

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

CARLA E. KIESLING, RESPONDENT,

v.

NORMA ANDREWS and LEONARD B. ZORDEL, APPELLANTS.

No. WD 68991

Miller County

Before Division One Judges: Lowenstein, P.J., Spinden and Howard, JJ.

Norma Andrews and Leonard Zordel appeal the circuit court's judgment to deny Zordel's counterclaim in which he sought to quiet title to farm land in Miller County. In their first point, Andrews and Zordel complain that the circuit court erred in denying Zordel's counterclaim. They assert that they presented clear and convincing evidence that Barnes gave Zordel the farm as a parol gift because they established that, on the basis of Barnes's promise that she was giving him the farm, Zordel took possession of it in 1991 and made substantial improvements to it. In their second point, Andrews and Zordel claim as an alternative argument that the circuit court erred in denying his counterclaim for a quiet title to the farm because the record established that he met the requirements for adverse possession.

AFFIRMED.

Division One holds:

Andrew's and Zordel's first point is denied because there was substantial evidence in the record establishing that Barnes never promised him the land in 1991. Specifically, the evidence established that, in 1997, Barnes executed a warranty deed for the farm, which conveyed her interest in the farm to Kiesling and Andrews. From this evidence, the circuit court had sufficient reason to find that, by executing a deed in 1997, Barnes did not give the property to Zordel or relinquish control over it in 1991. Additionally, numerous witnesses testified that Barnes had told them that she wanted Andrews and Kiesling to have the farm when she died.

Andrew's and Zordel's second point is denied because they never established the hostile element of their adverse possession claim. Kiesling testified that Barnes told her that she let Zordel live on the farm in exchange for his paying for its upkeep and his making needed improvements. Kiesling also testified that she had permitted Zordel to live on the farm in exchange for his making needed improvements. The circuit court was free to believe Kiesling's testimony. If believed, this testimony provided the circuit court a sufficient basis for finding that Zordel's possession of the farm was permissive and not hostile.

Opinion by: Paul M. Spinden, Judge

Date: November 4, 2008

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