REL: June 7, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2180063

J. Gregory Kennedy

v.

Georgene Gause Conner

Appeal from Baldwin Circuit Court
(CV-18-900531)

EDWARDS, Judge.

This appeal involves a boundary-line dispute between Georgene Gause Conner and J. Gregory Kennedy. Kennedy appeals from a judgment entered by the Baldwin Circuit Court ("the trial court") that found in favor of Conner on her adverse-

possession claim, awarded Conner injunctive relief, and awarded Conner damages against Kennedy for trespass.

Facts and Procedural History

Conner is the daughter of Thomas Gause and Georgia Gause. By a deed dated May 30, 1989, Thomas Gause, Georgia Gause, and Conner acquired title, as joint tenants with right of survivorship, to a parcel of property in Orange Beach ("the Gause property"). The Gause property included a vacation home that had been constructed next to the western boundary of that property. The southern boundary of the Gause property fronted Bay Ornocor ("the bay"). The northern boundary and eastern boundary shared a common boundary with property owned by Kenneth Harman, Jr. At the northern boundary, the Gause property had a 20-foot-wide access easement across Harman's property to the southern right-of-way of Alabama Highway 180.

By a deed dated June 19, 1998, Thomas Gause acquired title to Lot 3 ("Lot 3") of the Sun Circle Subdivision ("the subdivision"), which subdivision was located west of the Gause property. That deed specifically stated that the conveyance was subject to certain restrictive covenants ("the restrictive covenants") in favor of the other two lots in the subdivision,

and a copy of those restrictive covenants was attached to the deed. Lot 3, which was a vacant lot, was located immediately west of the Gause property and was the easternmost lot of the subdivision. Like the southern boundary of the Gause property, the southern boundary of Lot 3 fronted the bay. The eastern boundary of Lot 3 was the common boundary with the western boundary of the Gause property. Unlike the Gause property, however, the eastern boundary of Lot 3 continued in a northerly direction to the southern right of way of Alabama Highway 180. In other words, the eastern boundary of Lot 3 also shared a common boundary with Harman's property where the access easement in favor of the Gause property was located on Harman's property.

After Thomas Gause acquired Lot 3, that lot was combined with the Gause property, and the combined property was resubdivided into two lots referred to as the "Gause addition" to the subdivision. Lot 2 of the Gause addition consisted of what had been the Gause property plus a strip of land from Lot 3 of the subdivision; Lot 2 also included the access easement over Harman's property. Lot 1 of the Gause addition consisted of the remaining portion of the property that was formerly Lot

3 of the subdivision. The plat for the Gause addition reflects that the combined bay frontage for Lot 1 and Lot 2 was "179 feet more of less." Lot 2 of the Gause addition included approximately 94 feet of bay frontage; Lot 1 of the Gause addition included approximately 85 feet of bay frontage.

The strip of land that was taken from Lot 3 of the subdivision and made a part of Lot 2 of the Gause addition began at the bay front. From the bay front, and for most of the length of the strip of land, including the area where the vacation home was located, the strip of land was approximately 15-feet wide. Towards the northern end of Lot 2 of the Gause addition, however, the strip of land taken from Lot 3 of the subdivision widens to approximately 30 feet, for a distance of approximately 150 feet.[1] The northern boundary of Lot 2 of the Gause addition is approximately 350 feet south of the southern right-of-way to Alabama Highway 180; Lot 1 of the Gause addition shares that approximately 350 feet as a common boundary with Harman's property as described above.

[1]The testimony reflects that Thomas Gause took the wider (30-foot by 150-foot) part of the strip of land from Lot 3 of the subdivision so that Lot 2 of the Gause addition would have an additional area to store boats and other items.

It appears that Thomas Gause was the sole owner of Lot 3 of the subdivision when the plat of the Gause addition was recorded, and, obviously, the deed to the Gause property did not include the strip of land that was later taken from Lot 3 and added to the Gause property to form Lot 2 of the Gause addition. It is unclear from the record how and when Conner acquired title to that strip of land, but it is undisputed that Thomas Gause and Georgia Gause died before Conner commenced the underlying action, and it is undisputed that Conner owned Lot 2 of the Gause addition, which included that strip of land.

By a deed dated August 12, 1998, Thomas Gause conveyed Lot 1 of the Gause addition to John C. Hope III. The deed to Hope stated that the conveyance was subject to the restrictive covenants and certain additional restrictions on use, as did a deed dated November 28, 2012, by which Hope conveyed Lot 1 of the Gause addition to Millie, LLC, a family owned limited-liability company managed by Hope.

By a deed dated February 23, 2018, Millie, LLC, conveyed Lot 1 of the Gause addition to Kennedy, who is a general contractor and has been building in Gulf Shores and Orange

Beach for almost 30 years. The deed from Millie, LLC, to Kennedy states that the conveyance was subject to the restrictive covenants and the additional restrictions on use referenced in the preceding paragraph.

Kennedy utilized the services of Rowe Engineering and Surveying, Inc. ("RESI"), to locate the purported common boundary line between his property and Lot 2 of the Gause addition, and he began site work for the construction of a residence, including making trenches for utilities, installing "electrical hookups," clearing and grading an area for a foundation pad for the residence, and laying a gravel driveway. However, after RESI placed stakes purporting to show the common boundary line between Lot 1 and Lot 2 of the Gause addition, and during Kennedy's construction activities, disputes arose between Conner and Kennedy. Specifically, Conner confronted Kennedy about allegedly trespassing onto her property as part of his construction activities and about the location of their common boundary line. As to the latter, Conner claimed that the common boundary line was further west than the stakes laid by RESI indicated. Specifically, based on the evidence submitted to the trial court, Conner claimed

title by adverse possession to a long, thin, triangular parcel of property ("the disputed parcel") that was part of Lot 1 of the Gause addition according to the plat of the Gause addition and that was contiguous to Lot 2 of the Gause addition. Lot 1 of the Gause addition, minus the disputed parcel, is hereinafter referred to as "Kennedy's property"; Lot 2 of the Gause addition and the disputed parcel are hereinafter collectively referred to as "Conner's property." The southern boundary of the triangle forming the disputed parcel is the widest part of the triangle and is located on the bay front; that part of the triangle is approximately 5 feet wide -- which would leave Kennedy's property with approximately 80 feet of bay frontage rather than the approximately 85 feet shown on the plat of the Gause addition. From the westernmost point of the southern boundary of the disputed parcel, Conner claimed the common boundary line between Conner's property and Kennedy's property continued north through certain landmarks (an iron axle and the eastern side of a bent oak tree) for several hundred feet until the line met the common boundary

line between Lot 2 of the Gause addition and Kennedy's property as reflected on the plat of the Gause addition.[2]

On May 4, 2018, Conner filed a verified complaint against Kennedy in the trial court. According to Conner's complaint, she had acquired title to the disputed parcel by adverse possession. The complaint requested a judgment declaring the common boundary line between Conner's property and Kennedy's property and declaring that Kennedy's property is subject to the restrictive covenants. Also, the complaint sought a preliminary injunction enjoining

> "Kennedy and any of his agents and/or contractors from moving forward with construction activities on, along, or around [Kennedy's property or Conner's property] ... until such time as the restrictive covenants issue and common boundary line issue can

[2]The exact length of the western boundary line of the disputed parcel, i.e., what Conner claimed was the common boundary line between Conner's property and Kennedy's property, is not reflected in the record. However, as hereinafter discussed, the record includes evidence that allowed the trial court to establish where that common boundary line began, the bearing for that line, and where that line would terminate. See Wray v. Mooneyham, 589 So. 2d 181, 182 (Ala. 1991) (affirming a judgment establishing a common boundary line based on evidence that the boundary "runs roughly north to south" "from the 'channel iron in the rockpile' to the 'buggy axle' to the 'pipe found'").

> be resolved by the parties or by this Court, or until further Order from this Court."

Further, the complaint sought compensatory damages and punitive damages for Kennedy's alleged intentional or wanton trespass onto Conner's property; the trespass claim included allegations that Kennedy "ha[d] installed a power utility box and pole, water pipes, a portion of his gravel driveway, and [had] dug utility trenches clearly onto Conner's property, well beyond even Kennedy's claimed boundary line." The complaint also included a claim for ejectment seeking "the recovery of [Conner's] property, removal of the physical invasion [onto Conner's] property, and compensatory and punitive damages."

On May 14, 2018, Kennedy filed an answer and a counterclaim seeking a judgment declaring the location of the common boundary line to be as reflected on the plat of the Gause addition, declaring the extent to which the restrictive covenants applied to Kennedy's property, and declaring whether Conner had any right to enforce the restrictive covenants. Conner filed an answer denying the allegations of the counterclaim and asserting the affirmative defense that she was entitled to the disputed parcel based on statutory adverse

possession. See Ala. Code 1975, § 6-5-200. Conner also asserted that Kennedy's counterclaims were barred based on the application of the doctrines of estoppel, waiver, and unclean hands.

When Conner filed her complaint, she also filed a motion seeking a temporary restraining order requiring Kennedy to cease further construction activities. The trial court granted Conner's motion for a temporary restraining order, and, thereafter, it held an ore tenus proceeding regarding Conner's request for a preliminary injunction. On May 24, 2018, the trial court entered an order partially granting Conner's request for a preliminary injunction. The May 2018 order required Kennedy to "immediately remove the power pole, utility conduits and driveway encroachment from [Conner's] property and restore the disturbed areas within 14 days of the date of this order." The May 2018 order authorized Kennedy to resume construction activities, but

> "enjoined [him] from the following:
>
> "(I) any improvements whatsoever, including the placement of utilities, landscaping, fences, etc. east of the east boundary line of [Kennedy's property] ... as claimed by [Conner] and as marked by the existing string line running from the M & W capped pin by [Kennedy's] recently installed water

> meter to the north and the M & W capped pin at the axle to the south of the proposed primary residence area.
>
> "(ii) no pier, wharf or boathouse shall be built closer than the applicable setback from the existing piling set by [Conner's] father and claimed as a boundary marker."

"M & W" refers to McCrory & Williams, the engineering and land-surveying firm that had prepared the plat of the subdivision and the plat of the Gause addition. The trial court subsequently amended the May 2018 order; the amended order clarified that the trial court had granted preliminary injunctive relieve in order to preserve the status quo pending a final determination of the common boundary line. On June 13, 2018, Conner filed a motion seeking to have Kennedy held in contempt of the May 2018 order based on his alleged failure to fully remove the purported gravel-driveway encroachment on her property and to restore "the lost and disturbed lawn" in areas that Kennedy had excavated for utilities. Kennedy responded to the contempt motion, and, thereafter, the trial court entered an order stating that it would consider Conner's motion to hold Kennedy in contempt when it held a final hearing regarding the location of the common boundary line.

On July 18, 2018, Conner filed a "Supplement to Motion for Preliminary Injunction." In the supplement, Conner alleged that Kennedy's son was the "superintendent of Greg Kennedy, Inc., General Contractor"; it is undisputed that the corporation was owned by Kennedy and was performing the construction work on Kennedy's property. Conner also alleged that Kennedy's son had battered Harman at approximately midnight on July 6, 2018, after Harman responded to alleged harassment by Kennedy's son at Harman's property. Conner also alleged that Kennedy's construction workers had harassed Harman, particularly by playing loud music while working at Kennedy's property. Conner further alleged that Harman had testified on Conner's behalf at the hearing on Conner's motion for a preliminary injunction and that Harman was listed as a witness for Conner at the upcoming trial. We note that the record includes an affidavit from Kennedy's son admitting that an altercation had occurred with Harman but denying that Kennedy's son was responsible for that incident. Conner requested that the trial court enter a "preliminary injunction against Kennedy ... [e]njoining and restraining [Kennedy], and/or his agents or contractors, from coming onto Conner's

property [and] from taunting, threatening or harassing Conner, her family, or any witnesses disclosed in this matter."

The trial court held an ore tenus hearing on July 27, 2018. On August 20, 2018, the trial court entered a judgment declaring that Conner had acquired title to the disputed parcel by adverse possession. The August 2018 order states:

> "[F]or over ten years, [Conner] has been in actual possession and has continuously, openly and notoriously maintained, mowed, utilized exclusively and claimed exclusively her property along a line from the property corner immediately west of and nearest her driveway entrance (located where [Kennedy] recently placed a temporary power pole and water meter) to the base of the bent oak tree southward to the historic iron axle marker and survey-placed capped rebar, and then further to the piling placed a short distance out into the water, treating that as the understood boundary line between the lot with [Kennedy] and his predecessors in title. Therefore, [Conner] has satisfied the elements of adverse possession and the Court declares said line of actual possession to be the common boundary line between the subject lots. See Bearden v. Ellison, 560 So. 2d 1042, 1044 (Ala. 1990); Smith v. Brown, 213 So. 2d 374 (1968)."

The August 2018 judgment then includes a metes and bounds description of the common boundary line and directs Kennedy to retain a surveyor to mark that boundary line. The metes and bounds description is consistent with the evidence offered by Conner and with a survey from RESI (Kennedy's exhibit 16) and

a "computation" prepared by Cecil Hudson, vice president of RESI, illustrating Conner's claimed common boundary line in relation to the common boundary line shown on the plat of the Gause addition (Kennedy's exhibit 21).

Also, the August 2018 judgment granted Conner injunctive relief, enjoining "[Kennedy], and/or his agents and contractors, ... from coming onto [Conner's] property," "from taunting, threatening, or harassing [Conner], her family, or any witnesses that participated in this matter or their families," and "from blatantly blaring music over and above the local noise ordinances in a harassing manner."[3]

Regarding Conner's trespass claim, the August 2018 judgment states:

> "The evidence is also undisputed that after the surveying work was concluded, including the flagged and marked capped rebar along the boundary, [Kennedy] trespassed and encroached upon [Conner's] land in placing a temporary power pole on her

[3]Although Conner's supplement had requested only a preliminary injunction against Kennedy and his agents, the issue whether a permanent injunction should issue was tried by implied consent. See Rule 15(b), Ala. R. Civ. P. Also, we construe the August 2018 judgment as issuing an injunction only directly against Kennedy, establishing that he will be accountable for the actions of his agents and contractors, not as issuing an injunction directly against Kennedy's agents and contractors, who were not parties in this case.

> property, causing a water service line to be installed upon and across her property, installing utility conduits running down her property intended for future ... water and power service for his planned pier, installing his driveway approximately five feet over and into her property and burying a previously marked and flagged historical capped iron rod beneath his driveway. [Kennedy] failed to provide any evidence which would justify or explain these trespasses in light of his recent survey. Therefore, the Court finds that [Kennedy] is liable for willfully trespassing upon [Conner's] property and awards nominal compensatory damages in the amount of $500.00 and punitive damages in the amount of $2,500.00 for which judgment is hereby entered."

The August 2018 judgment also addressed Conner's claim for ejectment and her motion requesting that Kennedy be held in contempt for not fulfilling his obligations under the May 2018 order as follows:

> "After the initial preliminary injunction hearing, the Court ordered [Kennedy] to remove his utilities and driveway encroachments from [Conner's] property and restore the disturbed areas. Since the date of the Amended Order on Preliminary Injunction, ... [Kennedy] has removed the utilities, but has made nominal efforts to remove the driveway materials or restore [Conner's] damaged lawn as expressly ordered. Therefore, the Notice of Noncompliance with Injunctive Order and Motion to Show Cause is hereby GRANTED and [Kennedy] is found in contempt of the Amended Order on Preliminary Injunction. Therefore, [Kennedy] shall within 14 days:
>
> > "... remove all of his driveway materials (i.e., white rock, sand, fabric, concrete, etc.) from [Conner's] property; and

> "... re-sod [Conner's] property with St. Augustine grass in the locations where he dug utility trenches across [Conner's] property.
>
> "... [Conner] shall notify the Court within 21 days of the status of [Kennedy's] compliance with this paragraph of the Final Order."

The August 2018 judgment also adjudicated Conner's claim regarding the application of the restrictive covenants and Kennedy's counterclaims; those claims are not at issue on appeal. Finally, the August 2018 judgment denied all relief not otherwise specifically addressed.

Kennedy filed a postjudgment motion, arguing that Conner had failed to present sufficient evidence in support of her adverse-possession claim, her claim for injunctive relief, and her request for an award of punitive damages for trespass. Kennedy also argued

> "that to award money damages for trespass to land, in addition to ordering mandatory injunctive relief requiring Kennedy to repair the damage done to the land in connection with the trespass, by replacing sod and removing gravel from the driveway, is inconsistent and amounts to a double recovery to Conner."

The trial court denied Kennedy's postjudgment motion. Kennedy appealed to the Alabama Supreme Court, which transferred the appeal to this court, pursuant to § 12-2-7(6), Ala. Code 1975.

Standard of Review

> "Where ore tenus evidence is presented to the trial court, a presumption of correctness exists as to the court's findings of fact. This presumption is especially applicable in cases involving claims of adverse possession, because the evidence in such cases is usually difficult to assess from the vantage point of the appellate court. Unless it is clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence, the trial court's determination of fact will not be disturbed. Gaston v. Ames, 514 So. 2d 877, 878 (Ala. 1987). However, when the trial court improperly applies the law to the facts, no presumption of correctness exists as to the court's judgment. Gaston, supra."

Brackin v. King, 585 So. 2d 37, 40 (Ala. 1991) (some citations omitted). Also, as the supreme court stated in Thomas v. Davis, 410 So. 2d 889 (Ala. 1982):

> "[T]he trier of fact, the trial court without a jury, unlike an appellate court later reviewing the matter from a written record, occupies a position of peculiar advantage enabling it to see and hear firsthand the evidence as it is presented. From that vantage point the trier of fact can observe the demeanor of the witnesses, listen to the inflections and intonations of their voices during oral testimony, and study their eyes, facial expressions, and gestures -- all of these sensory perceptions which play a critical role in the factfinder's determination of which witnesses are to be afforded credibility when conflicting testimony is given. Consequently, this court will rarely disturb the judgment of the trial court in a boundary line dispute or adverse possession case which turns on issues of disputed facts."

Id. at 892.

> "Witnesses frequently testify to the existence of 'lines, locations, distances, monuments, culverts, fences and the like' by pointing or verbally referring to a diagram. Barnett v. Millis, 286 Ala. 681, 684, 246 So. 2d 78, 80 (1971). ... An appellate court is without the benefit of the 'pointing finger or any information which enables [it] to determine the particular line, location, distance, monument, culvert or fence to which the witness referred.' Id. Accordingly, the ore tenus presumption of correctness as to the trial court's findings of fact is 'especially strong in adverse possession cases.' Scarbrough [v. Smith, 445 So. 2d 553,] 556 [(Ala. 1984)]."

Lilly v. Palmer, 495 So. 2d 522, 526 (Ala. 1986).

Analysis

Kennedy first argues that the August 2018 judgment is not supported by clear and convincing evidence of Conner's adverse possession of the disputed parcel.

> "It is a well established general principle of law that title to land may be acquired by adverse possession provided, that for a period of ten years preceding commencement of the action, the claimant has held hostile possession of the land under a claim of right that was actual, exclusive, open, notorious and continuous."

Cambron v. Kirkland, 287 Ala. 531, 534-35, 253 So. 2d 180, 182-83 (1971). "[S]uch possession is required to be shown by clear and convincing evidence." Prestwood v. Hunt, 285 Ala. 525, 530, 234 So. 2d 545, 549 (1970).

Section 6-5-200, Ala. Code 1975, discusses the requirements for statutory adverse possession. However, "[a] boundary line dispute is subject to a unique set of requirements that is a hybrid of the elements of statutory adverse possession and adverse possession by prescription." Bearden v. Ellison, 560 So. 2d 1042, 1044 (Ala. 1990).

> "If a coterminous landowner holds actual possession of a disputed strip under a claim of right openly and exclusively for a continuous period of ten years, believing that he is holding to the true line, he thereby acquires title up to that line, even though the belief as to the correct location originated in a mistake, and it is immaterial what he might or might not have claimed had he known he was mistaken."

Sylvest v. Stowers, 276 Ala. 695, 697, 166 So. 2d 423, 426 (1964);[4] see also Moorehead v. Burks, 484 So. 2d 384, 385 (Ala. 1986) ("[C]oterminous landowners in a boundary dispute may alter the boundary line between their tracts of land by agreement plus possession for ten years, or by adverse possession for ten years.").

[4]There is an exception to the rule stated in Sylvest, but that exception has not been argued in this case. See Smith v. Brown, 282 Ala. 528, 535, 213 So. 2d 374, 380 (1968).

As the supreme court stated in Bearden:

> "In an adverse possession case, such as this, the claimant must prove by clear and convincing evidence that his possession was hostile, notorious, open, continuous, and exclusive for a 10-year period. While statements of intent may be entitled to consideration by the trial court, it is primarily the acts of the adverse claimant that a trial court must look at to determine objectively whether the claimant has exerted a claim of right to a disputed area openly and exclusively for ten years.
>
> > "'"To determine whether an adverse claimant's acts were 'a sufficient indication to all the world that [he] claimed ownership of the property in question ... we must look collectively to all the possessory acts of the claimant.' Hurt v. Given, 445 So. 2d 549, 551 (Ala. 1983). An adverse possessor need only use the land 'in a manner consistent with its nature and character -- by such acts as would ordinarily be performed by the true owners of such land in such condition.' Hand v. Stanard, 392 So. 2d 1157 (Ala. 1980)."'
>
> "Daugherty v. Miller, 549 So. 2d 65, 67 (Ala. 1989), quoting Drennen Land & Timber Co. v. Angell, [475 So. 2d 1166,] 1172 (Ala. 1985)."

560 So. 2d at 1044-45 (some citations omitted; emphasis added).

Based on Conner's testimony at the May 2018 hearing and the July 2018 hearing, see Rule 65(a)(2), Ala. R. Civ. P. (evidence received at a hearing on a preliminary injunction

need not be repeated at trial, where otherwise admissible at trial), Conner's father initially installed a wooden post to mark what he believed to be the common boundary between Conner's property and Kennedy's property. According to Conner, her father "believed in marking things from the get-go" and he installed a wooden post "shortly after the survey was done, you know, we added the 15 feet to our property and my father immediately marked the boundary." "[T]here were surveyor stakes, whatever, but my father marked it with a taller, stronger post ...." According to Conner, her father eventually had her husband replace the wooden post with an iron axle, "at the [M & W surveyor's] pin that was there on the property" sometime before July 5, 2002. That surveyor's pin and the iron axle are located in a grassy area along what the trial court determined to be the western boundary of the disputed parcel and are located approximately 70 feet from the southern boundary of the disputed parcel, i.e., the bay-front boundary. Photos submitted at trial show that the iron axle is located directly beside an M & W surveyors pin, and, as noted above, M & W had performed the survey for the plats of the Gause addition and of the

subdivision. However, the surveyor's pin at issue does not correspond with the boundary lines shown on either the plat of the Gause addition or the plat of the subdivision. Instead, the M & W surveyor's pin beside the iron axle is approximately five feet from the common boundary between Lot 2 of the Gause addition and Lot 1 of the Gause addition -- i.e., within Lot 1 -- as shown of the plat of the Gause addition.

In testifying about the common boundary, Conner stated: "We always kept it marked. You know, the surveyors had their things but he [Thomas Gause] wanted something more substantial." Conner introduced into evidence a series of photographs showing the location of the iron axle between July 5, 2002, and "spring break of 2008," in addition to more recent photographs, and she affirmed that she and her family had maintained, mowed, and possessed the property from the "bent tree down to the [iron] axle" and that she had always considered that the property was her property up to the iron axle. Regarding the bent tree Conner referred to, she testified: "My father always told me just in conversation -- said our line is along the edge or by this leaning, crooked tree, and so that was where I understood the line to run."

Conner testified that she had used the disputed parcel to access the waterfront and that she had left a sailboat on the disputed parcel during one winter. Conner also clearly testified that she and her family "always" mowed to the iron axle because, she said, "[w]e've always considered that is our line." She admitted that, on occasion, they had also mowed some of Hope's lot (i.e., Kennedy's property), as "neighbors being neighbors."

Conner also testified as follows:

> "In addition to my father -- he was aware, if someone builds a pier, they can't build within 10 feet of your property line crossing in front of you. And so he had a post placed in the water right in line with our other monuments, our other, you know, axle and the fence and all that's along that property, so that if and when someone built a pier next to us we would be able to tell if they were crossing 10 feet into our property area or into the water. So that was a post, sort of a point of reference for us."

Conner requested that the trial court declare the common boundary between Conner's property and Kennedy's property to be along a line from the piling placed by her father just off the shore of the bay "to the [iron] axle to the bent tree up to the corner."

Conner's husband testified that he had placed the iron axle in the ground at the request of Conner's father (Thomas Gause).

> "He carrie[d] axles in his car. It was typical for them to mark property, the business he was in, and he asked me to go down and put that axle down next to that pin because the pin was -- you could see it but you knew eventually you were not going to be able to see it as time went by."

Conner's husband stated that he had placed the iron axle by an existing survey pin. He also testified that the iron axle had been reoriented (shaft up to shaft in the ground) after Hurricane Ivan in 2005 but that it was in the same location by the survey pin. According to Conner's husband, the iron axle had remained in that location through the July 2018 hearing.

We note that Hope testified that the first time he ever saw the iron axle was in photographs he had viewed a few days before the July 2018 hearing, although it is clearly visible in the photographs Conner introduced into evidence. Hope admitted, however, that he had seldom visited Kennedy's property when he had owned it, and he did not deny that the iron axle had been placed and maintained as Conner and her

husband testified.[5] See Spradling v. May, 259 Ala. 10, 16, 65 So. 2d 494, 499 (1953) ("[A] property owner has a duty of exercising ordinary diligence in looking after his property so as to prevent others from acquiring title by adverse possession, but the nature of notice or knowledge which is to

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[5]On cross-examination by Conner's counsel, the following colloquy occurred with Hope:

"Q. How often did you go to the property?

"A. Maybe a couple times a year.

"Q. Did you walk down toward the water?

"A. The only time -- well, I'm sure I did at times, I mean, that would have been a logical thing to do. I do remember walking down towards the water after Hurricane Ivan came through. ...

"....

"Q. And if [Conner and Conner's husband] have testified that [Thomas] Gause asked -- back in '01 asked [Conner's husband] to place the axle at the location of the survey pin and it stayed there continuously until the present day, do you dispute their testimony or do you simply don't ever recall seeing it?

"A. I don't ever recall seeing it.

"Q. And you don't dispute -- do you have any reason to dispute [Conner's husband's] trustworthiness or his truthfulness?

"A. No. I had a good relationship with the Conners."

be imputed to a property owner is governed by the character and location of the land involved.").

Conner's husband testified that he mowed Conner's property "about every two weeks" during the summer and that he mowed "the line ... to the axle all the way up the hill to about the oak tree with the bent limb." Conner's husband also testified that he had observed Hope's yard-maintenance workers and that they mowed and maintained Hope's lot (i.e., Kennedy's property) "to the axle" and "to the tree." Conner's husband further testified at the July 2018 hearing that he had had a conversation with Hope about the location of the common boundary between the properties. Conner's husband stated that Hope was standing by the bent tree and that he had "pointed -- we were talking at that tree and he said about right here as he was pointing toward the base of the tree."[6] Likewise, at the May 2018 hearing, Conner's husband stated: "[Hope] said about right here and you'd have to take that tree out probably if he developed it -- if he ever did that."

[6]Hope testified that he and Conner's husband "may have referenced the property line" during their conversation. According to Hope, however, that conversation was not about the property line but about the trees that would need to be cut for a residence to be constructed.

Conner's husband testified that "once or twice a year" he had mowed Hope's yard when it was overgrown and the Conners were having a family event. The following colloquy then occurred during Conner's counsel's direct examination of Conner's husband:

> "Q. And in all the mowing and activity down around the location of the axle in over 20 years, did you ever see a separate capped rebar five feet over to the east towards your side in the ground, a capped rebar?
>
> "A. Never.
>
> "Q. Separate from the one that was by the axle?
>
> "A. The only one was by the axle.
>
> "Q. Is it fair to say you were out there every year continuously for 20 years, every summer, every year out there in that area working and maintaining?
>
> "A. Correct.
>
> "Q. And you never once saw another marker?
>
> "A. Never.
>
> "Q. Or pin?
>
> "A. Never."

On cross-examination by Kennedy's counsel, Conner's husband further testified that, in addition to mowing the disputed

parcel, "[w]e walked on it. We carried boats on it. We drove on it, had parties on it, set up tents."

Harman testified consistently with Conner regarding the location of the common boundary, as claimed by Conner. The following colloquy occurred between Harman and Conner's counsel at the July 2018 hearing:

> "Q. You testified at the [May 2018] hearing regarding maintenance. You had done some maintenance yourself, grass mowing, limb cleaning, etc., for the Conners?
>
> "A. Yes.
>
> "Q. And if I recall your testimony correctly, where the axle marks and the post that's out in the water up to that bent tree, that was always the line that you recognized when you were mowing -- helped -- as a neighbor or whatever helping them, correct? I assume you weren't paid?
>
> "A. No, I haven't got the bill yet. No. Yes, that's the line that the grass traditionally was mowed to and so that's the line -- when I mowed the grass, I mowed it to that line.
>
> "Q. And where the axle is, do you recall that being there for -- at least some photographs show back to '01? Do you remember the axle being placed there?
>
> "A. Yes.
>
> "Q. To your knowledge, has that axle ever moved or been relocated to any other location?
>
> "A. Not to my knowledge.

> "Q. Do you recall a capped pin at the same location of the axle?
>
> "A. Yes.
>
> "Q. Do you recall prior to April of this year there ever being another capped pin in the vicinity within three to five feet of the capped pin by the axle?
>
> "A. I do not."

The above testimony from Conner's husband and Harman references the absence of a second surveyor's pin within five feet of the surveyor's pin by the iron axle, specifically in an area that would have been along the common boundary line according to the plat of the Gause addition. Regarding the absence of such a second surveyor's pin, Harman stated that he had observed RESI's employees when they were placing wooden stakes to mark the common boundary line in February 2018. Harman testified as follows:

> "A. ... [T]he first time they were there, they laid their wooden stakes with their pink ribbons on them. And I noticed that the -- that line appeared to me to be well east of what I understood to be the property line including that axle. And so the second time the individual surveyor came back, I approached him and I said, 'Hey, I don't think you've got that right.' And he goes, 'No, it's right.' I said, 'I think that axle is the boundary marker.' He said no. And we walked together down there, and he showed me how he had measured. They had found a piece of rebar in the ground, and he had

> measured 15 feet from that rebar to the point where he had put the wooden stake.
>
> "Q. And where the stake was there on the second day of February, did you observe any type of capped pin by the wooden stake?
>
> "A. No.
>
> "Q. Was there any disturbed earth around the stake?
>
> "A. No."

Chaison Johnson, who was in charge of the RESI crew that performed the field work for Kennedy's survey, testified that he had located an M & W surveyor's pin by the wooden stake he had placed approximately five feet east of the iron axle; his notes purportedly made during the field work were consistent with his testimony. Also, Johnson testified that he had found a surveyor's pin by the iron axle, but, according to him, the markings on that pin were not legible; his field-work notes likewise were consistent with that testimony. However, contrary evidence was presented both as to the legibility of the M & W surveyor's pin by the iron axle and whether a second M & W surveyor's pin was present approximately five feet east of the M & W surveyor's pin by the iron axle when Johnson's crew initially placed the survey stakes and before Kennedy was made aware of the boundary dispute. Conner and Harman

testified that the second M & W surveyor's pin, i.e., the pin that would support Kennedy's claim regarding the location of the common boundary line, did not appear until after a dispute arose regarding whether the iron axle reflected the location of the common boundary.

Cecil Hudson testified at the May 2018 hearing that RESI did "quite a bit of survey work" for Kennedy and that it had been performing such work for Kennedy for "eight to ten years." Hudson also admitted that the allegedly illegible surveyor's pin by the iron axle was eventually determined to be an M & W pin:

> "At the time when the survey crew went out there, I don't know if it was covered with dirt but [Johnson] said it was illegible to him. So at that time we didn't -- now, subsequent visit, after doing a little digging and cleaning the cap off, we did discover that it does have a McCrory & Williams stamp on it."

The colloquy with Hudson continued:

> "Q. You recall looking at the photograph earlier. So this is in February when your crew was out there placing the stakes. That pin is clearly visible, correct?
>
> "A. I see the cap, yes.
>
> "Q. And so you're saying that it was illegible and that's why --

> "A. According to my crew member which I specifically asked him whose iron that was, he said it was illegible to him. He said he didn't know. So at that point in time, we just labeled it a recovered rod and cap.
>
> "Q. Well, and then you're familiar, of course, with the longstanding use of axles by individuals to mark property corners, right?
>
> "A. I've seen axles marking corners --
>
> "Q. -- for decades used axles, right?
>
> "A. Typically, yeah."

Taking into account the nature and character of the disputed parcel, Conner presented evidence indicating that, since late 1998, she and Thomas Gause had taken actions consistent with ownership of that parcel. In contrast, Kennedy presented no evidence indicating that Hope or Millie, LLC, had taken any action demonstrating control over the disputed parcel or ownership of the disputed parcel. See, e.g., Salter v. Cobb, 264 Ala. 609, 614, 88 So. 2d 845, 850 (1956) ("The grantee did not place anything east of said embankment nor did he claim any of the disputed area until the aforementioned survey was made. There was evidence that the grantor always exercised exclusive possessory acts over the disputed area.").

It is well settled that

> "[m]ere possession of land is not prima facie adverse to the true owner. To have that effect, it must be shown that the adverse holding was known to the true owner, or that such adverse claim was so open and notorious as to raise the presumption of notice. Mere casual acts of ownership, as where one authorized persons to go upon the land to cut timber therefrom; that he paid the taxes on it, and requested another to look after the premises for him, do not constitute adverse possession."

Adler v. Prestwood, 122 Ala. 367, 372, 24 So. 999, 1000 (1899) (citation omitted). It is likewise well settled, however, that

> "[i]t is not necessary to physically reside upon land to establish title by adverse possession. Land need only be used by an adverse possessor in a manner consistent with its nature and character -- by such acts as would ordinarily be performed by the true owners of such land in such condition. The acts of ownership and dominion necessary for adverse possession of a vacant lot need not and cannot be the same as with respect to a lot covered with valuable improvements or on which there is a residence."

Hand v. Stanard, 392 So. 2d 1157, 1160 (Ala. 1980) (citations omitted). As the supreme court stated in Monteith v. Chapman, 260 Ala. 206, 69 So. 2d 866 (1954):

> "Openness, notoriety and exclusiveness are shown by acts which at the time, considering the state of the land, comport with ownership, i.e., such act as would ordinarily be done by an owner in appropriating the land to his own use and to the

> exclusion of others. Those possessory acts by the appellee and her predecessor -- gardening and planting up to the fence -- and the absence of any acts of possession by the appellant, would, upon a consideration of the state of the land, sufficiently meet the requirements of this test."

260 Ala. at 208, 69 So. 2d at 867-68 (citation omitted).

Kennedy argues on appeal that, as a matter of law, evidence of mowing grass up to the iron axle is insufficient to establish "exclusive possession" for purposes of an adverse-possession claim. Kennedy relies on Johnson v. Coshatt, 591 So. 2d 483 (Ala. 1991), in support of that proposition. Kennedy's argument based on Johnson, however, does not focus on the salient facts from that case. In Johnson, the trial court entered a judgment in favor of Emmett M. Coshatt and Carol J. Coshatt, the holders of record title, and against Lawrence D. Johnson, the party claiming title by adverse possession. Johnson appealed. In addressing Johnson's argument regarding exclusive possession, the supreme court stated:

> "'"'Exclusive possession' means that [the] claimant must hold possession of the land for himself, as his own, and not for another, or must maintain exclusive dominion over the property and appropriation of it to his own use and benefit. To establish exclusive

> possession, there must be an intention to possess and hold land to the exclusion of, and in opposition to, the claims of all others, and the claimant's conduct must afford an unequivocal indication that he is exercising dominion of a sole owner. Exclusiveness essential to adverse possession may or must be shown by acts which comport with ownership and would ordinarily be done by an owner for his own use to the exclusion of others, and all such acts must be considered collectively in determining the sufficiency of possession. Exclusiveness of possession is often evidenced by the erection of physical improvements on the property, such as fences, houses, or other structures, and, in their absence, substantial activity on the land is required."'

"[Strickland v. Marcos,] 566 So. 2d [229,] 235 [(Ala. 1990)], quoting 2 C.J.S., Adverse Possession § 54 (1972).

"In this case, Johnson, relying on the doctrine of 'tacking,' presented undisputed evidence that the tenants of his predecessor in title had cut the grass on the disputed strip for almost 40 years. ... However, other evidence, also undisputed, showed that, because of its location, it was convenient, and perhaps more desirable, for aesthetic purposes, for Johnson and the tenants of his predecessor in title to cut the grass on the disputed strip for the Coshatts and their predecessors in title; that the grass on the disputed strip did not grow very well and had to be cut only every two weeks during the growing season; and that it took only a few minutes to cut the grass. Other evidence also showed that at various times over the years the sons of the Coshatts' predecessors in title had used the disputed strip for certain purposes (e.g., to load lawn mowers and

> to run motorcycles across). The Coshatts recently installed a new underground water line on the disputed strip. From our review of the record, we conclude that the trial court did not err in finding that Johnson had not acquired ownership of the disputed strip by adverse possession. Considering the evidence as a whole, the trial court could have correctly concluded that the single undisputed fact that Johnson and the tenants of his predecessor in title had cut the grass on the disputed strip for almost 40 years was insufficient, as a matter of law, to establish that the Coshatts and their predecessors in title had been placed on notice that an adverse claim had been asserted against their property or that Johnson and his predecessor in title had exercised dominion over their property as sole owners, to the exclusion of all others."

591 So. 2d at 484-85 (emphasis added).

In the present case, Conner, unlike Johnson, did not rely solely on the mowing of grass to establish exclusive possession and Conner, unlike Johnson, was the prevailing party below. Based on the ore tenus presumptions in favor of the trial court's judgment in favor of Conner, and the totality of the evidence presented to the trial court, the trial court could have concluded that the actions of Conner and Thomas Gause (one of Conner's predecessors in title) and the presence of the iron axle had placed Hope (one of Kennedy's predecessors in title) on notice of their claimed ownership of the disputed parcel. Further, based on the lack

of any specific argument by Kennedy regarding what is legally required to establish "substantial activity" for purposes of adverse possession, see Johnson, supra, or whether Conner's actions rise to the level of substantial activity, we will not consider that issue. Yellow Dog Dev., LLC v. Bibb Cty., 871 So. 2d 39, 41 (Ala. 2003) ("[T]his Court will not 'reverse a trial court's judgment based on arguments not presented to the trial court or based on arguments not made to this [C]ourt.'" (quoting Brown v. Wal-Mart Stores, Inc., 864 So. 2d 1100, 1104 (Ala. Civ. App. 2002))); see also Rule 28(a)(10), Ala. R. App. P.

Kennedy also notes that possession must be "open and notorious" in order to establish a claim of adverse possession. See, e.g., Johnson, supra. Kennedy contends in his appellate brief that

> "[t]he lack of a fence or some other structure creating an open and obvious 'line' along the claimed boundary has been held to be insufficient evidence of adverse possession. In Cockrell v. Kelley, 428 So. 2d 622 (Ala. 1983), this Court dealt with an adverse possession claim based on a line marked by 'wooden stakes.' There, this Court reversed the trial court's finding of adverse possession based on 'stakes.' In reversing the trial court, this Court noted that '[t]he line in question was never marked by a fence, but merely indicated by stakes.' Id. at 623. The Court

> recognized the general rule to be that a fence is an 'outstanding symbol of possession' and that due to the absence of a fence, the trial court's finding of adverse possession was reversed. Id. at 624. Parker v. Rhoades, 225 So. 3d 642 (Ala. Civ. App. 2016), is another case where the claimed line was marked only by a 'stob,' not a fence, and the existence of a 'stob' was held insufficient to establish adverse possession."

Like his argument regarding the element of exclusive possession, Kennedy's argument regarding the elements of open and notorious possession attempts to isolate a single fact from the remaining evidence and reflects a truncated analysis of the rationale of Cockrell v. Kelley, 428 So. 2d 622 (Ala. 1983). In Cockrell, the supreme court did note that "[t]he [boundary] line in question was never marked by a fence, but merely indicated by stakes," 428 So. 2d at 623, but the court further stated that

> "Arlis and G.W. Kelly[7] used the property together to graze cattle until 1968. Kelly and his father cannot hold the same property adversely to each other at the same time, since it is necessary that the possession be exclusive as well as hostile and continuous. In 1972, Arlis paid for repairs to the barn on the disputed property; however, until his father's death in 1977, the barn was used by various family members, including Cockrell.

[7]In Cockrell, the appellee/cross-appellant is identified as "Arlis Kelley, a/k/a Arlis Kelly." In the body of the opinion, the surname is spelled "Kelly."

> Possession cannot be presumed to be hostile, and presumptions and intendments are favorable to the title. Furthermore, sporadic acts of ownership are insufficient to show adverse possession.
>
> "....
>
> "The general rule is that a fence is an 'outstanding symbol of possession' and the case at bar is easily distinguished from Mardis [v. Nichols, 393 So. 2d 976 (Ala. 1981)], by the absence of a fence. In Mardis, the evidence showed that the fence had been in existence for over 25 years and was recognized by third parties as a line fence. The prerequisite intent to fix a dividing line may not be presumed.
>
> "On the occasion of the settlement of G.W. Kelly's estate, Arlis requested that the property on which the two barns were located be included in his share. Part of that property is in dispute in the instant case. Later, Arlis attempted to buy the same property from Ferguson, who sold the land in its entirety to Cockrell.
>
> "A careful consideration of the record, along with briefs submitted, convinces us that the elements of adverse possession were not proven."

428 So. 2d at 623-24 (citations omitted; emphasis added).

Again, the present case is distinguishable from Cockrell. No evidence was presented indicating that Conner or her predecessors in title were equivocal about their claim to ownership of the disputed parcel or that others had used the disputed parcel in any manner that was inconsistent with Conner's claim of ownership or Thomas Gause's claim of

ownership. Further, the claimed boundary had been clearly indicated by the iron axle, and Conner and her family consistently, openly, and notoriously took actions on the disputed parcel that were consistent with ownership of that parcel up to the iron axle, in light of the nature and character of that parcel.

Kennedy's reliance on Parker v. Rhoades, 225 So. 3d 642 (Ala. Civ. App. 2016), is likewise misplaced. The evidence in Parker reflected that both parties had used the property at issue, and, in affirming the judgment of the trial court in that case, this court stated: "Because the Parkers' use of the disputed property was not exclusive as to the Rhoadeses, in particular, we conclude that the Parkers failed to meet their burden of proving that element of adverse possession." 225 So. 3d at 648. Just as the evidence presented in Parker supported the judgment in that case, the evidence in the present case supports the conclusion that Conner and her family exercised exclusive possession over the disputed parcel. The fact that stobs or axles are part of the evidence submitted in support of adverse possession is not the sole determining fact in an adverse-possession case. Our courts

have stated that "[t]he presence of a fence, which is an outstanding symbol of possession, coupled with normal acts of use in appropriation of the land, sufficiently satisfies the requirements of adverse possession." Bearden, 560 So. 2d at 1045. However, Kennedy has directed us to no precedent that stands for the proposition that the absence of a single type of "symbol of possession," like a fence, will preclude a claimant from establishing adverse possession. "'"'[W]e must look collectively to all the possessory acts of the claimant'"'" in light of the nature and character of the property at issue. Id. at 1044 (quoting Daugherty v. Miller, 549 So. 2d 65, 67 (Ala. 1989), quoting in turn Drennen Land & Timber Co. v. Angell, 475 So. 2d 1166, 1172 (Ala. 1985), quoting in turn Hurt v. Given, 445 So. 2d 549, 551 (Ala. 1983)).

Kennedy further attempts to take specific snippets of testimony, mostly from the testimony of Hope, Conner, and Conner's husband, to construct a version of the facts favorable to his argument and unfavorable to Conner's adverse-possession claim. However, this court is not free to ignore the ore tenus rule, and Kennedy has cited no authority that

would require the conclusion that the collective actions taken by Conner and Thomas Gause, considered in light of the nature and character of the property at issue, could not establish adverse possession as a matter of law. Accordingly, we will not further discuss this issue. Kennedy has failed to demonstrate that the trial court erred in holding in favor of Conner on her adverse-possession claim to the disputed parcel or in declaring the western boundary of that parcel to be the common boundary between Conner's property and Kennedy's property.

Kennedy's second argument is that Conner presented insufficient evidence to support the trial court's issuance of an injunction against him regarding threatening or harassing acts. According to Kennedy, he did not threaten anyone; he is not responsible for acts committed by his son; and there is no evidence indicating that Conner was the subject of any such acts. Kennedy contends that "[n]one of the elements required to issue an injunction are present here, primarily because the injunction is unrelated to the action on the merits of the boundary dispute and is not issued to remedy a threat of injury to Conner." Also, citing Continental Insurance Co. of

New York v. Rotholz, 224 Ala. 574, 576, 133 So. 587, 589 (1931), Kennedy contends that "it is axiomatic that relief cannot be awarded in favor of, or against, non-parties to an action." Rotholz is an insurance-subrogation case and does not discuss whether a trial court may order injunctive relief in favor of a party's family members or witnesses, particularly when one of those witnesses has been the subject of an alleged battery by an agent of the opposing party. Kennedy's argument is inadequate regarding that issue. See Rule 28(a)(10), Ala. R. App. P. Likewise, Kennedy presents no legal authority in support of his argument about the timing of the hearing on Conner's request for permanent injunctive relief and no argument regarding whether he had adequate notice on that issue. Thus, we do not consider those issues. See id.

We have reviewed Harman's testimony regarding his interactions with the work crew at Kennedy's property, regarding Kennedy's son's alleged battery of Harman, and regarding the events leading up to that event. Likewise, we have reviewed Conner's testimony about her interactions and discussions with Kennedy. Based on the limited arguments made

by Kennedy, the few legal authorities he cites in support of those arguments, and the presumptions that attend the ore tenus rule, including the trial court's ability to draw inferences from the evidence presented, we cannot agree that Conner failed to establish

> "'success on the merits, a substantial threat of irreparable injury if the injunction is not granted, that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and that granting the injunction will not disserve the public interest.'
>
> "TFT, Inc. v. Warning Sys., Inc., 751 So. 2d 1238, 1241-42 (Ala. 1999)."

Mobile Press Register, Inc. v. Lackey, 938 So. 2d 398, 400 (Ala. 2006); see also Rule 28(a)(10), Ala. R. App. P. Accordingly we will not reverse the August 2018 judgment regarding the injunctive relief granted against Kennedy.

Kennedy's third argument is that the evidence does not support an award of damages for trespass and that any such award allows Conner a "double recovery" because, he says, he repaired the damage he had caused to Conner's property. Kennedy also challenges the trial court's determination that Conner was entitled to punitive damages.

"[I]n order for one to be liable to another for trespass, the person must intentionally enter upon land in the possession of another or the person must intentionally cause some 'substance' or 'thing' to enter upon another's land." Born v. Exxon Corp., 388 So. 2d 933, 934 (Ala. 1980). In W.T. Ratliff Co. v. Henley, 405 So. 2d 141 (Ala. 1981), the supreme court explained the latter part of the statement in Born as follows: "That is, the intent do to the act which leads to the trespass is the requirement, not the intent to actually trespass." 405 So. 2d at 146.

Kennedy argues that there was no evidence indicating that he "intentionally" entered upon Conner's property. However, the trial court received evidence indicating that Kennedy's agents entered upon Conner's property. In addition, the trial court received evidence indicating that Kennedy's agents performed construction activities damaging her property even after they had knowledge of the location of the boundary to that property. We also note that the acts of trespass at issue were to a part of Conner's property that was not part of the disputed parcel. The element of intent was satisfied in the present case.

Kennedy also argues that "punitive damages for trespass can only be awarded where the trespass is attended by rudeness, wantonness, recklessness, or in an insulting manner, or is accompanied by fraud. Ramos v. Fell, [272 Ala. 53,] 128 So. 2d 481 (Ala. 1961)." However, Ramos v. Fell, 272 Ala. 53, 128 So. 2d 481 (1961), actually states that, "where the trespass is attended by rudeness, wantonness, recklessness or an insulting manner or is accompanied by circumstances of fraud and malice, oppression, aggravation or gross negligence[,] ... a jury is warranted in assessing punitive damages in an action of trespass." 272 Ala. at 58, 128 So. 2d at 484. Based on the evidence presented to the trial court regarding the actions of Kennedy's agents in relation to Conner's property, we cannot conclude that the trial court erred by awarding Conner punitive damages for trespass.

Finally, regarding the $500 "nominal compensatory" damages award, "a party who proves a claim of trespass is entitled to recover nominal, compensatory, and, in some cases, punitive damages." Ex parte SouthTrust Bank of Alabama, N.A., 523 So. 2d 407, 410 (Ala. 1988). Kennedy does not take issue with the trial court's characterization of its damages award

as "nominal compensatory" damages, nor does he argue that $500 is an excessive award for such damages. The $500 damages award appears to be compensatory damages, but of a purportedly "nominal" nature, rather than an award of nominal damages per se. See Roberson v. C.P. Allen Constr. Co., 50 So. 3d 471, 479–80 (Ala. Civ. App. 2010) ("[N]ominal damages should be minimal awards for technical violations of legal rights when no actual damages are sustained or no actual damages have been proven."). Kennedy correctly notes that "there was no evidence offered of the amount of the damage to Conner's property," but he develops no argument, with citations to pertinent authority, as to the sufficiency of the evidence, or lack thereof, regarding the damages awarded to Conner. Also, he argues neither that a "nominal compensatory" damages award is an oxymoron or that a trial court may not make a "nominal compensatory" damages award when evidence of more than nominal damages is clearly presented, but no evidence is offered regarding a specific amount of those damages. See Rule 28(a)(10), Ala. R. App. P.

Kennedy cites "Gulf Oil Corp. v. Spriggs Enterprises, 388 So. 2d 518 (Ala. 1980), and Jenelle Mims Marsh, Alabama Law of

Damages § 1:7 (Election)," in support of an argument that, "because Kennedy removed the offending items, to award damages for trespass in addition to injunctive relief to repair the damage, constitutes a double recovery." As the trial court stated in its August 2018 judgment and as the record reflects, however, Kennedy had not repaired all the damage caused to Conner's property by the time of the July 2018 hearing, and Kennedy cites no legal authority supporting the conclusion that an award of compensatory damages is improper when damage caused by a defendant's trespass remains to be repaired, and particularly when the complaining party failed to make repairs required as part of a preliminary injunction. Although we agree that a party generally cannot recover compensatory damages for a repair that the defendant is also enjoined to make, under the circumstances it does not appear that the $500 "nominal compensatory" damages award was intended to address a specific item of damage that Kennedy is required to repair (hence the adjective "nominal"), and we find Kennedy's argument on this issue to be inadequate. See Rule 28(a)(10), Ala. R. App. P.

Conclusion

Based on the forgoing, Kennedy has failed to demonstrate that the trial court erred in holding in favor of Conner on her claim of adverse possession of the disputed parcel or in establishing the common boundary between Conner's property and Kennedy's property. Likewise, Kennedy has failed to demonstrate that the trial court erred in granting permanent injunctive relief against Kennedy or in awarding Conner damages for trespass. The August 2018 judgment is affirmed.

AFFIRMED.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ., concur.