

The Driveway Case

Objective: To better understand how courts analyze and decide a case using “elements.”

[Case Summary](#)

[Case Study](#)

[Case Map](#)

[What Do You Think?](#)

1. [Open Use Case](#)

[Map](#)

[Answer](#)

2. [Exclusive Use Case](#)

[Map](#)

[Answer](#)

3. [Hostile Use Case](#)

[Map](#)

[Answer](#)

4. [Actual Use Case](#)

[Map](#)

[Answer](#)

5. [Continuous Use Case](#)

[Map](#)

[Answer](#)

CASE SUMMARY

The case of “Who owns the Driveway” in the Inside Straight video has facts that are similar to many cases heard by the courts. In these cases, one person believes the property is hers and acts like it belongs to her (uses it, plants trees on it, etc.) while another person claims rights to the property because of the legal description of the property. The legal description describes the boundaries of the property that someone owns. The courts look at six elements in deciding who actually owns the property. 1) Was the property used for at least 15 years? 2) Was the use open, obvious? 3) Was the use exclusive? 4) Was the property used in a hostile way? 5) Was the use continuous? 6) Was the use actual?

Information contained on these pages was developed by the Minnesota Center for Community Legal Education for use only as a teaching aid by Minnesota educators. The case summaries included in this unit are those of the author(s) and do not represent the position or opinion of the Minnesota Court system, justices, judges or employees.

CASE STUDY

Driveway Case

The girl in the driveway case says that her family won the case in the Minnesota Court of Appeals because her family proved two things:

- 1) That they used the driveway for over fifteen years; and
- 2) That they made improvements to the driveway. They had receipts showing that they had paid for paving it.

The legal theory that allowed the girl's family to become the legal owners of the driveway in question is called **adverse possession**. When you want to get control of a piece of real property which you don't actually own, you can try to adversely possess it. You do this by acting as though the property really does belong to you. There are certain ways to do this in order to win. You must "possess" or use the land for **at least fifteen years**, like the family in the driveway case. You must also be **open** about your use of the property. That is, your use must be obvious.

The driveway case family certainly was "open" about their use. Look at the [driveway case map](#). You can see that the girl's family drove right in front of their neighbor's house probably every day for as long as the daughter can remember. And, the girl's family blacktopped the dirt road eighteen years ago. In doing this, they weren't hiding their use of the driveway. They were very "open" about it. Their use was obvious.

The fifteen-year requirement and the need to be "open" about the use of the property are only two of six things (or elements as they are legally called), which must be proven to win an adverse possession case. This means that the girl's family must have also proven four other things about their use of the driveway.

They must have proven that their use was **exclusive**.

Exclusive means you use the property in a way that excludes others. On the driveway case map, you can see that the driveway that goes on the neighbor's property leads to the main road in front of the two houses. The driveway is not used by everyone who drives on the main road, but is used only, or exclusively, by the girl's family and their guests. (You can never adversely possess public property because others use the land with you so your use of it is never exclusive.)

They must have proven that their use was **hostile**.

Hostile use does not mean that you are an angry, mean user of the property. It simply means that you use the property in a way that claims your exclusive ownership as against everyone else. When the girl's family blacktopped the driveway, that act was "hostile," or contrary, to the rights of their neighbors.

They must have proven that their use was **continuous**.

Continuous means that the adverse possessor's use was not interrupted in any way for the fifteen years. The girl in the driveway case said her family used the driveway "for as long as she could remember" and there were no claims that her family stopped their use of it at any time during the fifteen-year requirement.

They must have proven that their use was **actual**.

Actual has to do with the nature of the possession. If, in the driveway case, the girl's family only used the driveway a few times a year for the full fifteen years, their use was "continuous," but not actual. This is the hardest element to understand, but should become more clear as we go through some cases.

The fifteen-year requirement for adverse possession is mandated by Minnesota Statute 541.02, which addresses the recovery of real estate.

541.02 Recover of real estate, 15 years

No action for the recovery of real estate or the possession thereof shall be maintained unless it appears that the plaintiff, the plaintiff's ancestor, predecessor, or grantor, was seized or possessed of the premises in question within 15 years before the beginning of the action.

Such limitations shall not be a bar to an action for the recovery of real estate assessed as tracts or parcels separate from other real estate, unless it appears that the 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.

The provisions of paragraph two shall not apply to actions relating to the boundary line of lands, which boundary lines are established by adverse possession, or to actions concerning lands included between the government or platted line and the line established by such adverse possession, or to lands not assessed for taxation.

The remaining elements that must be proven in order to prevail in an adverse possession claim are defined and explained by Minnesota case law.

Before discussing Minnesota cases which address the elements required by adverse possession, it is important to note that if an owner of real property registers his or her title to the property by using the Torrens Title System, which results in a certificate of title to the land, that title cannot be affected by adverse possession. This is covered by Minnesota statute.

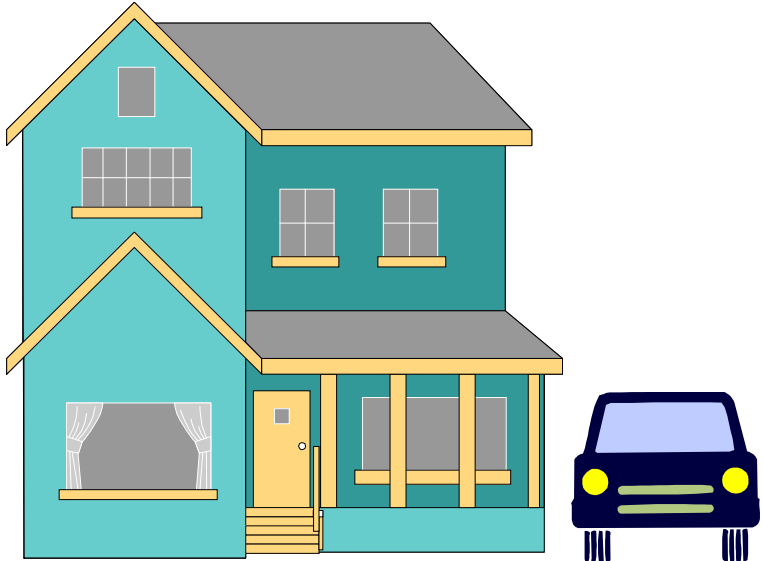
508.02 Registered land subject to same incidents as unregistered; adverse possession excepted

Registered land shall be subject to the same burdens and incidents which attach by law to unregistered land. This chapter shall not operate to relieve registered land or the owners thereof from any rights, duties, or obligations incident to or growing out of the marriage relation, or from liability to attachment on mesne process, or levy on execution, or from liability to any lien or charge of any description, created or established by law upon the land or the buildings situated thereon, or the interest of the owner in such

land or buildings. It shall not operate to change the laws of descent or the rights of partition between cotenants, or the right to take the land by eminent domain. It shall not operate to relieve such land from liability to be taken or recovered by any assignee or receiver under any provision of law relative thereto, and shall not operate to change or affect any other rights, burdens, liabilities, or obligations created by law and applicable to unregistered land except as otherwise expressly provided herein. No title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession.

Driveway Map

Neighbor's Property



Girl's Family House



Contested Property



Main Road



1. WHAT DO YOU THINK?

Hick owned property on Ruth Lake next to Bend's property on Gull Lake. Hick also owned a narrow strip of property over Bend's land that gave him access to Gull Lake. ([See the Open map.](#))

Starting in 1958, Bend built a house and a garage which he located on Hick's narrow strip of land. Bend also poured a concrete patio and retaining wall at the beach, installed a stone barbeque and planted shrubs and trees. All these improvements were on Hick's land near Gull Lake, but Hick did not object to them.

In 1993, Bend claimed adverse possession of the strip of Hick's land near Gull Lake. The court found that Bend possessed Hick's property for the required fifteen years. The court also found that Bend's possession was exclusive, hostile, continuous and actual. The only difficult requirement was whether Bend's possession of Hick's land was "[open](#)."

Hick argued that he could not see the improvements from his Ruth Lake property so they were not "obvious" to him. Therefore, Bend's possession of Hick's land was not "open" and adverse possession should be denied. Do you agree?

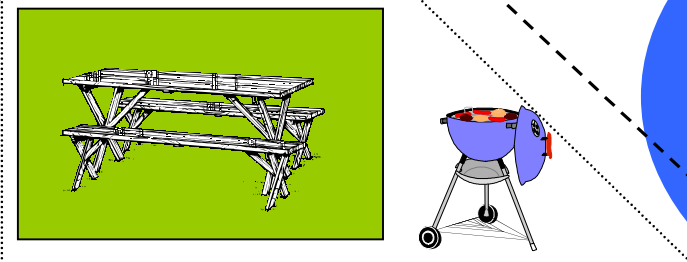
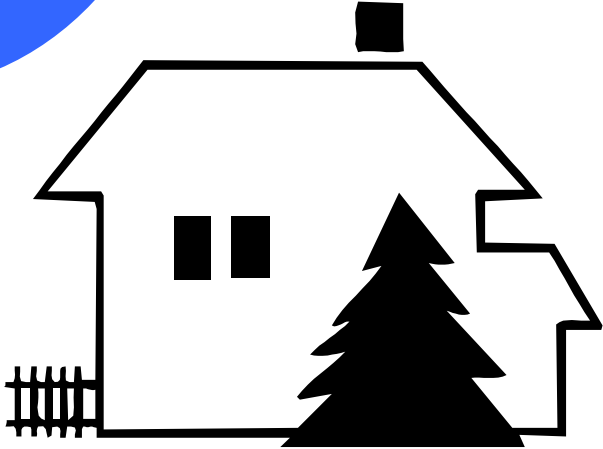
[For the answer, click here.](#)

Ruth
Lake

Hick's Property

Open Map

Bend's Property



Gull Lake

2. WHAT DO YOU THINK?

In 1892 Rick built a store in Austin Minnesota that was 72 x 22 feet in size. A 22 x 22 foot lot directly behind the store was used by the store for parking. However, it belonged to Sam.

In 1930, Sam built a wall behind the store, on his lot, which cut off access to the alley for the store's employees and customers. ([See Exclusive Map.](#)) Rick sued Sam for adverse possession of the lot. The court found that Rick used the lot for the required fifteen years. It also determined that Rick's use of the lot was open, continuous and actual. But, did Rick use the lot in an "[exclusive](#)" and in a "[hostile](#)" way? What do you think?

[For the Answer click here.](#)

Exclusive Map

Alley

Brick Wall



Parking Lot
Contested Property



3. WHAT DO YOU THINK?

Starting in 1942, Earl and Pete owned property next to each other. In 1936, six years before Pete bought his land, Earl planted shrubs and hedges and also placed stone monuments and heavy urns with flowers in them on some of the land that would eventually be owned by Pete. ([See Hostile Map.](#))

Earl had also created a parking area on the land eventually owed by Pete with a stone walkway to Earl's house. Earl and Pete shared this parking area. They also shared a clothes pole on this strip of land and were neighborly about the use of the area.

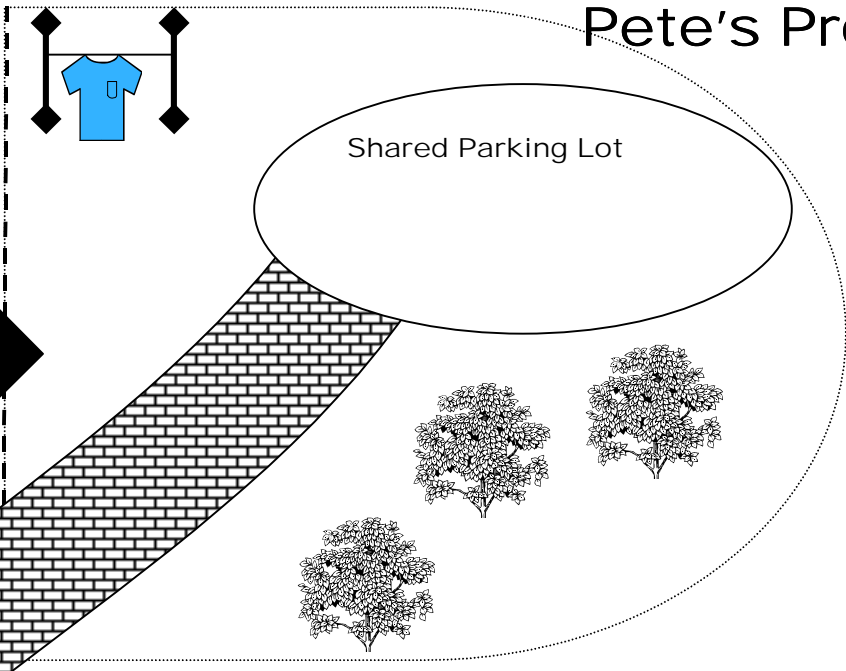
In 1972, Earl sued for adverse possession of the strip of land belonging to Pete. The court found that Earl's use of the land was open, exclusive, continuous and actual for at least fifteen years. However, was his use of the area "[hostile](#)"? What do you think?

[For the Answer click here.](#)

Earl's Property

Hostile Map

Pete's Property



4. WHAT DO YOU THINK?

Stan inherited lakeshore property in 1963. In 1969, Urban purchased the lot next door and used it as a summer home. Urban immediately started using a strip of land near the lake owned by Stan. Urban stored his dock on it and allowed his children and grandchildren to play on it. In 1970, Urban planted trees and bushes on it. In 1975, Urban converted his property to a year round home and moved in. In 1981, Urban built a tin storage shed on a concrete slab on this strip of land. At this time, he also offered to buy the piece of property from Stan. Stan refused and asked him to remove the shed. ([See Actual Map.](#))

In 1989, Stan sued to recover his piece of property by the lake. Urban claimed he acquired it by adverse possession. He claimed that for at least fifteen years he had used it in an open, exclusive, hostile, continuous and actual manner. Stan claimed that Urban's use of the property was not "[actual](#)" because he did not "actually" take over the property until he built the storage shed on it in 1981, only eight years ago - not enough time to adversely possess. Before that, Stan argued Urban only used the property in an occasional and sporadic manner, such as in the summer for boat storage or when Urban had company with children who played on the land. What do you think? Has Urban proved adverse possession?

[For the Answer click here.](#)

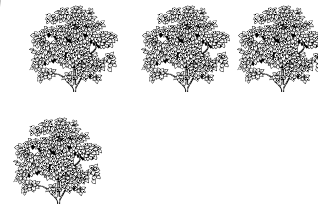
Actual Map

Stan's Property

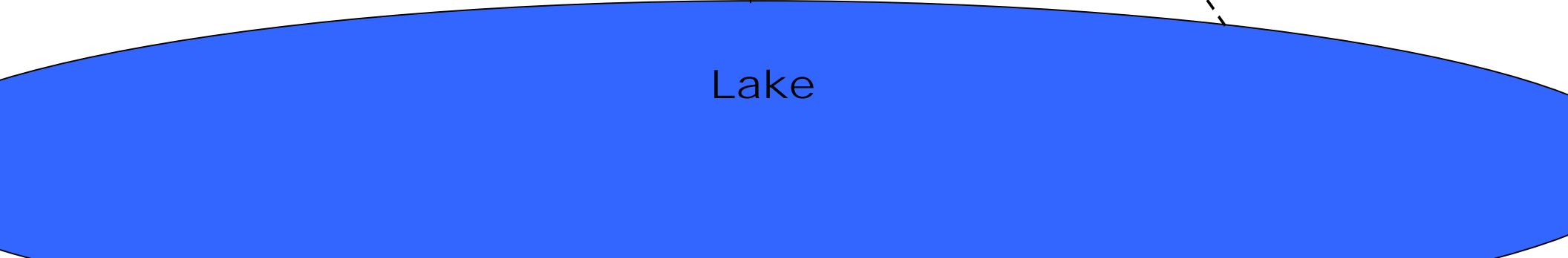
Urban's Property



Storage
Shed
(1981)



Lake



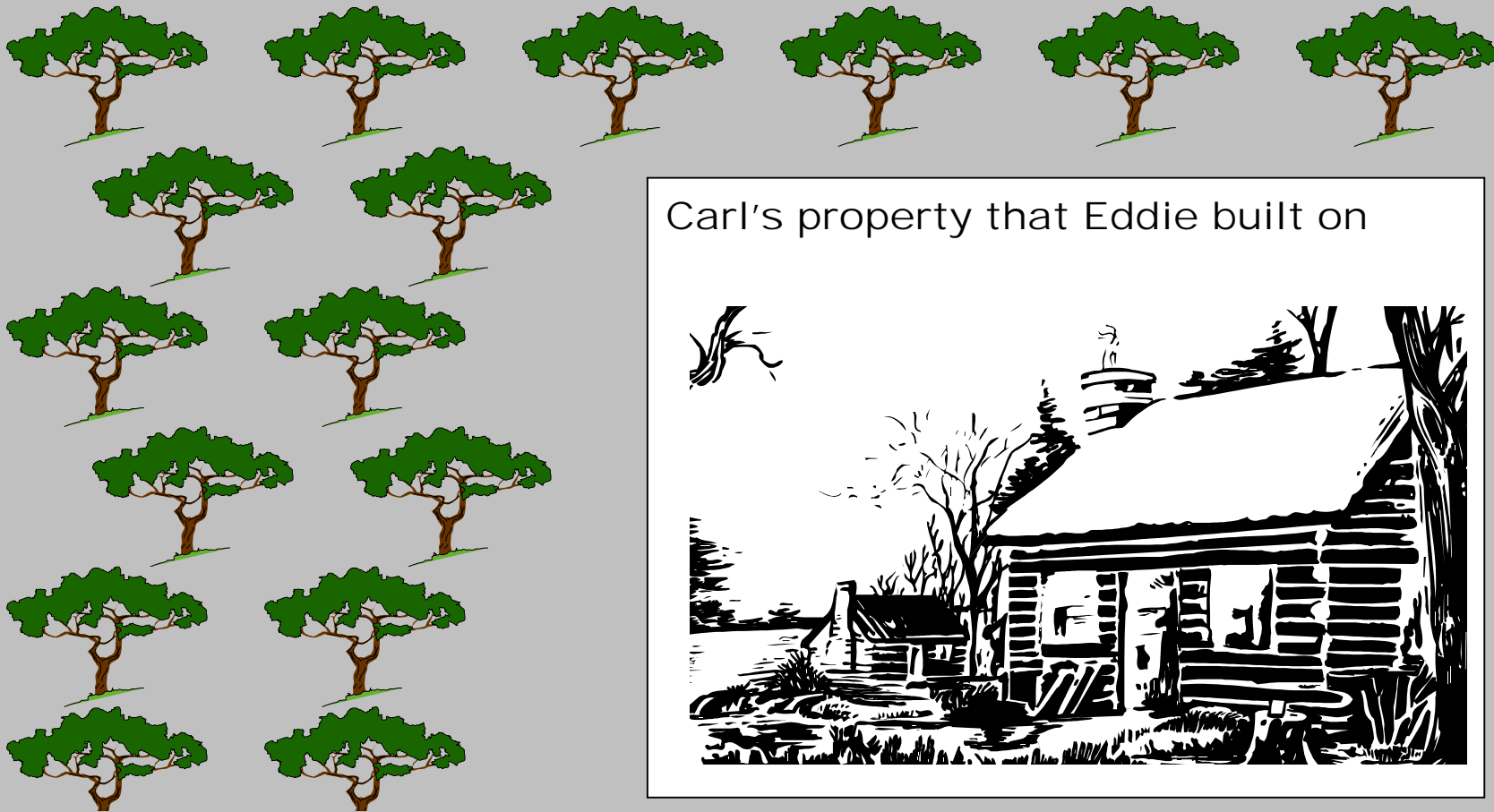
5. WHAT DO YOU THINK?

In 1863 Eddie took a look at Carl's land in upper Duluth. In 1864 he removed bushes on the land and in 1866 and 1867 he cut timber and saved it to build a house that he finished in 1870. It was a story and a half dwelling enclosed by a fence with shrubbery and apple trees. Eddie also planted raspberry, gooseberry and currant bushes. ([See Continuous Map.](#)) He lived on Carl's land until 1881. Then he rented it out, but he always had the key to the place, paid taxes and made improvements on it.

In 1890, Carl sued to get his land back claiming Eddie abandoned the property when he moved out. The court ruled that Eddie's use of the land was open, exclusive, hostile and actual for at least fifteen years. But was it [continuous](#)? What do you think?

[For the Answer click here.](#)

Carl's Property



Carl's property that Eddie built on



WHAT DO YOU THINK ANSWERS

1. Open Use Case.

Adverse possession was proven by Bend. The court found that Bend's use of the land was "open" because "open" means visible to the immediate surroundings. People could see Bend's improvements. He wasn't trying to hide his use of the land. Hick lost possession of the strip of land near Gull Lake.

Based on *Hickerson v. Bender*, 500 N.W. 2d 169 (Minn Ct of Appeals 1993).

2. Exclusive Use Case

Rick won. He became the owner of the lot by adverse possession. His use of the lot was "exclusive" because even though more than one person used it; all the people had a similar reason for using it—to access his store. The court ruled that "exclusive" doesn't mean "use" by one person only, but "use" that is separate from the entire community.

The court also found that Rick's use of the lot was "hostile" to the owner of the lot. This was proven by Sam's own actions in building the wall to stop Rick's store traffic. This showed Sam did not like Rick's use of the lot. It was "hostile" to Sam's possession of the land.

Based on *Merrick v. Scheuder* 228 N.W. 755 (Mn. 1930).

3. Hostile Use Case.

Earl won by adverse possession. He got the land because the court found that his use of it was "hostile." "Hostile" possession does not refer to a personal fight or negative attitude. It only means that the adverse possessor acts as though he is claiming exclusive ownership of the land as against the world. Earl certainly was doing that by making so many improvements to the land he ultimately claimed as his.

Based on *Ehle v. Prosser*, 197 N.W.2d 458 (Minn. 1972).

4. Actual Use Case

No adverse possession. Stan gets his property back. The court agreed that sporadic use and upkeep of the piece of property was not sufficient to constitute "actual" possession. The court agreed with Stan and stated that it wasn't until Urban built the shed that his possession became actual, triggering the 15-year period needed for adverse possession. And since only eight years passed between the construction of the shed and the lawsuit, that element of adverse possession was not proved by Urban.

The court also held that since Urban had offered to buy the disputed property from Stan, Urban had broken the "continuity" of his adverse possession claim by acknowledging Stan's ownership

of the land.

Based on *Standard v. Urban*, 453 N.W.2d 733. (Minn. Ct. of Appeals 1990)

5. Continuous Use Case

Carl lost. Eddie secured the land by adverse possession even though he did not live there all the time. The court ruled that actual residence and continuous occupancy is not required to show continuous use. The fact that Eddie kept up the property and continued to "rule" over it was enough "continuity" for adverse possession.

Based on *Costello v. Edson*, 46 N.W. 299 (Minn. 1890).