[Cite as *Lloyd v. Newland*, 2021-Ohio-2342.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

MICHAEL A. LLOYD,

Plaintiff-Appellee,

v.

JANET NEWLAND,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 20 BE 0026

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 19 CV 380

BEFORE:
Gene Donofrio, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed

Atty. David Delk, Jr., Grove, Holmstrand & Delk, 44 ½ 15th Street, Wheeling, West Virginia 26003, for Plaintiff-Appellee and

Atty. James Nichelson, P.O. Box 97, Martins Ferry, Ohio 43935, for Defendant-Appellant.

Dated:
June 16, 2021

Donofrio, J.

{¶1} Defendant-appellant, Janet Newland, appeals from a Belmont County Common Pleas Court judgment in favor of plaintiff-appellee, Michael Lloyd, following a bench trial on appellee's claim for adverse possession.

{¶2} In January of 1997, appellee purchased a home at 511 Orchid Drive. The adjacent property, 0 Orchid Drive (the property), was overgrown with weeds and required maintenance. In May 1997, appellee asked appellant and her sons to maintain the property. After several months passed with no improvement to the property, appellee began taking care of the property by himself in August 1997. Appellee cleared the land, cut the grass, fertilized, weeded, and seeded the property on a continual basis. Appellee also planted a garden on the property in 2000 and maintained it through 2010. As his sons aged, appellee built a pitching mound on the property and used the property for recreational and sporting activities. In 2010, appellee built an addition onto his home and moved a significant amount of dirt onto the property, filling in a valley.

{¶3} Appellant admitted that she did not pay much attention to the property during the past 22 years. She drove past the property a couple of times a year, noticing that the grass had been cut. She did not know who was cutting the grass.

{¶4} On October 22, 2019, appellee filed a complaint to quiet title to the property asserting that he gained title through adverse possession. The matter proceeded to a bench trial where the court heard testimony from appellant, appellant's sons, appellee, and a neighbor. The trial court found that appellee did in fact gain title to the property by means of adverse possession.

{¶5} Appellant filed a timely notice of appeal on September 30, 2020. She raises a single assignment of error.

{¶6} Appellant's sole assignment of error states:

> THE TRIAL COURT ERRED WHEN IT FOUND SUFFICIENT FACTS OF OPEN, NOTORIOUS, CONTINUOUS AND ADVERSE USE FOR 21 YEARS.

{¶7} Appellant argues that appellee's evidence of adverse possession was weak and that all appellee did was merely mow grass on the property. She also asserts there was evidence that she gave consent for appellee to mow the property.

{¶8} When reviewing civil appeals from bench trials, an appellate court applies a manifest weight standard of review. *Revilo Tyluka, L.L.C. v. Simon Roofing & Sheet Metal Corp*., 193 Ohio App.3d 535, 2011-Ohio-1922, 952 N.E.2d 1181, ¶ 5 (8th Dist.), citing App.R. 12(C), *Seasons Coal v. Cleveland*, 10 Ohio St.3d 77, 461 N.E.2d 1273 (1984). Judgments supported by some competent, credible evidence going to all the material elements of the case must not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co*., 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus (1978). See also, *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 226, 638 N.E.2d 533 (1994). Reviewing courts must oblige every reasonable presumption in favor of the lower court's judgment and findings of fact. *Gerijo*, 70 Ohio St.3d at 226 (citing *Seasons Coal Co*., supra). In the event the evidence is susceptible to more than one interpretation, we must construe it consistently with the lower court's judgment. *Id*.

{¶9} "To acquire title by adverse possession, a party must prove, by clear and convincing evidence, exclusive possession and open, notorious, continuous, and adverse use for a period of twenty-one years." *Grace v. Koch*, 81 Ohio St.3d 577, 692 N.E.2d 1009, syllabus (1998). Clear and convincing evidence is that proof which establishes in the minds of the trier of fact a firm conviction as to the allegations sought to be proved. *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954). Failure of proof on any of the elements of adverse possession results in failure to acquire title by adverse possession. *Grace*, 81 Ohio St.3d at 579.

{¶10} Appellee testified that he has lived at 511 Orchid Drive for 23 ½ years, since January 1997. (Tr. 5). The property is adjacent to his lot. (Tr. 7). When he moved in, the weeds on the property were over five-feet high. (Tr. 8). He stated that twice in the summer of 1997, appellant's sons mowed or plowed the weeds down. (Tr. 14). After the summer of 1997, appellee testified that neither appellant nor anyone on her behalf ever tended to the property. (Tr. 15).

{¶11} In September 1997, appellee began taking care of the property. (Tr. 17). He planted grass seed to prevent more weeds and mowed. (Tr. 17). From September

1997 until October 2019, appellee continuously mowed the property. (Tr. 17-18). He applied "Turf Builder Plus 2, the good stuff" so that the grass would look nice. (Tr. 18). He also trimmed and applied weed killer. (Tr. 18-19). Appellee stated that he treated the property like his own. (Tr. 19). He purchased tractors over the years to keep up with the mowing. (Tr. 19). Appellee did all of the maintenance to the property during the day for anyone to see. (Tr. 19).

{¶12} Additionally, appellee planted a vegetable garden on the property that he maintained for several years. (Tr. 20). In 2010, appellee put an addition on his house. (Tr. 20). He took the dirt from the project at his house and used it to fill in a valley on the property. (Tr. 20). Appellee leveled the dirt on the property. (Tr. 23-24). Appellee also built a pitching mound on the property for his children to practice baseball. (Tr. 21). In addition, appellee hosted neighborhood picnics and fireworks displays on the property. (Tr. 24). Appellee "thought of it as my own; as I would take care of my own property." (Tr. 25). He did this for 22 years. (Tr. 29).

{¶13} On cross-examination, appellee stated that he did not talk to appellant's sons about the property after 1997 when they "poked" fun at him about taking care of it. (Tr. 33-34).

{¶14} Donald Yablonski has lived across the street from appellee since appellee moved in. Yablonski testified that no one took care of the property until appellee moved in. (Tr. 39). He stated that appellee mowed, weeded, and fertilized the property. (Tr. 39-40). Yablonski testified that appellee was the only one who took care of the property and treated it like his own. (Tr. 40). Yablonski observed appellee maintain a garden, build a pitching mound, and play with his children on the property. (Tr. 40).

{¶15} Appellant testified that she did not pay much attention to the property. (Tr. 50). She described it as "an investment to be dealt with later." (Tr. 50). She stated that she was aware that someone was maintaining the property but she did not know it was appellee. (Tr. 51). She only ever drove by the property "every once and awhile" and noticed that someone was keeping the grass cut. (Tr. 53).

{¶16} Dan Newland is appellant's son. He testified that he was aware appellee was cutting the grass at the property. (Tr. 59). Dan also testified that appellee asked him

if he could dump the dirt from his construction project onto the property and asked if he could cut the grass. (Tr. 59-60).

{¶17} John Newland is appellant's other son. John testified that he drives by the property twice a year. (Tr. 67). He noticed that it was being cut. (Tr. 67). He did not notice anything else on the property. (Tr. 68-69). John did know that it was not anyone from his family who was maintaining the property. (Tr. 70).

{¶18} On rebuttal, appellee testified that he never asked anyone from appellant's family for permission to cut the grass, to place the fill dirt, to do the maintenance, or anything else at the property. (Tr. 72).

{¶19} As set out above, in order to prevail, appellee had to prove that he had exclusive possession of the property, that his possession was open and notorious, that it was continuous, and that it was adverse for 21 years.

{¶20} The testimony was undisputed that appellee exclusively used the property. Appellant and her sons testified that they only drove by the property a few times a year. There was no testimony that they ever stopped and used it for anything. On the other hand, appellee testified that he and his family used the property like it was their own. Appellee was the only person who mowed, weeded, seeded, and trimmed the property.

{¶21} Likewise, the testimony was undisputed that appellee's use of the property was open and notorious. For a use to be considered "open," it must be without attempted concealment. *Hindall v. Martinez*, 69 Ohio App.3d 580, 583, 591 N.E.2d 308 (3d Dist.1990). For a use to be "notorious," it must be known to some who might reasonably be expected to communicate their knowledge to the owner if he maintained a reasonable degree of supervision over his premises. *Id*. Appellee testified that he did all of the maintenance on the property during the day when anyone could see him. His neighbor testified that he watched appellee mow the grass, maintain a garden, build a pitching mound, and play with his children on the property. And appellant and her sons testified that when they checked on the property they could tell that someone had been maintaining the grass.

{¶22} Additionally, there was no dispute that appellee's use of the property was continuous for 21 years. Appellee stated that he started maintaining and using the

property in August 1997. He stated he continued to use the property, and still does so, until he filed this lawsuit in October 2019, a period of 22 years.

{¶23} Finally, the evidence demonstrated that appellee's use of the property was adverse. In order for possession to be adverse, the use must be non-permissive. *McCune v. Brandon*, 85 Ohio App.3d 697, 700, 621 N.E.2d 434 (5th Dist.1993). Appellee testified that he never asked for permission to use or maintain the property. One of appellant's sons testified to the contrary. But as stated above, it was up to the trial court as the factfinder to determine which testimony was more credible.

{¶24} Appellee provided clear and convincing evidence going to each element of adverse possession. Therefore, the trial court properly determined that he gained title to the property by adverse possession.

{¶25} Accordingly, appellant's sole assignment of error is without merit and is overruled.

{¶26} For the reasons stated above, the trial court's judgment is hereby affirmed.

Robb, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.