REL: 2/10/12

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2011-2012

2100491

Wanda Sue Lindsey and Diedri Kay Lindsey

v.

Amos Aldridge et al.

Appeal from Fayette Circuit Court
(CV-08-9)

BRYAN, Judge.[1]

---

[1]Before this appeal was assigned to this judge, the court reporter requested and received extensions of the deadline for completion of the transcript totaling 147 days, and the parties requested and received extensions of the deadlines for filing their briefs totaling 21 days. As a result of those extensions, this appeal was not assigned to this judge until more than 290 days after the filing of the notice of appeal.

Wanda Sue Lindsey ("Wanda Sue") and Diedri Kay Lindsey[2] ("Diedri") appeal from a judgment in favor of Amos Aldridge, Syble Aldridge, Sandra Holliman, Stanley Crowell, Carl White, Mary White, and Louella Nelson (collectively referred to as "the defendants") in a land dispute. We dismiss the appeal with respect to Diedri and affirm the judgment.

On January 16, 2008, Wanda Sue and Diedri, who are sisters, sued the defendants in Fayette Circuit Court, alleging that they jointly owned land that was coterminous with lands owned by the defendants, stating a claim seeking a determination of the location of a boundary line separating their land from the lands of the defendants, and stating a claim seeking an injunction enjoining the defendants from trespassing on land Wanda Sue and Diedri claimed to own.

Although he was not mentioned in the complaint, Jessie Curtis Lindsey ("Jessie"), a relative of Wanda Sue and Diedri, was also a joint owner of Wanda Sue and Diedri's land when the action was filed. However, on May 7, 2009, Wanda Sue, Diedri, and Jessie executed deeds conveying to each of them sole

[2]Diedri Kay Lindsey changed her last name from Roberts to Lindsey while this action was pending in the trial court.

ownership of a portion of their jointly owned land.

The parcel conveyed to Wanda Sue abuts the north boundary of all the parcels owned by the defendants and abuts the west boundary of the parcel owned by the Aldridges, Holliman, and Crowell, which we will refer to as "parcel 1." Diedri's parcel abuts the south boundary of parcel 1, but it does not abut either the parcel owned by the Whites, which we will refer to as "parcel 2," or the parcel owned by Nelson, which we will refer to as "parcel 3." Jessie's parcel is not coterminous with any of the defendants' parcels.

Parcel 1 is bounded on the east by the west right-of-way of County Road 100, a paved road that runs generally north and south. Parcel 2 is bounded on the west by the east right-of-way of County Road 100 and is bounded on the east by parcel 3. In addition to separating parcels 1 and 2, County Road 100 bisects the portion of Wanda Sue's parcel that abuts the north boundaries of parcels 1, 2, and 3.

The common boundary line separating Wanda Sue's parcel from parcels 1, 2, and 3 (i.e., the north boundaries of parcels 1, 2, and 3) is described in the deeds in Wanda Sue's chain of title and in the deeds in the chains of title of

parcels 1, 2, and 3 as the quarter-quarter section line separating the northwest quarter of the northeast quarter of Section 12 in Fayette County from the southwest quarter of the northeast quarter of Section 12 ("the quarter-quarter section line"). However, Wanda Sue claims that, by virtue of the hybrid form of adverse possession applicable in boundary-line disputes, most of the common boundary line separating her parcel from parcels 1, 2, and 3 is now a considerable distance south of the quarter-quarter section line. The defendants all contend that the quarter-quarter section line is still the common boundary line separating Wanda Sue's parcel from parcels 1, 2, and 3.

On May 8, 2009, the day after Wanda Sue, Diedri, and Jessie had executed deeds conveying to each of them sole ownership of a portion of their jointly owned land, the trial of the action began. The action was tried before the trial judge sitting without a jury, and the trial judge received evidence ore tenus. In addition, at the request of the parties, the trial judge viewed the land. During the trial, Wanda Sue and Diedri moved, pursuant to Rule 15(b), Ala. R. Civ. P., for leave to amend their complaint to add a claim of

adverse possession by prescription, and the trial judge granted that motion.

At trial, the evidence established that Horace Greeley Nelson, a common ancestor of Wanda Sue, Diedri, Jessie, and the defendants, had owned Wanda Sue's parcel, Diedri's parcel, Jessie's parcel, and parcels 1, 2, and 3. The evidence further established that, in 1951, Horace Greeley Nelson subdivided his land and conveyed it to his children. The evidence also established that, before Horace Greeley Nelson subdivided his land and conveyed it to his children, he had fenced in an area on what is now parcel 1 to use as a cow pasture ("the cow pasture"). Wanda Sue introduced into evidence a scale drawing ("the scale drawing") she had employed Bobby McCrary, a licensed surveyor, to prepare. Among other things, the scale drawing depicts parcel 1 and the cow pasture. The scale drawing indicates that the cow pasture encompasses over one-half of parcel 1, including most of the eastern half of parcel 1.

Wanda Sue and her witnesses testified that, after her and Diedri's father, Rudolph Lindsey, acquired title to the parcel now owned by Wanda Sue in 1957, he made exclusive use of the

cow pasture for pasturing his cows until he died in 1992. However, Mary White, one of the owners of parcel 2, testified that her family had also used the cow pasture for pasturing livestock and that Rudolph Lindsey's use of the cow pasture was not exclusive. Wanda Sue contended at trial and contends before this court that, by virtue of the hybrid form of adverse possession applicable in boundary-line disputes, her father acquired ownership of the cow pasture by making exclusive use of it for 10 years. Thus, according to Wanda Sue, the southern and western fence lines of the cow pasture now constitute a portion of the common boundary line separating her parcel from parcel 1. The owners of parcel 1 contend that Rudolph Lindsey did not acquire ownership of the cow pasture and that the quarter-quarter section line still constitutes the entire common boundary line separating Wanda Sue's parcel from parcel 1.

A gravel road runs southwestward across the cow pasture from County Road 100 to Diedri's parcel, which is located south of parcel 1. Diedri began using the gravel road as a driveway approximately 4 years before trial. When the pleadings in this action were filed, she was a joint owner of

the parcel now owned by Wanda Sue and, like Wanda Sue, claimed to own the cow pasture by virtue of her father's alleged adverse possession of it. However, when she conveyed her interest in the parcel abutting the north boundary of parcel 1 to Wanda Sue on May 7, 2009, Diedri conveyed to Wanda Sue any right Diedri might have had to ownership of the cow pasture by adverse possession, and she did not plead a separate claim seeking a determination that she had a right to use the gravel road that runs across the cow pasture from County Road 100 to her parcel.

Wanda Sue contended at trial that the common boundary line separating her parcel from parcels 2 and 3 had been moved from the quarter-quarter section line to 1 of 3 alternative locations by virtue of the hybrid form of adverse possession applicable in boundary-line disputes. First, she contended that the common boundary line had been moved to a line we will refer to as "the pea-patch line." Wanda Sue contended that the common boundary line had been moved to the pea-patch line by virtue of her family's allegedly making exclusive use of the portions of parcel 2 and 3 located north of the pea-patch line for growing peas for more than 10 years. Although Wanda Sue

introduced evidence indicating that the pea-patch line was located close to the Whites' house, which was located near the south boundary of parcel 2, she did not introduce evidence establishing the precise location of the pea-patch line. Moreover, Mary White testified that her family had also grown peas in the portion of parcel 2 where Wanda Sue and her witnesses testified that Wanda Sue's family had made exclusive use of the pea patches. In addition, Mary White testified that there were periods when mobile homes were located in that portion of parcel 2 and that no one grew peas in that portion of parcel 2 when the mobile homes were present.

Second, Wanda Sue contended that the common boundary line could be determined by projecting an imaginary line ("the projected imaginary line") across parcels 2 and 3 on the same bearing as the south fence of the cow pasture, which was located on parcel 1, which was located on the other side of County Road 100. However, she did not introduce any evidence indicating that the projected imaginary line coincided with any landmarks or the demarcation line of any use her family had made of parcels 2 and 3.

Third, Wanda Sue contended that her mother had fenced in

an area on parcels 2 and 3 in 1993 and had made exclusive use of that area as a horse pasture ("the horse pasture") since then and, therefore, that the south fence line of the horse pasture ("the horse-pasture line") had become the common boundary line separating her parcel from parcels 2 and 3 by virtue of the hybrid form of adverse possession applicable in boundary-line disputes.

When Diedri conveyed her interest in the parcel abutting the north boundaries of parcels 2 and 3 to Wanda Sue on May 7, 2009, she conveyed to Wanda Sue any right Diedri might have had to ownership of any portion of parcels 2 and 3 by adverse possession.

Following the trial and his view of the land, the trial judge, on November 12, 2010, entered a judgment determining that Wanda Sue had failed to prove that she owned any portions of parcels 1, 2, or 3 by virtue of adverse possession by prescription and establishing the quarter-quarter section line as the common boundary line separating Wanda Sue's parcel from parcels 1, 2, and 3. Wanda Sue and Diedri timely filed a postjudgment motion, which the trial judge denied on January 12, 2011. Thereafter, Wanda Sue and Diedri timely appealed to

this court. Because we lacked jurisdiction, we transferred the appeal to the supreme court, which transferred it back to us pursuant to § 12-2-7(6), Ala. Code 1975.

Because the trial judge received evidence ore tenus, our review is governed by the following principles:

> "'"'[W]hen a trial court hears ore tenus testimony, its findings on disputed facts are presumed correct and its judgment based on those findings will not be reversed unless the judgment is palpably erroneous or manifestly unjust.'"' Water Works & Sanitary Sewer Bd. v. Parks, 977 So. 2d 440, 443 (Ala. 2007) (quoting Fadalla v. Fadalla, 929 So. 2d 429, 433 (Ala. 2005), quoting in turn Philpot v. State, 843 So. 2d 122, 125 (Ala. 2002)). '"The presumption of correctness, however, is rebuttable and may be overcome where there is insufficient evidence presented to the trial court to sustain its judgment."' Waltman v. Rowell, 913 So. 2d 1083, 1086 (Ala. 2005) (quoting Dennis v. Dobbs, 474 So. 2d 77, 79 (Ala. 1985)). 'Additionally, the ore tenus rule does not extend to cloak with a presumption of correctness a trial judge's conclusions of law or the incorrect application of law to the facts.' Waltman v. Rowell, 913 So. 2d at 1086."

Retail Developers of Alabama, LLC v. East Gadsden Golf Club, Inc., 985 So. 2d 924, 929 (Ala. 2007).

As a threshold matter, we note that, because Diedri had conveyed her interest in the parcel abutting the north boundaries of parcels 1, 2, and 3 the day before trial and had thus conveyed to Wanda Sue any ownership interest in parcels

1, 2, and 3 Diedri might have had by virtue of adverse possession before trial, Diedri was not aggrieved by the judgment entered in this action. A party that is not aggrieved by a trial court's judgment lacks standing to appeal from that judgment, and this court lacks jurisdiction over such an appeal. See Buco Bldg. Constructors, Inc. v. Mayer Elec. Supply Co., 960 So. 2d 707, 711-12 (Ala. Civ. App. 2006). Accordingly, we conclude that, because Diedri was not aggrieved by the judgment in this action, we lack jurisdiction over the appeal insofar as she purports to appeal that judgment, and, therefore, we dismiss the appeal with respect to Diedri.

Wanda Sue first argues that the trial judge erred by interpreting the Rule 15(b) amendment of her complaint, which added a claim of adverse possession by prescription, as superseding her claim seeking a determination of a boundary-line dispute, which she had stated in her original complaint. According to Wanda Sue, this was error because, she says, the amendment clearly indicated that it was adding the claim of adverse possession by prescription and did not indicate that that claim was intended to supersede her claim seeking a

determination of a boundary-line dispute. However, as we will explain below, the trial judge's interpreting the claim of adverse possession by prescription contained in the amendment as superseding the claim seeking a determination of a boundary-line dispute was harmless error.

In Buckner v. Hosch, 987 So. 2d 1149, 1151-52 (Ala. Civ. App. 2007), this court stated:

> "In Kerlin v. Tensaw Land & Timber Co., 390 So. 2d 616 (Ala. 1980), the supreme court recited Alabama law regarding adverse possession:
>
> > "'In Alabama there are basically two types of adverse possession, these two types being statutory adverse possession and adverse possession by prescription. Adverse possession by prescription requires actual, exclusive, open, notorious and hostile possession under a claim of right for a period of twenty years. See, Fitts v. Alexander, 277 Ala. 372, 170 So. 2d 808 (1965). Statutory adverse possession requires the same elements, but the statute provides further that if the adverse possessor holds under color of title, has paid taxes for ten years, or derives his title by descent cast or devise from a possessor, he may acquire title in ten years, as opposed to the twenty years required for adverse possession by prescription. Code 1975, § 6-5-200. See, Long v. Ladd, 273 Ala. 410, 142 So. 2d 660 (1962).
> >
> > "'Boundary disputes are subject to a unique set of requirements that is a hybrid

> of the elements of adverse possession by prescription and statutory adverse possession. In the past there has been some confusion in this area, but the basic requirements are ascertainable from the applicable case law. In a boundary dispute, the coterminous landowners may alter the boundary line between their tracts of land by agreement plus possession for ten years, or by adverse possession for ten years. See, Reynolds v. Rutland, 365 So. 2d 656 (Ala. 1978); Carpenter v. Huffman, 294 Ala. 189, 314 So. 2d 65 (1975); Smith v. Brown, 282 Ala. 528, 213 So. 2d 374 (1968); Lay v. Phillips, 276 Ala. 273, 161 So. 2d 477 (1964); Duke v. Wimberly, 245 Ala. 639, 18 So. 2d 554 (1944); Smith v. Bachus, 201 Ala. 534, 78 So. 888 (1918). But see, Davis v. Grant, 173 Ala. 4, 55 So. 210 (1911). See also Code 1975, § 6-5-200(c). The rules governing this type of dispute are, in actuality, a form of statutory adverse possession. See Code 1975, § 6-5-200(c); Berry v. Guyton, 288 Ala. 475, 262 So. 2d 593 (1972).'

"390 So. 2d at 618-19.

"Although the Alabama Supreme Court has applied the hybrid form of adverse possession described above in true boundary-line disputes, see, e.g., Johnson v. Brewington, 435 So. 2d 64, 65 (Ala.1983), it has held that, when a coterminous landowner is claiming to have acquired all or a significant portion of another coterminous landowner's land by virtue of adverse possession, (1) the case is an adverse-possession case rather than a boundary-line dispute, (2) the hybrid form of adverse possession does not apply, and (3), therefore, the party claiming adverse possession must prove the elements of either statutory adverse possession or prescriptive adverse possession. See McCallister v.

> Jones, 432 So. 2d 489, 492 (Ala. 1983) (holding that, when one coterminous landowner claimed to have acquired ownership of a three- to five-acre portion of the other coterminous landowner's land, the case was an adverse-possession case to which the hybrid form of adverse possession applicable in boundary-line disputes did not apply); and Kerlin, 390 So. 2d at 619 (holding that, when one conterminous landowner claimed to have acquired ownership of the entire lot of the other coterminous landowner, the case was an adverse-possession case to which the hybrid form of adverse possession applicable in boundary-line disputes did not apply)."

(Emphasis added.)

In the case now before us, Wanda Sue claimed that her father had made exclusive use of the cow pasture for 10 years and, therefore, by virtue of the hybrid form of adverse possession applicable in boundary-line disputes, she was the owner of the cow pasture and, thus, the southern and western fence lines of the cow pasture had replaced a significant portion of the quarter-quarter section line as the common boundary line separating her parcel from parcel 1. As noted above, the scale drawing indicates that the cow pasture encompassed over one-half of parcel 1; thus, by claiming that she had acquired the cow pasture by adverse possession, Wanda Sue was claiming to have acquired a significant portion of parcel 1. Consequently, "(1) [this] case is an

adverse-possession case rather than a boundary-line dispute, (2) the hybrid form of adverse possession does not apply, and (3), therefore, [Wanda Sue,] the party claiming adverse possession[,] must prove the elements of either statutory adverse possession or prescriptive adverse possession." Buckner v. Hosch, 987 So. 2d at 1152.

Wanda Sue did not plead or otherwise assert a claim of statutory adverse possession in the trial court. Therefore, she could prevail on her claim seeking to establish that the southern and western fence lines of the cow pasture had replaced a significant portion of the quarter-quarter section line as the common boundary lines separating her parcel from parcel 1 only if she proved that she had acquired the cow pasture by adverse possession by prescription. See Buckner v. Hosch.

As noted above, Wanda Sue contended that the common boundary line separating her parcel from parcels 2 and 3 was one of 3 alternative lines, i.e., the pea-patch line, the projected imaginary line, or the horse-pasture line. The scale drawing depicts parcels 2 and 3, the Whites' house on parcel 2, the projected imaginary line, and the horse-pasture line.

It does not depict the pea-patch line. Although the other evidence introduced at trial did not indicate the precise location of the pea-patch line, it established that it was close to the Whites' house, which is near the south boundary of parcel 2. Thus, the area north of the pea-patch line would encompass most of parcel 2. The scale drawing indicates that the area north of the projected imaginary line would encompass approximately one-half of parcel 2 and that the area north of the horse-pasture line would encompass approximately one-third of parcel 2. Thus, even Wanda Sue's claim that the common boundary line had been moved to the horse-pasture line was a claim seeking a significant portion of parcel 2. Consequently, she was required to prove either statutory adverse possession or adverse possession by prescription. As noted above, she did not plead or otherwise assert a claim of statutory adverse possession. Therefore, in order to prevail on her claim that the common boundary line separating her parcel from parcels 2 and 3 had been moved to the pea-patch line, the projected imaginary line, or the horse-pasture line, she was required to prove that she had acquired the portions of parcels 2 and 3 located north of those lines by adverse possession by

prescription. Id.

Because Wanda Sue could have prevailed only if she established the elements of adverse possession by prescription, the error committed by the trial judge in interpreting her Rule 15(b) amendment to supersede her claim seeking the establishment of a boundary line with a claim of adverse possession by prescription did not injuriously affect Wanda Sue's substantial rights and, therefore, was harmless. See Rule 45, Ala. R. App. P. ("No judgment may be reversed or set aside, nor new trial granted in any civil ... case ... for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken ..., after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties.").

Wanda Sue's second argument is that the trial judge erred because, she says, he determined that she was required to prove adverse possession for 20 years instead of adverse possession for 10 years in order to prevail. However, as discussed above, Wanda Sue could prevail only if she proved the elements of adverse possession by prescription. Adverse

possession by prescription requires proof of adverse possession for 20 years rather than 10. Therefore, Wanda Sue's second argument has no merit.

Wanda Sue's third argument is that the trial court erred in finding that the fence enclosing the cow pasture was not a boundary-line fence. However, the undisputed evidence established that Horace Greeley Nelson erected the fence around the cow pasture as a pasture fence rather than as a boundary-line fence when he owned all the parties' land. Thus, the undisputed evidence established that the fence enclosing the cow pasture was not intended to be a boundary-line fence when it was originally erected. Moreover, Mary White testified that Wanda Sue's father did not make exclusive use of the cow pasture; to the contrary, she testified that her family had also used the cow pasture for pasturing livestock. Thus, the trial court was presented with conflicting evidence regarding whether Horace Greeley Nelson's successors in title treated the fence enclosing the cow pasture as a pasture fence or a boundary-line fence. "'[I]n ore tenus proceedings the trial court is the sole judge of the facts and of the credibility of witnesses,' and 'we are required to review the evidence in a

light most favorable to the prevailing part[ies].'" Architectura, Inc. v. Miller, 769 So. 2d 330, 332 (Ala. Civ. App. 2000) (quoting Driver v. Hice, 618 So. 2d 129, 131 (Ala. Civ. App. 1993)). The trial court could have found that Mary White's testimony that her family had also used the cow pasture to pasture livestock was credible and could have rejected the testimony tending to prove that Wanda Sue's father had made exclusive use of the cow pasture. Accordingly, we find no merit in Wanda Sue's third argument.

Wanda Sue's fourth argument is that the trial judge erred in finding that Wanda Sue did not own the cow pasture and the horse pasture by virtue of adverse possession by prescription. However, as discussed above, the evidence would support a finding that Wanda Sue's father's use of the cow pasture was not exclusive, which is an essential element of adverse possession by prescription. See Buckner v. Hosch. Therefore, we cannot hold that the trial judge erred in finding that Wanda Sue did not own the cow pasture by virtue of adverse possession by prescription.

With respect to the area where the horse pasture is now located, the evidence was in conflict regarding whether Wanda

Sue's family had made exclusive use of it for growing peas before the fence enclosing the horse pasture was erected in 1993. Wanda Sue and her witnesses testified that Wanda Sue's family had indeed made exclusive use of that area for growing peas. However, Mary White testified that her family had also used that area for growing peas and, thus, that Wanda Sue's family's use of that area was not exclusive. Consequently, viewed in the light most favorable to the prevailing parties, the evidence supports a finding that Wanda Sue's family had not made exclusive use of the area where the horse pasture is now located before the fence enclosing the horse pasture was erected. Moreover, the evidence established that Wanda Sue's mother had not erected the fence enclosing the horse pasture until 1993, which was less than 20 years before trial. Consequently, we find no merit in Wanda Sue's fourth argument.

Wanda Sue's fifth and final argument is that the trial judge erred in viewing the land without the parties' counsel being present. However, the only legal authority Wanda Sue cites in support of that argument is the first sentence of Rule 43(a), Ala. R. Civ. P., which provides that "[i]n all trials the testimony of witnesses shall be taken orally in

open court, unless otherwise provided in these rules." The trial judge was not taking the testimony of witnesses when he viewed the land. Therefore, the first sentence of Rule 43(a) does not support Wanda Sue's argument. Rule 28(a)(10), Ala. R. App. P. requires that an appellant's argument be supported with citations to cases, statutes, or other legal authority. "'[A]n appellant's citations to general propositions of law not specifically applicable to the issues presented by the appeal do not meet the requirements of Rule 28, Ala. R. App. P.'" Cincinnati Ins. Cos. v. Barber Insulation, Inc., 946 So. 2d 441, 449 (Ala. 2006) (quoting BankAmerica Hous. Servs. v. Lee, 833 So. 2d 609, 621 (Ala. 2002)). Consequently, we decline to consider Wanda Sue's fifth argument.

For the reasons discussed above, we dismiss the appeal with respect to Diedri and affirm the judgment.

APPEAL DISMISSED AS TO DIEDRI KAY LINDSEY; AFFIRMED.

Thompson, P.J., and Pittman, Thomas, and Moore, JJ., concur.