence and trees. Oolman obtained a survey and began constructing a garage after the City of Lead issued a building permit. The evidence showed that Ashby rarely used or mowed the disputed strip, while occupants of Oolman's property maintained it, and that Ashby's deed described only the north portion of Lot 4 rather than the disputed strip.

PROCEDURAL HISTORY

Ashby sued Oolman after Oolman began constructing a garage on a disputed strip of land between their properties. Following a bench trial, the circuit court found for Oolman and dismissed the complaint. The South

Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- City of Deadwood v. Summit, Inc., 2000 SD 29, ¶ 9, 607 N.W.2d 22, 25
- Lewis v. Moorhead, 522 N.W.2d 1, 3 (S.D. 1994)
- Lien v. Beard, 478 N.W.2d 578, 580 (S.D. 1991)
- Fin-Ag, Inc. v. Feldman Bros., 2007 SD 105, ¶ 19, 740 N.W.2d 857, 862
- Rotenberger v. Burghduff, 2007 SD 7, ¶ 8, 727 N.W.2d 291, 294
- State v. \$1,010 in Am. Currency, 2006 SD 84, ¶ 8, 722 N.W.2d 92, 94
- Andree v. Andree, 291 N.W.2d 788, 790 (S.D. 1980)
- Taylor v. Tripp, 330 N.W.2d 542, 543-44 (S.D. 1983)
- Sullivan v. Groves, 42 S.D. 60, 172 N.W. 926 (1919)
- Cuka v. Jamesville Hutterian Mutual Society, 294 N.W.2d 419, 422 (S.D. 1980)
- Schultz v. Dew, 1997 SD 72, ¶ 13, 564 N.W.2d 320, 323