

STATE OF INDIANA
2002 041257
COUNTY OF LAKE

LAKE CIRCUIT COURT
2002 FEB 24 9:15
CROWN POINT, INDIANA
RECORDER

Filed in Open Court

EDWIN A. MASSA, et al,
Plaintiffs

FEB 24 1998

CAUSE NO.
45C01-9409-CP-01944
45D05-9501-CP-00075
(Consolidated)

-vs-

Anna N. Antow
CLERK LAKE CIRCUIT COURT

MILFORD CHRISTENSON, et al,
Defendants

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT**

Plaintiffs appeared with attorney Michael Massa, and Defendants Mosny & Christenson, Inc., Michael Poe and Gail Poe appeared with attorney David Wickland, on November 11, 1997, and November 12, 1997. Cause submitted to the Court for trial on the merits on the issues of Plaintiffs' First Amended Complaint For Adverse Possession and Action to Quiet Title to Real Estate, filed herein on December 18, 1996.

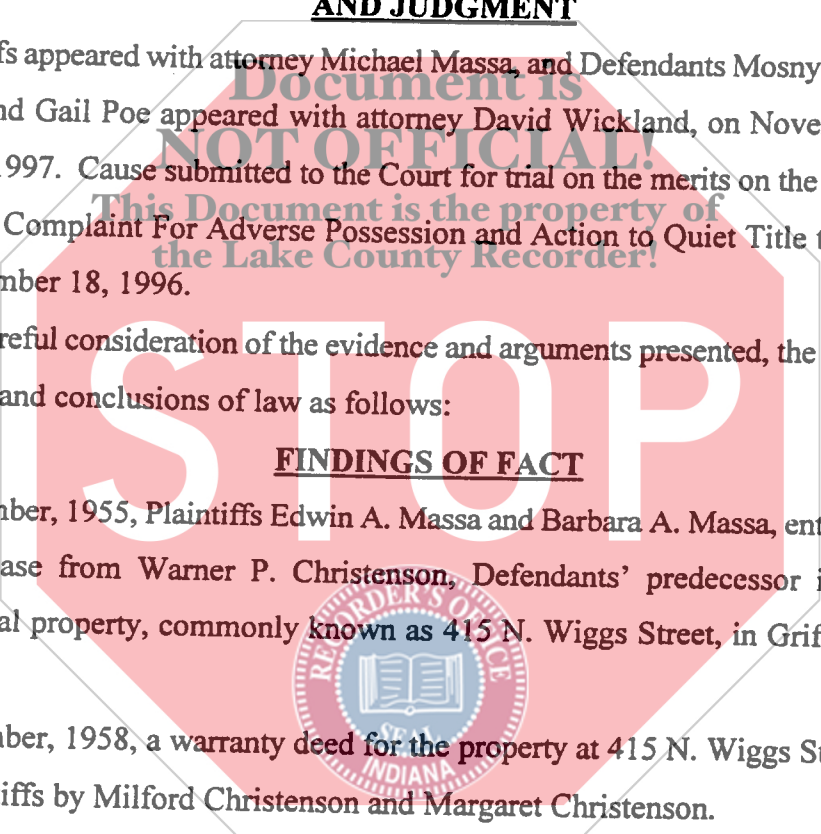
Upon careful consideration of the evidence and arguments presented, the Court hereby enters findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. In December, 1955, Plaintiffs Edwin A. Massa and Barbara A. Massa, entered into a contract to purchase from Warner P. Christenson, Defendants' predecessor in interest, certain residential property, commonly known as 415 N. Wiggs Street, in Griffith, Lake County, Indiana.
2. In December, 1958, a warranty deed for the property at 415 N. Wiggs Street was issued to the Plaintiffs by Milford Christenson and Margaret Christenson.
3. The approximate dimensions of the originally purchased lot include a 100 foot frontage along Wiggs Street to a 150 foot depth eastward, a 100 foot rear property line and back 150 feet westward to Wiggs Street.
4. Plaintiffs built a home on the property approximately 60 feet long and 29 feet wide, and

*Atty Michael Massa
2633 415 N Street
Griffith Ind IN 46322*

*BD
23.00
cash*



- moved their family into the home in December, 1958.
5. East of Plaintiffs' property, behind Plaintiffs' rear lot line, were, and still are, other vacant undeveloped parcels of real estate belonging to Defendants' predecessor in interest, Warner Christenson, and later to the Defendants herein.
 6. Plaintiffs are now claiming ownership by adverse possession of an area contiguous to their original lot and adjacent to their rear property line, and which covers the rear portions of three of Defendants' vacant parcels.
 7. Warner Christenson passed ownership of the vacant parcels behind Plaintiffs' property to Milford Christenson and Margaret Christenson, who later transferred the property to Defendant Mosny & Christenson, Inc., a family-held and family-controlled corporation. Milford and Margaret Christenson were initially Defendants herein, but were dismissed out because they no longer own an interest in the property in dispute.
 8. Defendants Michael Poe and Gail Poe are the owners of an irrevocable option to purchase the three vacant parcels, contingent upon the outcome of this cause of action.
 9. The evidence showed that in the spring of 1959, the Plaintiffs plowed a large portion of the property immediately to the east of their purchased lot and planted a 90 foot by 60 foot garden on that land. Prior to being plowed, the area in dispute had been lowland covered by prairie grass.
 10. Around the same time, the Plaintiffs also drained the lowland portions of the contiguous area, and began mowing and maintaining an additional area around the garden. The Plaintiffs cleared the land, removed some trees, and planted other trees, as well as berry bushes, grapevines and flowers.
 11. Plaintiff testified that at the time the Plaintiffs started using the area behind their lot, they did not know who owned it. Plaintiff Edwin Massa testified that the Plaintiffs considered the area to be useless to anyone else because it was landlocked and appeared to be largely inaccessible.
 12. The Plaintiffs cleared, landscaped and maintained an area directly behind their property that stretched from the Plaintiffs' east lot line across the rear portions of the three vacant parcels

- to the railroad right of way.
13. The evidence showed that the Plaintiff used the disputed area as an integral part of their yard; the Plaintiff's children, grandchildren, guests and pets enjoyed free run of the area.
 14. The Plaintiffs have exerted continuous control over the disputed property since 1959; the Plaintiffs have continued to maintain and mow the area, to garden on that property, to clear away trees and unwanted vegetation and to plant and grow desirable trees, bushes and flowers, and to use the property for family recreational uses.
 15. The Plaintiffs erected a make-shift storage shed on the property.
 16. The Plaintiffs conducted all of these activities in plain view, and with the knowledge of their neighbors and others in the neighborhood.
 17. The Plaintiffs use of the land was openly visible to onlookers and to public passersby.
 18. The Plaintiffs allowed only their family and their invitees to use the property.
 19. The Plaintiffs chased trespassers off the disputed property, and did so under claim of right.
 20. The Plaintiffs acted in all outward ways as the owners of the property.
 21. Plaintiff Edwin Massa informed Defendant Michael Poe in 1992 that the disputed property belonged to the Plaintiffs.
 22. Defendant Michael Poe testified that he observed that the disputed area had been cleared and maintained by the Plaintiffs for some time.
 23. Defendants Poes had actual and constructive notice that the Plaintiffs were claiming ownership of the disputed area.
 24. During the entire time that the Plaintiffs were engaging in these activities on the property, no one representing the Defendants in any way ever told the Plaintiffs to stop their use of the property.
 25. Plaintiff Edwin Massa testified that he decided to take control of that area without asking or receiving permission from anyone.
 26. Milford Christenson testified that he recalled giving Plaintiffs permission to use the disputed area for a garden. Milford Christenson also testified that he owned hundreds of properties over the years, and had many times granted permission to garden on his parcels.

27. The Court finds it unlikely that Milford Christenson recalls specifically granting Plaintiffs permission to garden in a conversation that occurred nearly forty years ago.
28. Plaintiff Edwin Massa testified that he did not find out who owned the vacant parcels until 1971, and that at that time he made inquiry as to the possibility of purchasing the area the Plaintiffs were using as yard.
29. In 1971, Milford Christenson refused to sell Plaintiffs the disputed parcel.
30. The Plaintiffs continued to use the disputed property in the same way they had used it since 1959.
31. The evidence presented clearly showed that the Plaintiffs' use of the land was visible, open and notorious; the Plaintiffs' activities were conducted in plain sight and were seen and commented upon by neighbors and visitors.
32. The evidence clearly showed that the Plaintiffs' use of the land was exclusive, hostile and under claim of right, in that the Plaintiffs allowed only their family and their invitees upon the land, and actively chased off all others.
33. The Court finds that the evidence showed that the use of the disputed area by the Plaintiffs was without permission or agreement of the Defendants or their predecessors in interest.
34. The evidence established that the Plaintiff's use of the disputed property was actual, visibly open and notorious, exclusive, under claim of ownership, hostile and continuous for the entire ten-year statutory period, from 1959 to 1969.
35. The evidence showed that as of 1969, the Plaintiffs had fulfilled all statutory requirements for ownership of the disputed property by adverse possession.
36. The Plaintiffs have never paid real estate taxes on the disputed property.
37. The Plaintiffs have paid all taxes and assessments for the years 1958 through 1997, according to tax duplicates, for the property to which they own legal title.
38. The Plaintiffs' titled land is contiguous to the disputed area which the Plaintiffs are claiming by virtue of adverse possession; the Court finds that this matter is in the nature of a border dispute, which exempts the Plaintiffs from the requirement under IC 32-1-20-1 that they must show payment of the real estate taxes on the disputed land during their adverse

- possession.
39. In July 1994, Defendants Michael Poe and Gail Poe purchased the three parcels from Defendant Mosny & Christenson, Inc., that included the disputed areas; the Poes intended to construct an eight-unit condominium building on the site.
 40. At the September 1994 Town of Griffith Plan Commission meeting, the Plaintiffs remonstrated against the Poes' proposed project.
 41. Plaintiffs commenced this action against the Poes, the title owners at that time, for adverse possession and quiet title the same month.
 42. As a result of the filing of this action, the Defendant Mosny & Christenson, Inc., repurchased the three parcels from the Poes, and granted the Poes an irrevocable option to repurchase the parcels, contingent on the outcome of this action and the Defendant corporation's ability to pass clear title to the land to the Poes.
 43. After the Defendant corporation reacquired title to the land, the corporation filed and pursued a quiet title action in Lake Superior Court Room Five in Hammond, Indiana, under cause number 45D05-9501-CP-00075, while this action in this Court was pending.
 44. The Room Five action was ordered consolidated with this action on December 12, 1996.
 45. Mosny & Christenson, Inc., pursued the second lawsuit, the Room Five action, until it was dismissed, refusing the Massas' offer of voluntary joinder into the matter pending in this Court, and then sought and received Court-ordered joinder into the first lawsuit through a Motion to Correct Errors.
 46. The pursuit of a second duplicative collateral attack when the same action was already pending in this Court exhibits bad faith and pursuit of a frivolous claim, contrary to IC 34-1-32-1, and entitles the Plaintiffs to recover costs and attorney fees from Defendant Mosny & Christenson, Inc., expended in defending against the Room Five action.

CONCLUSIONS OF LAW

1. To establish title to real estate by adverse possession, the Plaintiffs must show that their possession was actual, visible, open and notorious, exclusive, under claim of ownership and continuous for the statutory period of ten years, pursuant to IC 34-1-2-2(6).

2. The Court finds that the Plaintiffs have carried their burden of proof as to the elements of adverse possession.
3. Under IC 34-1-2-2(6), the ten year period required to establish adverse possession runs as a statute of limitation against the title landowner, and after ten years bars an action by the titled landowner to quiet title or eject the adverse possessor.
4. Where the adverse possessor has fulfilled the statutory requirements for the full ten years, and the title holder failed to take legal action to quiet title or eject the adverse possessor within the ten years, the adverse possessor becomes the fee simple owner of the property without the necessity of any further legal action.
5. The requirement that the adverse possessor must have paid the real estate taxes on the disputed property is waived where the disputed property is contiguous to the property the adverse possessor owns by legal title.
6. In the matter presently before the Court, the disputed property is contiguous to the Plaintiffs' property; therefore the Plaintiffs' failure to pay the real estate taxes on the disputed area is not fatal to their claim of adverse possession.
7. Plaintiffs' began their adverse possession of the disputed property in 1959; as the title holders failed to initiate a legal action to protect their ownership within ten years, Plaintiff's adverse possession ripened into legal ownership as of 1969.
8. Plaintiffs' 1971 inquiry as to possible purchase of the land has no effect on the Plaintiffs' ownership.
9. Defendant Mosny & Christenson, Inc.'s attempted sale of the property to Defendants Poes in 1994, and the repurchase by the Defendant Corporation had no effect on the Plaintiffs' ownership of the disputed area.
10. Plaintiffs have proven their entitlement to attorney fees under IC 34-1-32-1 against Defendant Mosny & Christenson, Inc., for its bad faith in filing and pursuing an action involving the same facts, parties and issues in another Court with full knowledge that the matter was pending in this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Plaintiffs EDWIN A. MASSA and BARBARA A. MASSA are owners of the disputed property herein by virtue of adverse possession.
2. The legal description of the land acquired by the Plaintiffs by said adverse possession is as follows:

That part of the northeast 1/4 of the southeast 1/4 of Section 34, Township 36 North, Range 9 west of the 2nd principal meridian described as: commencing at a point 100 feet north of the north line of Miller Street which is 150 feet east of the east line of Wiggs Avenue; thence north along a line which is parallel to the east line of Wiggs Avenue, a distance of 100 feet; thence east along a line parallel to the north line of Miller Street a distance of 93.04 feet to a point on the southwesterly right-of-way-line of the Chesapeake & Ohio Railroad Co.; thence southeasterly along said right-of-way line a distance of 125 feet to a point parallel to the north line of Miller Street; thence west along a line parallel to the north line of Miller Street a distance of 155.8 feet more or less to the point of the beginning, all in the Town of Griffith, Lake County, Indiana.

Legal title in fee simple is hereby found to have vested in the Plaintiffs in 1969.

3. The Court hereby quiets Plaintiffs' title to said property against the Defendants herein.
4. Plaintiffs are entitled to an award of attorney fees against Defendant Mosny & Christenson, Inc., in an amount which will be determined at a separate hearing. Said hearing to determine attorney fees is hereby set for the 24th day of March, 1998, at 1:30 o'clock p.m.
5. Plaintiffs' oral motion, made at trial, for a view of the premises is hereby denied.

CLERK: TR 72 NOTICE.

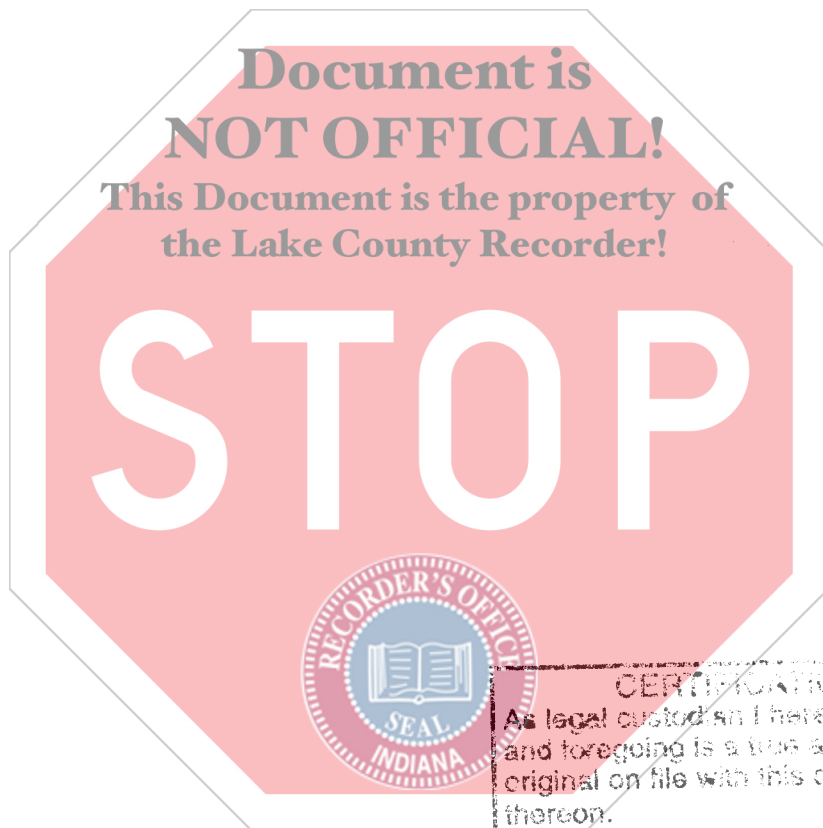
ALL OF WHICH IS HEREBY ORDERED, ADJUDGED AND DECREED, this 24th day of February, 1998.



Joseph A. Anderson
JUDGE LAKE CIRCUIT COURT

DISTRIBUTION:

M. Massa
D. Wickland



CERTIFICATION OF CLERK
As legal custodian I hereby certify that the above and foregoing is a true and complete copy of the original on file with this office in the cause stated thereon.

Witness my hand and the seal of the court this
02 day of MAY 2002
Anna N. Anton
Clerk of the Lake Circuit and Superior Courts
By: Jaurja Smith
Deputy Clerk