STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF WASHINGTON **TENTH JUDICIAL DISTRICT**

Court File 82-CV-19-1788

Kristine Bruer and
Barbara Heenan,

Plaintiffs,

vs.

Elaine Pumaren, John Doe,
Jane Roe, XYZ Corporation,
and other persons unknown
claiming any right, title, estate,
interest, or lien in the real estate
described in the complaint herein,

Defendants.

ORDER FOR PARTIAL SUMMARY JUDGMENT AND DISMISSAL OF COUNTER-CLAIMS

This matter came on for hearing before Mary E. Hannon, Judge of District Court, at the Washington County Courthouse in Stillwater, Minnesota on February 19, 2020 on Plaintiff's Motion for Summary Judgment. Thomas B. Olson and Katherine L. Wahlberg appeared on behalf of Plaintiff Kristine Bruer and Barbara Heenan (Plaintiffs). Defendant Elaine Pumaren appeared personally and was represented by Barry C. Lundeen. The Court heard argument from both parties and took the matter under advisement as of February 19, 2020.

Based upon the submissions of the parties and arguments of counsel, and on all the files, records, and proceedings herein, the Court hereby makes the following:

FINDINGS OF FACT

I. Background

1. This is a property dispute involving real property located in Washington County, Minnesota (the Subject Property). The full legal description of the Subject Property is contained in the Complaint filed with the court on April 17, 2019.

2. The Subject Property's original owner, at least to the extent relevant to this case, was Calvin Russell Bruer (Cal).

3. Plaintiffs Kristine Bruer and Barbara Heenan are Cal's daughters. Defendant Elaine Pumaren is Cal's former spouse.[1]

4. Cal and Defendant Pumaren married in 1971. They purchased the Subject Property on or about August 17, 1973, and took title by Deed recorded August 29, 1973 as Document No. 314957 in the office of the Register of Deeds (Recorder) in and for Washington County.

5. At the time of the purchase by Cal and Defendant Pumaren, the Subject Property had a cabin and a shed on it; Cal and Defendant Pumaren moved to and resided in the Panama Canal Zone during their marriage.

6. Cal and Defendant Pumaren divorced pursuant to a Judgment and Decree (J&D) entered July 20, 1981. The J&D awarded the Subject Property to both Cal and Defendant Pumaren as joint tenants.

7. According to Plaintiffs, Defendant Pumaren agreed in 1986 to sell her interest in the Subject Property to Cal. To that end, on May 13, 1986, Cal and Defendant Pumaren

[1] Plaintiffs' Complaint included unnamed Defendants to accommodate possible other parties claiming an interest in the Subject Property, but none have appeared since the Complaint's publication in May 2019.

executed two quit claim deeds; one identifying a $5000 payment and another identifying a $25,000 payment from Cal as consideration for Defendant Pumaren's interest in the Subject Property.

8. For reasons that remain disputed, those quit claim deeds were never recorded. Plaintiffs speculate that the deeds may have been rejected for recording because the lawyer who notarized them erred by listing his own name as the person acknowledged instead of Defendant Pumaren.[2]

II. Cal's Use of the Subject Property Between 1986 and 2018

9. Cal died on November 10, 2018. The parties do not dispute that Cal and Defendant Pumaren had no contact in the thirty-plus years between the alleged execution of the quit claim deeds and Cal's death. In fact, Defendant Pumaren admits that she has not entered the Subject Property since at least 1986.

10. During that period, Cal consistently took actions as if he solely owned the Subject Property, without consulting or otherwise providing notice to Defendant Pumaren.

11. Cal began staying at the Subject Property during the summer months immediately following the alleged execution of the quit claim deeds in 1986. His daughter, Plaintiff Heenan, lived in the cabin on the Subject Property with her then-boyfriend throughout 1986 and 1987. Cal ensured that he, a local friend, or Plaintiff Heenan maintained the Subject Property by trimming bushes and mowing the lawn.

12. Since May 13, 1986, Cal solely paid the real estate taxes associated with the Subject Property. Plaintiffs paid the real estate taxes due in 2019. During the period of

[2] Plaintiff Bruer has since located the lawyer—Mr. Douglas Frison—who then executed an affidavit as to his acknowledgement of the quit claim deeds he notarized in 1986.

1986 through 2019, Defendant Pumaren made no contribution to the real estate taxes, assessments, or any other expenses related to the Subject Property.

13. Cal made several improvements to the Subject Property beginning in 1987, when he caused railroad ties to be delivered to the Subject Property and used them to build a retaining wall along the property's bluff line. Over the course of the next decade, Cal also had a mound septic system and lawn sprinkler system installed, purchased and installed a wrought iron gate at the driveway's entrance to the Subject Property, and replaced the roof on the utility shed. In 2008, Cal applied for and received a building permit for a detached garage to replace sheds that had burned down on the Subject Property, and later built the garage.

14. In 1987, Cal applied for building permits to demolish the cabin on the Subject Property and build a new log cabin in the same location. To that end, he had surveys completed, designs drawn by architects, and logs purchased for shipment to the Subject Property. Cal worked to overcome significant legal hurdles in his attempts to build a log cabin and other improvements on the Subject Property, a process that lasted more than a decade:

a. Washington County initially denied Cal's application for building permits because his proposed construction was too close to the Subject Property's bluff line. Thus, Cal obtained a fifty-foot variance from Washington County in 1989 and from the Minnesota Department of Natural Resources in 1990.

b. In 1995, Cal sought legal advice on whether to request a greater variance. He requested a variance from the Washington County Board of Adjustment

and Appeals to build closer to the bluff line with a different design, but was denied.

c. Shortly afterwards, Cal hired a design company to draw up construction plans for an addition and garage for the Subject Property. Having those plans, Cal hired an attorney to attempt another variance request/appeal to Washington County, but was again denied in 1996.

d. Cal, through his attorney, attempted to negotiate building plans directly with the Washington County Attorney's Office. Washington County eventually issued a building permit to construct a 17-foot-wide lateral addition on to the existing cabin.

e. Cal continued communication with the Denmark Township Town Board and attended meetings to gain support to build his log cabin. In 1998, the Denmark Township Supervisors even sent a letter to the Washington County Board of Adjustment and Appeals in support of his request.

15. Along with the permit dispute, Cal participated in other litigation involving the Subject Property:

a. In 1991, Denmark Township informed Cal that he was to be compensated for land taken from the Subject Property to build a road. Defendant Pumaren was not named in the correspondence.

b. In 1993, Cal solely entered into an agreement with Northern States Power Company granting them an easement necessary to install, operate, and maintain its gas services on the Subject Property in exchange for the Company providing natural gas service.

c. Cal defended legal title to the Subject Property in two different registration actions as to neighboring properties, one in 1994 and another in 1998. In both actions, he 1) hired legal counsel; and 2) conveyed portions of the Subject Property to neighbors by quit claim deed. Further, in each action, neighbors conveyed portions of their property by quit claim deed solely to Cal.

16. Cal made these improvements and took these legal actions without consultation with or participation by Defendant Pumaren.

III. The Instant Dispute

17. Bessie M. Bruer (Cal's wife at the time of his death), as Cal's attorney-in-fact, conveyed all right, title, and interest in the Subject Property to Plaintiffs (Cal's daughters) by Quit Claim Deed dated October 30, 2018 and recorded November 5, 2018 as Document No. 417315 in the Office of the County Recorder for Washington County.

18. Defendant Pumaren disputes the authenticity of the 1986 quit claim deeds purporting to sever her interest as a joint tenant of the Subject Property pursuant to the 1981 J&D dissolving her marriage to Cal. She asserts ownership of the Subject Property through survivorship rights as a joint tenant.

19. Plaintiffs commenced this action in April 2019 by serving Defendant Pumaren with a Complaint seeking declaratory relief that they are Subject Property's fee owners and Defendant Pumaren has no right, title, or interest in the Subject Property and money damages for slander of title to the Subject Property.

20. Defendant Pumaren filed an Answer and Counterclaim on May 16, 2019, seeking declaratory judgment that Plaintiffs have no valid title or interest in the Subject Property and money damages for slander of title to the Subject Property.

21. On January 6, 2020, Plaintiffs filed a Notice of Motion and Motion for Summary Judgment and filed an Amended Motion for Summary Judgment on January 22, 2020. The authenticity of the 1986 quit claim deeds is not at issue in Plaintiffs' motion. Rather, Plaintiffs seek summary judgment on the ground that, regardless of the quit claim deeds' validity, Cal, their predecessor in interest, obtained sole ownership of the Subject Property through adverse possession by occupying and improving it for the over 30 years since the quitclaim deeds were supposedly executed.

22. Both parties timely submitted written arguments on the motion. The Court heard oral argument on February 19, 2020, and took the matter under advisement on that date.

Now, therefore, based upon the foregoing Findings of Fact, the Court hereby makes the following:

CONCLUSIONS OF LAW

I. Applicable Legal Standards

1. "The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01.

2. On a motion for summary judgment, the Court views the evidence in the light most favorable to the non-moving party. *See Nicollet Restoration, Inc. v. City of St. Paul,* 533 N.W.2d 845, 847 (Minn. 1995). Thus, because the authenticity of the 1986 quit claim

deeds remains an issue of material fact, the Court will assume for the purpose of this motion that they are irrelevant. The only issue before the Court is whether Cal obtained title to the Subject Property through adverse possession.

3. Normally, "[i]n order to establish title by adverse possession, the disseizor must show, by clear and convincing evidence, an actual, open, hostile, continuous, and exclusive possession for the requisite period of time which, under [Minnesota law], is 15 years. *Ehle v. Prosser*, 197 N.W.2d 458, 462 (Minn. 1972).

4. The only adverse possession element Defendant Pumaren disputes in this case is hostility. Specifically, she argues that her "close familial" relationship with Cal as his former spouse and joint tenant precludes Plaintiffs from demonstrating that Cal's use of the Subject Property was sufficiently hostile to sustain an adverse possession claim at the summary judgment stage.

5. In this particular case, a threshold question for the Court is whether the adverse possession analysis changes because of Defendant Pumaren's relationship with Cal, either 1) as his former spouse or 2) as his joint tenant.

A. Defendant Pumaren Does Not Share a "Close Familial Relationship" with Cal

6. Defendant Pumaren cites case law indicating that the standard for demonstrating hostility for adverse possession purposes is heightened in matters involving family members. *See Boldt v. Roth*, 618 N.W.2d 393, 396–97 (Minn. 2000) ("[T]he nature of close familial relationships is such that mere actual, open, exclusive, and continuous possession is not enough to give notice to a family member that a use is hostile …. [T]he presence of the close familial relationship gives rise to 'the inference, if not the

presumption' that the use is permissive.") (quoting *Wojahn v. Johnson*, 297 N.W.2d 298, 306 (Minn.1980)).

7. In *Myers v. Myers*, for example, the Minnesota Court of Appeals determined that a former spouse did not establish adverse possession against her ex-husband even where her use of the subject property was "was actual, open, continuous, and exclusive." 368 N.W.2d 391, 393 (Minn. Ct. App. 1985). In *Meyers*, like in this matter, the parties divorced and had limited contact with one another for nearly thirty years. *Id.* During that period, the plaintiff occupied and improved the former marital homestead after the defendant moved to California. *Id.* The only contact the parties had after their separation was a child support dispute concerning their three children. *Id.* The trial court determined that the plaintiff had sustained an adverse possession claim on the former marital homestead. The Court of Appeals reversed, ruling that the plaintiff never provided the defendant adequate notice of her hostile intent to adversely possess the property against his claim of right. *Id.* at 393–94. Specifically, the Court of Appeals determined that the parties' familial relationship as co-parents created "the 'inference' referred to in *Wojahn*" that the plaintiff's use of the subject property was permissive, and therefore "proof of the inception of possession … hostile to the record owner's title must [have been] clear and unequivocal." *Id.* at 393. Because no "clear and unequivocal" notice ever occurred, the Court of Appeals concluded that the plaintiff's use of the former marital homestead was permissive.

8. Defendant Pumaren asks this Court to reach the same conclusion here. She argues that 1) she and Cal, like the *Meyers* parties, shared a close familial relationship as former spouses; and 2) Plaintiffs cannot point to any specific instance in which Cal

provided clear and unequivocal notice of his intent to possess the Subject Property hostile to her interest as joint tenant. Neither component of Defendant Pumaren's argument persuades this Court.

9. The *Meyers*' relationship is distinguishable from that between Cal and Defendant Pumaren in one key respect: although their marriage was dissolved, the Meyers maintained a familial relationship because they were co-parents to three children, for which the defendant remained obligated to pay child support. Nothing of the sort bound Cal and Defendant Pumaren after their divorce in 1981. Thus, by definition, any "familial relationship" between Cal and Defendant Pumaren *dissolved* upon dissolution of their marriage. Minn. Stat. § 518.06, subd. 1 ("A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties.") This Court rejects the notion that they should be considered family members for adverse possession purposes, and therefore cannot conclude that the *Wojahn* inference requiring clear and unequivocal notice of Cal's intent to possess the Subject Property hostile against Defendant Pumaren's interest as joint tenant applies here.

B. No Clear Authority Exists to Alter the Adverse Possession Analysis Merely Because of Defendant Pumaren's Status as a Joint Tenant

10. Defendant Pumaren also argues that Plaintiffs cannot sustain their adverse possession claim because the legal authority on which they rely focuses exclusively on cases involving tenants in common—not joint tenants, as Defendant Pumaren and Cal were according to their J&D.

11. But in making this argument, Defendant Pumaren can point to no authority suggesting courts must analyze adverse possession claims differently between parties

who are joint tenants as opposed to tenants in common; nor has she offered any persuasive policy arguments explaining why courts should do so, or how the analysis should change. "A joint tenancy is distinguished from a tenancy in common by the fact that a surviving joint tenant succeeds to the person with whom he shared the joint tenancy." *Hendrickson v. Minneapolis Fed. Sav. & Loan Ass'n*, 161 N.W.2d 688, 690 (Minn. 1968). It is unclear, at least to this Court, why this difference alone would render the weight of adverse possession case law, which historically has primarily involved parties who are tenants in common, inapplicable to this case.

12. Defendant Pumaren's argument suggests that the Court might infer a reason to approach the adverse possession analysis differently by the express award of the Subject Property to Cal and herself as joint tenants rather than tenants in common. By default, "grants and devises of lands, made to two or more persons, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy." Minn. Stat. § 500.19. Thus, the express grant by their J&D of the Subject Property to Cal and Defendant Pumaren as joint tenants may suggest that, for whatever reason, they did not intend to be tenants in common after their divorce. However, the record before the Court does not clarify any particular reason.

13. Neither party could cite clear authority—statutory, case law, or otherwise—applying the adverse possession elements to a joint tenancy. At oral argument, Defendant Pumaren's counsel conceded that no binding case law distinguishes joint tenants from tenants in common with respect to adverse possession claims. In its own research, this Court found no such authority either.

14. Absent authority compelling a different analysis, the Court will analyze Plaintiffs' adverse possession claim under existing case law, regardless of the fact that Cal and Defendant Pumaren were awarded the Subject Property as joint tenants rather than tenants in common.

II. Plaintiffs Have Established That Cal Obtained Fee Title to the Subject Property Through Adverse Possession

15. The only disputed legal issue in this motion is whether Cal's use of the Subject Property establishes hostile possession. "[T]here is a presumption that [a] cotenant holds lands with the implicit permission of the others even if the possessor should maintain the property as his own …." *Adams v. Johnson*, 136 N.W.2d 78, 81 (Minn. 1965). "In order to overcome this presumption … there must be an express or implicit ouster … consisting of acts of declarations of hostility sufficient to indicate a truly adverse possession and to start the statute of limitations." *Id.* "An express notice is not necessary; an intention to hold the land adversely to the owners may be derived from all the circumstances of the case, especially the amount and nature of control exercised by the cotenant over the property." *Id.*; *see also Beitz v. Buendiger*, 174 N.W. 440, 441 (Minn. 1919) ("[A]fter long lapse of time the court may, even in [cases where original entry was permissive], presume ouster from exclusive enjoyment.").

16. Even where the Court infers that Cal's initial occupation of the Subject Property in 1987 was permissive in light of Defendant Pumaren's joint tenancy, the record establishes an implicit ouster of her interest over the course of the next thirty-plus years. Beginning with his plans to build a log cabin throughout the late 1980s and early 1990s, Cal consistently acted as the Subject Property's sole owner, making improvements and taking legal actions related to the Subject Property without consulting or seeking input from

Defendant Pumaren. Cal's installation of a locked wrought iron entrance gate is indicative of measures he took to exclude others—presumably including Defendant Pumaren—from entering the Subject Property without his permission. All of these actions, most notably the 1994 and 1998 title registration actions, were noticeable to the public and would have been discovered by Defendant Pumaren had she taken any action consistent with that of a joint tenant over the course of the over thirty-year period between 1986 and 2018.

17. Therefore, the Court derives from these circumstances a hostile ouster by Cal of Defendant Pumaren's interest in the Subject Property as joint tenant.

18. "[T]he party claiming title by adverse possession or the party's ancestor, predecessor, or grantor, or all of them together, shall have paid taxes on the real estate in question at least five consecutive years of the time during which the party claims these lands to have been occupied adversely." Minn. Stat. § 541.02.

19. Defendant Pumaren admits that she has made no contribution towards the real estate taxes associated with the Subject Property since at least 1986. Cal and Plaintiffs have made all tax payments between 1986 and the present. Thus, Cal and Plaintiffs' use of the Subject Property is consistent with the requirements under Minnesota law to sustain an adverse possession claim.

20. Having determined that Cal's use and possession of the Subject Property establish adequate hostility to sustain that element of Plaintiffs' adverse possession claim, the Court concludes that that no genuine issue of material fact exists to defeat Plaintiffs' summary judgment motion.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby makes the following:

ORDER

1. Plaintiffs Bruer and Heenan's Motion for Summary Judgment to declare title by adverse possession is hereby **GRANTED**.

2. Defendant Pumaren's Counterclaims are hereby **DISMISSED with PREJUDICE**.

3. Plaintiffs Bruer and Heenan are the fee owners of the Subject Property and Defendant Pumaren holds no right, title, or interest in the Subject Property.

4. Plaintiffs Bruer and Heenan are awarded their costs and disbursements incurred herein as the prevailing parties against Defendant Pumaren.

5. Plaintiffs Bruer and Heenan's slander of title claim is **RESERVED** for further proceedings. Counsel for all parties shall meet and confer and advise the Court as to further scheduling requests.

6. The Washington County Court Administrator shall serve a true and correct copy of this Order upon counsel for the parties and any self-represented litigants.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Signed at Chambers
Stillwater, Minnesota

Hannon, Mary (Judge)
May 13 2020 2:06 PM

Mary E. Hannon
Judge of District Court

I hereby certify that the foregoing order constitutes the Judgment of the Court

May 13 2020 4:15 PM

May 13 2020 4:15 PM