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Alan Kortmeyer and Carolyn Kortmeyer, husband and wife, appellants, v. Alyssa Hendrix and Carey Hendrix, wife and husband, et al., appellees.

___ N.W.3d ___

Filed August 28, 2026. No. S-24-794.

1. **Equity: Quiet Title.** A quiet title action sounds in equity.
2. **Equity: Appeal and Error.** On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination.
3. **Equity: Evidence: Appeal and Error.** In an appeal of an equity action, where credible evidence is in conflict on a material question of fact, an appellate court considers and may give weight to the fact that the trial court heard and observed the witnesses and their manner of testifying and accepted one version of the facts rather than another.
4. **Adverse Possession: Proof: Time.** A party claiming title through adverse possession 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 10 years.
5. **Adverse Possession: Notice.** To be effective against the true owner, acts of dominion over land allegedly adversely possessed must be so open, notorious, and hostile as to put an ordinarily prudent person on notice of the fact that the lands are in the adverse possession of another.
6. **Adverse Possession.** If an occupier's physical actions on the land constitute visible and conspicuous evidence of possession and use of the land, such will generally be sufficient to establish that possession was notorious.
7. ____. Acts of routine yard maintenance, without more, are not sufficiently notorious to warn the titleholder that another is claiming or using the land for his or her own purpose.

8. ____. 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 to put an ordinarily prudent person on notice of the fact that the lands are in the adverse possession of another.
9. ____. A possession that is adverse is under a claim of ownership.
10. **Adverse Possession: Words and Phrases.** Claim of ownership or claim of right means "hostile," and these terms describe the same element of adverse possession.
11. ____: ____. The word "hostile," when applied to the possession of an occupant of real estate holding adversely, is not to be construed as showing ill will, or that the occupant is an enemy of the person holding the legal title, but means an occupant who holds and is in possession as owner and therefore against all other claimants of the land.
12. **Adverse Possession: Notice.** The purpose of prescribing the manner in which an adverse holding will be manifested is to give notice to the real owner that his or her title or ownership is in danger so that the real owner may, within the period of limitations, take action to protect his or her interest.
13. **Adverse Possession.** It is the nature of the hostile possession that constitutes the warning, not the intent of the claimant when he or she takes possession.
14. **Landlord and Tenant: Title: Leases.** It is an ancient and well-settled rule of law that a tenant cannot, while occupying the premises, deny his or her landlord's title. This is so even where the tenant was in possession before the lease was made.
15. **Leases: Property: Evidence.** Where parties litigate over a lease and are fully acquainted with the premises, any uncertainty in the description of the property contemplated in the lease may be cured by the introduction of record evidence accurately describing the land.
16. **Judgments: Issue Preclusion.** Issue preclusion bars the relitigation of a finally determined issue that a party had a prior opportunity to fully and fairly litigate.
17. ____: ____. Issue preclusion applies where (1) an identical issue was decided in a prior action, (2) the prior action resulted in a final judgment on the merits, (3) the party against whom the doctrine is to be applied was a party or was in privity with a party to the prior action, and (4) there was an opportunity to fully and fairly litigate the issue in the prior action.
18. **Issue Preclusion.** Issue preclusion applies only to issues actually litigated.

19. **Actions: Parties.** Privity requires, at a minimum, a substantial identity between the issues in controversy and a showing that the parties in the two actions are really and substantially in interest the same.

Petition for further review from the Court of Appeals, RIEDMANN, Chief Judge, and MOORE and WELCH, Judges, on appeal thereto from the District Court for Seward County, RACHEL A. DAUGHERTY, Judge. Judgment of Court of Appeals affirmed.

Liam R. Wakeman and Gina M. Elliott, of Morrow, Poppe, Watermeier & Lonowski, P.C., L.L.O., for appellants.

Stephen D. Mossman and Andrew R. Spader, of Mattson Ricketts Law Firm, L.L.P., for appellees.

FUNKE, C.J., CASSEL, STACY, PAPIK, FREUDENBERG, BERGEVIN, and VAUGHN, JJ.

BERGEVIN, J.

INTRODUCTION

This case concerns an action to quiet title to real property based on a claim of adverse possession. The appellants, Alan Kortmeyer and Carolyn Kortmeyer, petition for further review of the Nebraska Court of Appeals' affirmance of the district court's judgment,[1] which dismissed their complaint to quiet title to the disputed property and denied their requests for a declaratory judgment and a permanent injunction. Because we find that the Kortmeyers did not establish each element of adverse possession for the statutory period of 10 years, we affirm the judgment of the Court of Appeals.

BACKGROUND

The Kortmeyers own lot 27, a parcel of real property located in a subdivision in Seward County, Nebraska. The appellees, Alyssa Hendrix and Carey Hendrix, by and through

[1] See *Kortmeyer v. Hendrix*, No. A-24-794, 2025 WL 2911190 (Neb. App. Oct. 14, 2025) (selected for posting to court website).

their corporations, which are also appellees in this case, own lot 26, a parcel of real property adjacent to the western border of lot 27.

In 2021, both parties had lot 26 surveyed. The two surveys revealed that approximately 7 feet along the western boundary of lot 27 was part of lot 26. This area is referred to as "the disputed property." The Kortmeyers filed an action to quiet title to the disputed property in 2023. They also sought a declaratory judgment declaring that they met the requirements of adverse possession and a permanent injunction directing the Hendrixes to not use or damage the disputed property. The Hendrixes raised a counterclaim to quiet title to the disputed property. The matter proceeded to a bench trial on the parties' claims in 2024.

District Court

At trial, Alan and Carolyn testified, as did Alyssa. From them, the following evidence was adduced.

Some residents of the subdivision where lots 26 and 27 are located bought their plot of land, while others rented. Both groups would pay the owner of the subdivision a monthly fee for services provided to the lots, such as water, sewer, garbage, road repair, and snow removal.

The Kortmeyers bought lot 27 in 1990. At that time, the owner and manager of the subdivision owned lot 26. The Kortmeyers testified that they always understood themselves to be the owners of the disputed property and held themselves out as such. After purchasing lot 27, the Kortmeyers maintained the disputed property by weeding, mowing grass, and trimming trees. Beginning in the fall of 2003, the Kortmeyers made improvements to the disputed property. They planted a three-tiered flower garden, added a retaining wall, trees, a fence, and a decorative arch. Alan testified that "dating back to at least 2010," the Kortmeyers began renting lot 26 from the owner of the subdivision. By this time, they had purchased a mobile home located on lot 26 that previously belonged to a renter.

The Hendrixes bought the subdivision, including lot 26, in 2018. The Kortmeyers paid the Hendrixes rent for lot 26 from 2018 until sometime in 2021. In February 2021, the Hendrixes sent the Kortmeyers a letter informing them that the disputed property belonged to the Hendrixes.

Alyssa testified that she did not know the boundaries of lot 26 or that the disputed property was part of lot 26 until their survey was completed in 2021. The Hendrixes offered their survey as evidence at trial.

In a decree, styled as an order, the district court denied the Kortmeyers' requests to quiet title and for a declaratory judgment. The court also denied the Kortmeyers' request for a permanent injunction. The court granted the Hendrixes' counterclaim to quiet title to the disputed property.

The district court determined that the Kortmeyers failed to prove the elements of adverse possession of the disputed property by a preponderance of the evidence. Specifically, the court found that the earliest date the Kortmeyers could have adversely possessed the disputed property was in the fall of 2003 when they began making improvements, including building the retaining wall and planting the trees. The court further found that the Kortmeyers failed to meet the minimum 10-year statutory period for adverse possession because they began renting lot 26 in 2009.

The Kortmeyers timely appealed.

Court of Appeals

On appeal, the Kortmeyers assigned that the district court erred in determining that they failed to meet their burden of proof for adverse possession of the disputed property.

The Court of Appeals affirmed the district court's judgment. It agreed with the district court's finding that the Kortmeyers' actions on the disputed property did not make their possession notorious until 2003. It also agreed with the district court's finding that the Kortmeyers failed to meet the 10-year statutory period for an adverse possession claim

because they began paying rent for lot 26 "dating back to at least 2010."

The Court of Appeals further found that the previous owner of the subdivision gave the Kortmeyers a possessory right to use lot 26, which included the disputed property. The Court of Appeals determined that this possessory right over lot 26 was controlling, regardless of whether the parties believed the rental agreement included the disputed property.

The Kortmeyers filed a petition for further review, which we granted.

ASSIGNMENT OF ERROR

The Kortmeyers assign, restated, that the Court of Appeals erred in affirming the district court's denial of the Kortmeyers' quiet title claim to the disputed property.

STANDARD OF REVIEW

[1,2] A quiet title action sounds in equity.[2] On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination.[3]

[3] In an appeal of an equity action, where credible evidence is in conflict on a material question of fact, an appellate court considers and may give weight to the fact that the trial court heard and observed the witnesses and their manner of testifying and accepted one version of the facts rather than another.[4]

ANALYSIS

[4] A party claiming title through adverse possession must prove by a preponderance of the evidence that the adverse possessor has been in (1) actual, (2) continuous, (3) exclusive,

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[2] *Goldie v. McNeil & Co. Builders*, 321 Neb. 84, 32 N.W.3d 626 (2026).

[3] *Id.*

[4] *Id.*

(4) notorious, and (5) adverse possession under a claim of ownership for a statutory period of 10 years.[5]

The Kortmeyers maintain that they satisfied all the elements for adverse possession of the disputed property under Nebraska law. However, they specifically challenge the Court of Appeals' determination that (1) their possession of the disputed property did not become notorious until 2003 and that (2) their use of the disputed property became permissive "beginning in 2009."[6] We address each argument in turn.

NOTORIOUS

[5,6] To be effective against the true owner, acts of dominion over land allegedly adversely possessed must be so open, notorious, and hostile as to put an ordinarily prudent person on notice of the fact that the lands are in the adverse possession of another.[7] If an occupier's physical actions on the land constitute visible and conspicuous evidence of possession and use of the land, such will generally be sufficient to establish that possession was notorious.[8]

The Kortmeyers contend that their claim of ownership was adverse and hostile in nature beginning in 1990 and continuing to the date of trial. While they concede that "[u]nder ordinary conditions, an adverse possessor must do more than routine maintenance,"[9] they argue that their possession was adverse beginning in 1990 because all parties concerned with the disputed property believed that the Kortmeyers owned it.

The Hendrixes argue that the lower courts correctly found that the Kortmeyers did not prove adverse possession of the disputed property by a preponderance of the evidence. They

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[5] *Id.*; Neb. Rev. Stat. § 25-202 (Reissue 2016).

[6] Brief for appellant in support of petition for further review at 6.

[7] *Goldie v. McNeil & Co. Builders, supra* note 2.

[8] *Id.*

[9] Brief for appellant in support of petition for further review at 5.

argue that the Kortmeyers' possession of the property was not notorious until 2003.

[7] Upon our de novo review, we find that the Kortmeyers did not make their possession of the disputed property notorious until 2003, at the earliest. Acts of routine yard maintenance, without more, are not sufficiently notorious to warn the titleholder that another is claiming or using the land for his or her own purpose.[10] Between 1990 and 2003, the Kortmeyers did no more than routine yard maintenance on the disputed property by weeding, mowing grass, and trimming trees.

[8] 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 to put an ordinarily prudent person on notice of the fact that the lands are in the adverse possession of another.[11] The Kortmeyers made such improvements to the disputed property when they added a flower garden, a retaining wall, a fence, and a decorative arch and planted trees. However, they did not begin these improvements until 2003.

Our analysis is unchanged if the Kortmeyers, the Hendrixes, and the previous owner of lot 26 all believed that the Kortmeyers owned the disputed property. The Kortmeyers were still required to prove each element of adverse possession by a preponderance of the evidence.[12] This includes proving that their acts of dominion over the disputed property were so open, notorious, and hostile as to put an ordinarily prudent person on notice of the fact that the disputed property was in the adverse possession of another.[13] We agree with the Court of Appeals that the Kortmeyers' possession did not become notorious until 2003, at the earliest.

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[10] *Poullos v. Pine Crest Homes*, 293 Neb. 115, 876 N.W.2d 356 (2016).

[11] See *Goldie v. McNeil & Co. Builders, supra* note 2.

[12] See *id.*

[13] See *id.*

Permissive Use

We next address the Kortmeyers' claim that the Court of Appeals erred by finding that their use of the disputed property became permissive beginning in 2009.

[9-13] A possession that is adverse is under a claim of ownership.[14] Claim of ownership or claim of right means "hostile," and these terms describe the same element of adverse possession.[15] The word "hostile," when applied to the possession of an occupant of real estate holding adversely, is not to be construed as showing ill will, or that the occupant is an enemy of the person holding the legal title, but means an occupant who holds and is in possession as owner and therefore against all other claimants of the land.[16] The purpose of prescribing the manner in which an adverse holding will be manifested is to give notice to the real owner that his or her title or ownership is in danger so that the real owner may, within the period of limitations, take action to protect his or her interest.[17] It is the nature of the hostile possession that constitutes the warning, not the intent of the claimant when he or she takes possession.[18]

The Kortmeyers contend that even if their use of the disputed property did not become adverse until 2003, they still met the 10-year statutory period for an adverse possession claim. To support this contention, the Kortmeyers argue that when they bought the mobile home on lot 26 in 2009 and made monthly payments to the previous owner of the subdivision, they had no landlord-tenant relationship. They maintain that the monthly payments were for services rendered to lot 26, rather than rental payments for the use of the land.

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[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

Additionally, the Kortmeyers argue that the previous owner of the subdivision shared their belief—that the Kortmeyers owned the disputed property. According to the Kortmeyers, this shows there was no meeting of the minds concerning payment for services provided to the disputed property.

In support of their argument that they possessed the disputed property adversely and without permission, the Kortmeyers rely on the Court of Appeals' unpublished memorandum opinion in *Glenhaven Village v. Kortmeyer*.[19] At trial, they offered a certified copy of the opinion as evidence. The matter underlying the opinion involved an unrelated dispute between the Kortmeyers and the previous owner of the subdivision. In the opinion, the Court of Appeals found that the agreement between the Kortmeyers and the previous owner was not a rental agreement, but was a contract implied in law for the Kortmeyers to pay the reasonable value of the services rendered to lot 26.

The Hendrixes argue that, in this case, the Court of Appeals correctly found that the Kortmeyers' payments relating to lot 26 made their use of the disputed property permissive. They further argue that the Kortmeyers' distinction between services and rent "elevates form over substance."[20]

[14] On our de novo review, we find that the Kortmeyers' use of the disputed property became permissive in 2010. Contrary to their argument on appeal, both Alan and Carolyn testified at trial that they paid rent for the use of lot 26 from "at least 2010" to 2021. It is an ancient and well-settled rule of law that a tenant cannot, while occupying the premises, deny his or her landlord's title.[21] This is so even where the tenant was in possession before the lease was made.[22]

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[19] *Glenhaven Village v. Kortmeyer*, 20 Neb. App. xviii (No. A-12-288, Apr. 16, 2013).

[20] Brief for appellees in opposition to petition for further review at 2.

[21] *Carson v. Broady*, 56 Neb. 648, 77 N.W. 80 (1898).

[22] *Id.*

[15] The rent paid by the Kortmeyers for lot 26 included the disputed property. Where parties litigate over a lease and are fully acquainted with the premises, any uncertainty in the description of the property contemplated in the lease may be cured by the introduction of record evidence accurately describing the land.[23]

The Hendrixes offered their survey of lot 26 into evidence. Both parties acknowledge this survey accurately reflects that the disputed property is on lot 26. Further, both parties agree that lot 26 was the land being rented. Thus, the Kortmeyers' use of the disputed property became permissive when they began renting lot 26, on which the disputed property sits, in 2010.

[16-18] The Kortmeyers' argument that the Court of Appeals' 2013 memorandum opinion in *Glenhaven Village* establishes that they did not rent the disputed property from the previous owner of lot 26 is an argument for issue preclusion. Issue preclusion bars the relitigation of a finally determined issue that a party had a prior opportunity to fully and fairly litigate.[24] The doctrine applies where (1) an identical issue was decided in a prior action, (2) the prior action resulted in a final judgment on the merits, (3) the party against whom the doctrine is to be applied was a party or was in privity with a party to the prior action, and (4) there was an opportunity to fully and fairly litigate the issue in the prior action.[25] Issue preclusion applies only to issues actually litigated.[26]

[19] The Hendrixes were not a party to the action underlying the Court of Appeals' 2013 memorandum opinion, nor were they in privity with the previous owner of the subdivision who was a party. We have said that privity requires,

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[23] See *Johnson v. City of Lincoln*, 174 Neb. 837, 120 N.W.2d 297 (1963) (citing *Boyd v. McElroy*, 105 Colo. 527, 100 P. 2d 624 (1940)).

[24] *Benda v. Sole*, 319 Neb. 745, 25 N.W.3d 68 (2025).

[25] *Id.*

[26] *Id.*

at a minimum, a substantial identity between the issues in controversy and a showing that the parties in the two actions are really and substantially in interest the same.[27] The action underlying the Court of Appeals' 2013 memorandum opinion concerned the Kortmeyers' failure to pay the previous owner of lot 26 for services rendered to that lot. The Hendrixes did not have an interest in lot 26 until 2018. Thus, the Kortmeyers' argument to preclude the issue of whether they rented lot 26 fails.

Statutory Period

To prevail on their claim to quiet title to the disputed property, the Kortmeyers were required to establish that each element of adverse possession was satisifed for a period of 10 years, as required by statute.[28] We have determined that the Kortmeyers' possession of the disputed property was not notorious until 2003 when they began making nonenclosed improvements. We have further determined that their use of the disputed property became permissive in 2010 when they began paying rent on lot 26. As a result, the Kortmeyers did not adversely possess the disputed property for the statutory period of 10 years.

CONCLUSION

The Kortmeyers failed to prove by a preponderance of the evidence that their possession of the disputed property became notorious before 2003. Further, the Kortmeyers failed to prove that they maintained a hostile claim of ownership over the disputed property after 2010. Therefore, the Kortmeyers failed to prove adverse possession for the statutory period of 10 years. Accordingly, we affirm the judgment of the Court of Appeals.

Affirmed.

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[27] *Boone River, LLC v. Miles*, 314 Neb. 889, 994 N.W.2d 35 (2023), *modified on denial of rehearing* 315 Neb. 413, 996 N.W.2d 629.

[28] See § 25-202.