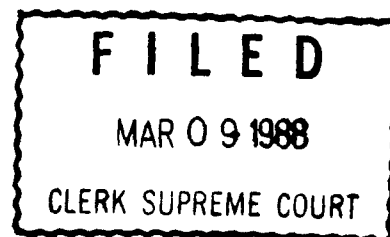


IN THE COURT OF APPEALS OF IOWA



LARRY L. SEDORE and
CAROLYN SEDORE,

Plaintiffs-Appellants,

vs.

STATE OF IOWA, ROBBEN FRANKLIN,
REX FRANKLIN, REESA FRANKLIN,
and RACHEL FRANKLIN,

Defendants-Appellees.

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Filed March 9, 1988

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86-1798

Appeal from the Iowa District Court for Davis County (No. CL 318-984-53—
162) - James P. Reilly, Judge.

Plaintiffs appeal an order granting summary judgment. **AFFIRMED.**

Gregg A. Pieper of Pieper Law Offices, Fairfield, for plaintiffs-appellants.

Thomas J. Miller, Attorney General, and David A. Ferree, Assistant
Attorney General, for defendant-appellee State of Iowa.

Jerome M. Beaver of Kiple, Kiple, Deneffe and Beaver, Ottumwa, for defen-
dants-appellees Franklin.

Considered by Oxberger, C.J., and Sackett, and Habhab, JJ.

SACKETT, J.

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Plaintiffs filed a petition at law seeking to establish their title to an approximate 4.96-acre tract of land in Davis County, Iowa. We address plaintiffs' claim the trial court erroneously sustained defendants-appellees' motion for summary judgment. We affirm the trial court.

Plaintiffs claim they should be declared owners in fee simple of the 4.96 acres. They claim to have held possession for the past ten years and claim title by virtue of adverse possession.

I.

Plaintiffs first contend there was a factual issue whether they acquired title through their actions and those of their predecessors. The question is whether defendants demonstrated the absence of any genuine issue of material fact and were entitled to a judgment on the merits as a matter of law. Suss v. Schammel, 375 N.W.2d 252, 254 (Iowa 1985); Brown v. Monticello State Bank, 360 N.W.2d 81, 83-84 (Iowa 1984).

We determine whether a genuine issue of material fact exists and whether the law was correctly applied. Adam v. Mt. Pleasant Bank and Trust Co., 355 N.W.2d 868, 872 (Iowa 1984). The undisputed facts show title to the property was held by the State of Iowa from May 29, 1941, to May 22, 1984. As against the State there can be no adverse possession. See City of Sioux City v. Betz, 232 Iowa 84, 85, 4 N.W.2d 872, 873 (1942). The statute of limitations does not run against the sovereign. Carr v. Moore, 119 Iowa 152, 159, 93 N.W. 52, 55 (1903); Chicago, R.I. & Pac. Ry. v. City of Council Bluffs, 109 Iowa 425, 432, 80 N.W. 564, 567 (1899).

The undisputed facts show there was inadequate time for plaintiffs to establish adverse possession. We affirm the order granting summary judgment.

II.

Plaintiffs claim the trial court abused its discretion in not considering an affidavit filed nearly an hour after the time set for hearing. The trial court has discretion to refuse to consider an untimely affidavit or to consider it, based on the circumstances in a particular case. Schroeder v. Fuller, 354 N.W.2d 780, 782 (Iowa 1984). There is no showing the trial court abused its discretion.

AFFIRMED.