

Rel: October 27, 2023

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2022-1069

**Elba Exploration, LLC, William Richard Rollo, Gloria Rollo,
Tom Fouts, and Michael Management, Inc.**

v.

Joel R. Pate and Strago Petroleum Corporation

**Appeal from Conecuh Circuit Court
(CV-20-900055)**

PARKER, Chief Justice.

AFFIRMED. NO OPINION.

Shaw, Sellers, Mendheim, Stewart, and Cook, JJ., concur.

Bryan, J., dissents.

SC-2022-1069

Mitchell, J., dissents, with opinion, which Wise, J., joins.

MITCHELL, Justice (dissenting).

Following a nonjury trial, the Conecuh Circuit Court entered a judgment concluding that Joel R. Pate owned a parcel of property in rural Conecuh County, which he had purchased from Evie Phelps. The circuit court found that Phelps in turn had acquired title to the property by adverse possession after Phelps's aunt Lucille Jones -- who held a life estate in the property -- died. Other parties claiming a right to the property have appealed that judgment, arguing that the evidence produced at trial did not support a finding of adverse possession. I agree and therefore dissent from this Court's decision to affirm the circuit court's judgment.

Adverse possession requires that a claimant demonstrate "actual, exclusive, open, notorious and hostile possession." Kerlin v. Tensaw Land & Timber Co., 390 So. 2d 616, 618 (Ala. 1980). Accordingly, for us to affirm the circuit court's judgment, there must be substantial evidence from which the circuit court could have concluded that Phelps actually possessed the property after Jones died. See Robinson v. Hamilton, 496 So. 2d 8, 10 (Ala. 1986) (noting that, when a circuit court has heard ore tenus evidence, its judgment "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").

But I do not see any evidence in the record indicating that Phelps did so. At most, there is evidence indicating that Phelps visited the property once a year. And it is not even clear that he continued to make those visits after Jones died. Thus, Pate failed to show that Phelps had actually occupied the property after Jones's death. For this reason, the chain of title ran through the heirs of Jones's deceased husband Clifford and favors the appellants, who acquired their interests in the property through those heirs. See Powell v. Hopkins, 288 Ala. 466, 471, 262 So. 2d 289, 293 (1972) ("[N]o one having been in actual possession thereof, the possession is regarded as constructive and follows the chain of title."). Accordingly, I would reverse the judgment below.

Wise, J., concurs.