

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-000656-MR

CHARLES C. PATRICK AND  
EILLENE PATRICK

APPELLANTS

v.

APPEAL FROM MARTIN CIRCUIT COURT  
HONORABLE JOHN DAVID PRESTON, JUDGE  
ACTION NOS. 01-CI-00029 & 03-CI-00176

EARL CASSADY AND  
EVELYN CASSADY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; VANMETER, JUDGE; LAMBERT,<sup>1</sup>  
SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: The sole issue before this Court is whether the  
trial court was clearly erroneous in its determination that Appellants failed to prove

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<sup>1</sup> Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

ownership of the subject real property by adverse possession. Upon examination of the record, including the trial court's thorough findings of fact, conclusions of law and judgment, we are unable to conclude that the trial court's findings were clearly erroneous or that controlling law was misapplied. Kentucky Rules of Civil Procedure (CR) 52.01. Accordingly, we affirm.

An extensive recitation of the facts and procedural history of the case is unnecessary. While prior phases involved an additional party and damage claims, the only remaining issue is adverse possession. As such, it is sufficient to say that Appellees owned two tracts of real property on Cold Water Fork of Rockcastle Creek near the mouth of Mullitt Branch. Appellees sold one of these tracts and it ultimately came into possession of Appellants. Appellees retained the other tract. The tract retained by Appellees is the real property which is the subject of this dispute.

Appellants claim to have engaged in possessory acts with respect to the disputed real property sufficient to cause ownership to ripen in them. Among those acts are gardening, removal of brush, the filling of a slope, sowing grass, plowing, and generally exercising dominion and control over the property. Appellees acknowledge some possession by Appellants but contend that it was intermittent and far short of that required for ownership to ripen. Appellants did not build any structures on the property nor did they fence the property.

The trial court rendered extensive findings of fact. Finding no. 12 is a fair summary of its view of the controversy:

In analyzing the evidence, there is a conflict in the testimony of the parties. Viewed in a light most favorable to the Patricks [Appellants herein], the evidence indicated that they gardened the property, mowed the property, and had it filled with fill dirt over time. There is no evidence that they fenced the property or that they built any structures on the property. Considering the evidence for the Cassadys [Appellees herein], Mrs. Cassady indicated that she knew that the grass had been mowed some time, and that some filling had gone on, but denied anything else concerning the property. Both her son and son-in-law denied ever seeing any gardens on the property. Charles Patrick testified initially that they gardened every year but once, but on cross-examination, was a little more vague, and indicated that there might have been a few years that he did not garden on the property. In considering all the evidence, and particularly the fact that gardening or grass mowing would occur only about half of any particular year, the Court is unable to find that any possession by the Patricks was hostile enough, exclusive enough or continuous enough to ripen into adverse possession.

The required elements for adverse possession to ripen into ownership are well-stated in *Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., Inc.*, 824 S.W.2d 878 (Ky. 1992). In summary, possession must be hostile and under claim of right; it must be actual, exclusive and continuous, and open and notorious. “The ‘open and notorious’ element requires that the possessor openly evince a purpose to hold dominion over the property with such hostility that will give the nonpossessory owner notice of the adverse claim.” *Id.* at 879. “An intent to exercise dominion over land may be evidenced by the erection of physical

improvements on the property. *Kentucky Women’s Christian Temperance Union v. Thomas*, Ky., 412 S.W.2d 869 (1967).” *Id.*

Applying the foregoing principles to the facts in evidence, the trial court concluded that as a matter of law, “any possession by the Patricks was not sufficient to meet the burden of proof required for adverse possession.” The trial court did not err in this conclusion.

The judgment of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Suleiman Oko-ogua  
Michael T. Hogan  
Louisa, Kentucky

BRIEF FOR APPELLEES:

John R. Triplett  
Inez, Kentucky