Rel: October 20, 2023

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0254

Kathleen M. LaFlore

v.

Robert Auburn Huggins and Katherine Hamilton Huggins

Appeal from Clarke Circuit Court
(CV-21-900052)

MITCHELL, Justice.

This appeal involves a boundary-line dispute between neighbors in Clarke County. Kathleen M. LaFlore sued her neighbors, Robert Auburn Huggins and Katherine Hamilton Huggins, in the Clarke Circuit Court,

seeking to have the court establish the true boundary line between her property and the Hugginses' property. LaFlore alleged in the complaint that she had acquired legal title to the disputed property -- which consists of a ravine ("the gully") and an adjoining strip of land -- through adverse possession. The trial court rejected LaFlore's claim and declared the true boundary to be the western survey line that existed when her family originally purchased their home in 1962. LaFlore filed a timely postjudgment motion, which the trial court denied. LaFlore appeals. We affirm.

Facts and Procedural History

In 1962, LaFlore's parents purchased a residential lot in the town of Grove Hill. At the time, the Tate family owned the lot immediately west of the LaFlores' lot. A large gully, about 40 feet wide and 20 feet deep, crossed the Tates' property north to south. The Tates' property also included a strip of land lying east of the gully up to the western survey line of the LaFlores' property.[1]

[1]This is the same survey line that was established by a 2008 survey that third party Larry Baker conducted and that the trial court ultimately held to be the actual boundary. LaFlore does not dispute that this was the original boundary line between the properties. She only claims title to the disputed property through adverse possession.

At the time the LaFlores purchased their home, the gully was not crossable. The walls were steep, and there was no bridge to connect the land lying on either side. Nevertheless, the gully did not lie untouched: both the Tates and the LaFlores took advantage of the myriad uses it offered. Mr. Tate planted kudzu in the bottom of the gully to prevent erosion. Mr. LaFlore kept other portions of the gully "clean and cleared" of debris. And the neighborhood children, including the LaFlore and Tate children, frequently played in it.

On the land lying west of the gully, Mr. Tate planted shrubbery, mowed the grass, and otherwise maintained the yard up to the gully's rim. East of the gully, Mr. LaFlore likewise took care of the yard, planting "grass, azaleas, bridal wreath, oak trees and hibiscus." Members of both families, as well as neighbors, frequently dumped yard clippings and other debris into various portions of the gully. This communal dumping continued throughout the time that the Tates and the LaFlores lived on their respective properties.

LaFlore's parents owned their lot until their respective deaths in 1990 and 2007, at which point LaFlore became the sole owner of the property. The Tate family, meanwhile, owned their lot until they sold it

to the Hugginses in 2005. Almost immediately after their purchase, the Hugginses were approached by various members of the community -- including Grove Hill municipal employees -- who asked if they could use the gully as a dump site. Like their predecessors, the Hugginses obliged. The Hugginses periodically compacted the debris with their track hoe and tractor.

In about 2007, LaFlore left town for two weeks. When she returned, a significant portion of the gully had been filled in with a "massive amount of trees." Apparently, the quantity of dirt and trees deposited in the gully in this single event far exceeded the cumulative periodic dumping by various members of the community in the previous decades. LaFlore later learned that the Hugginses had granted permission to a third party to fill in the gully. Upset, but recognizing that any attempt to remove the debris would be futile, she decided that the remainder of the gully should be completely filled in. Around this time, she too was approached by Grove Hill municipal employees asking whether they could dispose of debris in the gully. Seeing an opportunity to expedite her project of filling in the gully, she acquiesced.

In 2008, LaFlore hired a surveyor to determine the actual boundary between her property and the Hugginses' property because she wanted to relocate some of her shrubbery to an otherwise vacant part of the disputed property. The survey revealed the original boundary line that had existed when the LaFlores first purchased their property in 1962 -- i.e., the western survey line. According to the 2008 survey, all the disputed property -- the gully and a strip of land lying east of the gully -- was part of the Tates' property. The surveyor placed stakes on each end of the western survey line.

By 2015, almost all the gully was filled with debris and dirt so that it was possible to walk over most of the area. After it became crossable, the Hugginses used their tractor and bush hog to level the filled-in gully and their lawnmower to cut the grass lying east of the gully.

The precise nature and extent of LaFlore's interactions with the Hugginses are not clear from the record, but in 2021 LaFlore filed a complaint in the trial court seeking a judgment declaring that the "common recognized boundary" between the two properties was the middle of the gully. She specifically argued that she had acquired legal title to the entirety of the disputed property -- the land lying west of the

western survey line up to the middle of the gully -- through adverse possession.

The trial court held a bench trial on LaFlore's claim and heard ore tenus evidence presented by both sides about how they and their predecessors had used the disputed property in the past. The trial court determined that the dispute should be resolved based on the 2008 survey results and set the boundary line where that survey had placed it. LaFlore then filed a motion to alter, amend, or vacate, which the trial court denied. See Rule 59(e), Ala. R. Civ. P. LaFlore appealed.

Standard of Review

"[W]here a trial court has heard ore tenus testimony, as in this case, its judgment based upon that testimony is presumed correct and will be reversed only if, after consideration of the evidence and all reasonable inferences to be drawn therefrom, the judgment is found to be plainly and palpably wrong." Robinson v. Hamilton, 496 So. 2d 8, 10 (Ala. 1986). "The presumption of correctness is particularly strong in boundary line disputes and adverse possession cases, because the evidence in such cases is difficult for an appellate court to review." Bearden v. Ellison, 560 So. 2d 1042, 1044 (Ala. 1990).

Analysis

LaFlore argues that the trial court erred in finding the boundary line to be the western survey line. She argues that the trial court should have placed the boundary line in the center of the gully or, in the alternative, along the gully's eastern rim. We reject both arguments.

A. The Trial Court's Judgment Finding the Boundary Line to be the Western Survey Line Is Supported by the Evidence

LaFlore first argues that the trial court committed reversible error by failing to find that her family had obtained all the property east of the gully's center by adverse possession. We disagree.

Under Alabama law, a claimant may acquire title to land by adverse possession in one of three ways: by prescription, by statute, or by agreement. Kerlin v. Tensaw Land & Timber Co., 390 So. 2d 616, 618 (Ala. 1980). Adverse possession by prescription requires actual, exclusive, open, notorious, and hostile possession under a claim of right for a period of 20 years. Id. Statutory adverse possession requires the same elements but permits a claimant to acquire title in 10 years if the claimant holds the land under color of title, pays taxes on the land for 10 years, or derives her title by descent or devise from a possessor. § 6-5-200, Ala. Code 1975. See Long v. Ladd, 273 Ala. 410, 142 So. 2d 660

(1962). Finally, in boundary-line disputes between the owners of coterminous property, an adverse possessor can acquire title if the owners agree to alter the boundary line and the claimant possesses the land for 10 years. Kerlin, 390 So. 2d at 618. In all three instances, the burden of proof rests with the party claiming title to the land by adverse possession. Garringer v. Wingard, 585 So. 2d 898, 900 (Ala. 1991).

In her complaint, LaFlore alleged that she was entitled to the disputed property because the middle of the gully was the "commonly recognized boundary between the respective lands of the parties and their respective predecessors in interest." Thus, her theory of why she was entitled to the disputed property was the third version of adverse possession -- by agreement between owners of coterminous properties -- though she did not couch her adverse-possession claim in those terms.

But once it became apparent at trial that there had not been an agreement between the parties or their predecessors in interest, LaFlore switched tactics to effectively argue that she was entitled to the disputed property by prescriptive adverse possession. She now argues on appeal that the evidence presented at trial established that her predecessors in interest -- her parents -- satisfied the requirements of prescriptive

adverse possession,[2] thus making her a possessor who "derives title by descent cast or devise" under the statute. § 6-5-200(a)(3).

But our review of the record reveals that there is substantial evidence that LaFlore's parents' use of the disputed property was not exclusive; thus, they could not have acquired the property by prescriptive adverse possession. At trial, LaFlore testified that her father, from 1962 until his death in 1990, maintained the disputed strip of land lying east of the gully by planting shrubbery and mowing the grass. LaFlore also testified that her father kept portions of the gully clean and free of undergrowth[3] and that she frequently played in the gully as a child. And

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[2]"Tacking" allows a claimant to add -- or "tack" -- her time of possession onto that of a previous adverse possessor to reach the required statutory period if there is sufficient privity between the successive adverse claimants. Strickland v. Markos, 556 So. 2d 229, 233 (Ala. 1990). Tacking is also permissible under common law to prove prescriptive adverse possession. See Graham v. Hawkins, 281 Ala. 288, 202 So. 3d 74 (1967). When the claimant takes actual possession of the disputed property that was adversely held by her predecessor in interest, "sufficient privity is established to allow tacking." Carpenter v. Huffman, 294 Ala. 189, 192, 314 So. 2d 65, 68 (1975).

[3]LaFlore correctly notes that the "use" requirement of adverse possession requires only that the possessor use the land in question in a manner consistent with its nature; therefore, keeping portions of the gully free of debris constituted "use." Drennen Land & Timber Co. v. Angell, 475 So. 2d 1166 (Ala. 1985). But since the "use" of the gully was not exclusive, her claim of adverse possession fails.

the LaFlores routinely deposited grass clippings and debris into other parts of the gully.

The trial court found that, during the same period, the Hugginses' predecessors in interest, the Tates, also made use of the gully by disposing of their own "lawn and garden debris, storm debris, and other building materials." At trial, Mr. Tate's daughters testified that their father planted kudzu in the gully in the 1960s to prevent erosion. The Tate daughters also testified that they and their friends played in the gully as children during the 1960s and 1970s. Moreover, the Tates granted neighbors and other citizens of Grove Hill permission to use the gully as a dump site. The communal dumping in the gully continued even after LaFlore's parents were deceased and she acquired their home in 2007.

The Hugginses also made use of the gully when they first acquired their property from the Tates in 2005. They testified that they dumped debris in the gully and granted permission to other members of the community to do the same from 2005 until as late as 2020. Once a portion of the gully was substantially filled in with dirt in 2015, the Hugginses

used their tractor and bush hog to level the filled-in gully and their lawnmower to cut the grass lying east of the gully.

Taken as a whole, the record does not demonstrate that there was ever any measurable span of time in which the LaFlores' possession of the disputed property was exclusive. From the time the LaFlore family first occupied their home in 1962 until as recently as 2020, the Tates, the Hugginses, and a rotating cast of Grove Hill citizens have used the gully as a dump site. Because there is credible evidence to support the trial court's judgment, we will not disturb the court's determination that the true boundary line is the western survey line depicted in the 2008 survey. See Pinson v. Veach, 388 So. 2d 964, 968 (Ala. 1980).

B. LaFlore's Argument that the Boundary Line Should Have Been Set at the Gully's Eastern Rim Was Not Timely Asserted

LaFlore also argues that even if she did not adversely possess the eastern half of the gully, she should have been awarded title to the land lying between the eastern rim of the gully and the western survey line because, she says, the evidence was undisputed that her parents had exercised exclusive control over that property for more than 20 years. But LaFlore waited until her postjudgment motion to distinguish between these two portions of the disputed property. At trial she argued

that the boundary line should be set at the center of the now filled-in gully; she never argued in the alternative that the line could be set at the eastern rim. She acknowledged as much at the postjudgment hearing, admitting that while her "original contention" was that she was entitled to all the disputed property, up to the "midline of the gully," her "fallback argument" -- articulated for the first time in her postjudgment motion -- was that she was at least entitled to the land up to the eastern rim of the gully.

The problem with delaying her alternative argument is that while litigants are permitted to raise new arguments in Rule 59(e) postjudgment motions, the trial court is not obligated to consider them. Green Tree Acceptance, Inc. v. Blalock, 525 So. 2d 1366, 1369 (Ala. 1988). LaFlore explained at the postjudgment hearing that her decision not to make two separate adverse-possession claims at trial was strategic. But as we held in Alfa Mutual Insurance Co. v. Culverhouse, 149 So. 3d 1072, 1077 (Ala. 2014), it is well within the discretion of the trial court to refuse to entertain new arguments in litigants' postjudgment motions, and that is especially true when, as here, the litigant's decision not to present her theory in a timely fashion was the result of a deliberate strategic choice.

Because LaFlore deliberately waited until after trial to claim title solely to the land lying east of the gully, the trial court's decision to reject that argument is now insulated by an additional layer of deferential review. Thus, we cannot say that the trial court exceeded its discretion in denying LaFlore's Rule 59(e) postjudgment motion.

Alternatively, LaFlore suggests that the trial court was nonetheless "required" to establish the eastern rim of the gully as the true boundary between the parties' property, even though neither side argued for that result at trial. The essence of this argument seems to be that the trial court should have, on its own, bifurcated her single claim to the disputed property into distinct claims of adverse possession, even though LaFlore originally claimed title to all the disputed property.

In support of her argument, LaFlore cherry-picks a single sentence from Barnett v. Millis, 286 Ala. 681, 684 246 So. 2d 78, 80 (1971), in which we cited another one of our cases, Deese v. Odom, 283 Ala. 420, 218 So. 2d 134 (1969), and stated that, "[i]n a boundary line suit[,] the trial court should establish the true boundary line whether or not it is the one contended for by either party." LaFlore's reliance on this quote is misplaced, and both cases are inapposite.

Barnett and Deese were boundary-dispute cases in which we straightforwardly applied the ore tenus rule and affirmed the trial courts' judgments. Neither case stands for the proposition that a trial court may draw a boundary line wherever it wishes. In fact, in Barnett we affirmed the trial court's determination that the actual boundary line was the line claimed by one of the parties. 286 Ala. at 685, 246 So. 2d at 82.

And while we said in Deese that trial courts could determine that the actual boundary line is not what either of the parties are claiming, we in no way suggested that they were required to subdivide the disputed property if the plaintiffs established adverse possession on a discrete portion of the property but not its entirety. In Deese, the sole issue before us was whether the evidence below supported the trial court's judgment that the true boundary line was what the court-ordered survey reflected. 283 Ala. at 422, 218 So. 2d at 135. The appellant contended that the trial court should have found that the boundary was along a fence line between the coterminous properties rather than where the court-appointed surveyor had determined the line to be. 283 Ala. at 423, 218 So. 2d at 136. We rejected the argument that the trial court had to choose between the boundary lines that the parties each held up as the true line.

Instead, we held that it was in the trial court's discretion to rely on the survey results to determine the true boundary line if it was "'reasonably satisfied'" from the evidence that the survey was accurate. 283 Ala. at 423, 218 So. 2d at 137 (citation omitted).

If anything, Barnett and Deese undermine LaFlore's argument by underscoring the strength of the presumption of correctness that we afford trial-court judgments in boundary-dispute cases. See Deese, 283 Ala. at 422, 218 So. 2d at 136 ("[U]nless the trial court's decision is shown to be palpably wrong and unjust and contrary to the great weigh of the evidence, its decision should be affirmed."). Applying that standard here, it is clear that the trial court did not err in finding that the western survey line was the true boundary line between the parties' properties.

Conclusion

Because LaFlore has failed to show that the trial court erred by entering judgment in favor of the Hugginses, we affirm.

AFFIRMED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.