NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-174

GAIL PARKERSON, APPELLANT V. RICHARD MCMURTREY, SANDRA MCMURTREY, ERNIE'S WRECKER & BODY SHOP, INC. and WARREN FARR, APPELLEES	**Opinion Delivered** 11 FEBRUARY 2009 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT, [NO. CIV-2004-346 III] THE HONORABLE THOMAS LYNN WILLIAMS, JUDGE THE HONORABLE MARCIA HEARNSBERGER, JUDGE AFFIRMED

D.P. MARSHALL JR., Judge

This adverse-possession case has returned for a decision on the merits. *Parkerson v. McMurtrey*, CA06-978 (Ark. App. 6 June 2007) (dismissing appeal without prejudice for lack of a final order).[*] Ms. Parkerson and the McMurtreys are neighboring land owners near Lake Hamilton. Ms. Parkerson claimed a disputed strip of land through decades of adverse use by her family and, in recent years, as the parking place for her Corvette. The McMurtreys had record title. The circuit court quieted title in the

[*]Judge Lynn Williams presided over the trial and entered the original order in this case. On remand, Judge Marcia Hearnsberger presided and entered the amended and final order from which Parkerson now appeals.

McMurtreys. Ms. Parkerson appeals. She raises a number of issues, which we consider in two groups: the pre-trial issues about recusal, scheduling, and motions, and the issues at trial about matters of evidence and the merits. We also address Ms. Parkerson's post-trial motion, which covers some of this ground again.

The Facts. About fifty years ago, Parkerson's parents bought land located at 490 Bayshore Drive. Twenty years later, Parkerson acquired her parents' land through a warranty deed. The Conroys, the McMurtreys' predecessors in title, owned the adjoining property at that time. In 1990, Parkerson began parking her Corvette at a spot in front of her house, a spot located on the Conroys' land. The Conroys never asked Parkerson to move her car. The Conroys sold their land to the McMurtreys in 2002. The McMurtreys asked Parkerson several times to move her car off their land, but she refused. Parkerson testified that she and her family had used and taken care of the disputed strip of property since she was a child. The McMurteys mowed around the car; they also began putting up posts to build a fence around their property. Parkerson removed the posts. Mr. McMurtrey eventually had Ernie's Wrecker and Body Shop tow the Corvette from the property. That step led Parkerson to file this case, seeking her car back and an order quieting title based on adverse possession. The McMurtreys counterclaimed, requesting an order quieting title in them based on their deed.

The Pre-Trial Motions. Parkerson argues that the circuit court erroneously denied

several of her pre-trial motions. First, she claims that the circuit judge abused his discretion by refusing to recuse. Before taking the bench, Judge Williams was a deputy prosecutor and had pursued charges against Parkerson in an animal-cruelty case. The charges against her were eventually dismissed.

We see no abuse of discretion in Judge Williams's decision to stay on this case. *Rogers v. Rogers*, 80 Ark. App. 430, 442, 97 S.W.3d 429, 437 (2003). A trial judge need not recuse in unrelated litigation simply because he or she prosecuted a party in another case. *Cooper v. State*, 317 Ark. 485, 490, 879 S.W.2d 405, 408 (1994). Parkerson had to show bias or prejudice on Judge Williams's part. *Rogers*, 80 Ark. App. at 442, 97 S.W.3d at 437. She failed to do so. His various rulings against her did not demonstrate bias. 80 Ark. App. at 443, 97 S.W.3d at 438. And Judge Williams's comment that Judge Switzer sent him this case as "payback" for several murder trials that Judge Williams had transferred to Judge Switzer likewise shows no bias. Judge Williams transferred those cases because he had been prosecuting them before he became a judge. Judge Williams's colloquial comment was directed at Judge Switzer and the administration of the court's business; it did not reflect any bias against any of the parties in this case.

Parkerson also argues that the circuit court erred by not sending her written notice of the trial date in accordance with Rule of Civil Procedure 6(c). First, while Rule 6 applies to hearings, Rule 40 governs trial settings. Second, Rule 40 does not

require written notice of trial settings, though it is of course the better and near-universal practice. Third, and dispositively, Parkerson had adequate notice of the trial date. The judge announced the trial date, as well as a pre-trial hearing date, in open court at an August 2005 hearing that Parkerson attended. *Harris v. State*, 6 Ark. App. 89, 91–92, 638 S.W.2d 698, 699 (1982). Parkerson points out that, at the August 2005 hearing, the circuit judge misspoke and said that he was setting the trial for 17 April 2005, instead of 2006. But in context, the court's slip about the year was not misleading: the court had stated the correct trial date earlier in that same hearing. Moreover, April 2005 had already passed, and the court gave the correct year when announcing the date of the March 2006 pre-trial hearing—a hearing at which Parkerson failed to appear.

Because the court failed to follow proper procedures, Parkerson argues, it should have granted her continuance motion. She sought this relief ten days before trial. She argued that, because she had no written notice of the trial date and thus did not know for sure when it was, she did not have time to prepare or subpoena her witnesses. She also pointed out her confusion about the court ordering the parties into mediation while keeping the trial date that was set at the August 2005 hearing. The circuit court denied her continuance motion. The court noted that this case had been pending since 2004 and that Parkerson was informed in open court of the trial date. Parkerson had eight months to prepare for trial after the August 2005 hearing.

Further, the mediation order was addressed at the March 2006 pre-trial hearing, which Parkerson did not attend, and the circuit court entered an order the week before trial dispensing with mediation. We see no abuse of discretion in the circuit court's denial of her continuance request. *Travis v. State*, 371 Ark. 621, 625, 269 S.W.3d 341, 344 (2007).

Parkerson next argues that the circuit court erred by not granting her motion to inspect the disputed property. Site visits are often helpful to the finder of facts. The decision rests, however, within the circuit court's informed discretion. *McGraw v. Weeks*, 326 Ark. 285, 293, 930 S.W.2d 365, 370 (1996). In any event, Parkerson failed to get a specific ruling on her inspection motion. We therefore may not address the issue on appeal. *National Home Centers v. Coleman*, 373 Ark. 246, 249–51, __ S.W.3d __, __ (2008).

Because Parkerson also failed to get rulings on her motions for summary judgment and judgment on the pleadings, we may not reach those issues either. *Ibid.* Had she obtained adverse rulings, we would still affirm on these points. Because trial expands the record, the denial of summary judgment is unreviewable after a trial on the merits. *Rick's Pro Dive 'N Ski Shop, Inc. v. Jennings-Lemon*, 304 Ark. 671, 672, 803 S.W.2d 934, 935 (1991). While the denial of a motion for judgment on the pleadings that turns solely on the law and the undisputed facts pleaded may be reviewed on appeal, *Estate of Hastings v. Planters & Stockmen Bank*, 307 Ark. 34, 818 S.W.2d 239

(1991), this adverse-possession dispute presented a thicket of contested facts. This case had to be tried.

The Merits. Parkerson claims that the circuit court erred in quieting title in the McMurtreys for two reasons. First, because the McMurtreys' Notice of Publication and Proof of Notice mistakenly recited that the disputed property was located in Mississippi County, she argues that the Garland County circuit court had no jurisdiction. We disagree. Neither the McMurtreys nor Parkerson strictly complied with the notice requirements of Arkansas Code Annotated § 18-60-503 (Repl. 2003). The McMurtreys' notice was defective, while Parkerson filed no notice at all. But the parties' errors and omissions did not undercut jurisdiction because all possible claimants to the disputed property were properly before the circuit court. *Boyd v. Roberts*, 98 Ark. App. 385, 392–93, 255 S.W.3d 895, 900 (2007).

Parkerson argues next that the circuit court erred in quieting title in the McMurtreys because she proved that she adversely possessed the disputed land. Parkerson certainly had a strong case. But she failed to offer proof of an essential element of her adverse-possession claim—exactly where the property she was claiming was located. *Robertson v. Lees*, 87 Ark. App. 172, 185–86, 189 S.W.3d 463, 471–73 (2004). Though a survey showing a legal description of the disputed property was marked for identification, Parkerson failed to introduce it into evidence. She also failed to move the admission of the deed to her property into evidence. In sum, as the

circuit court remarked, Parkerson "[was] not well-served in acting as [her] own attorney." The McMurtreys, on the other hand, introduced a warranty deed and survey showing the boundary lines of their property. No clear error exists in the circuit court's order quieting title in the McMurtreys to the land described in those instruments, including the strip on which Parkerson had parked her Corvette. *Robertson*, 87 Ark. App. at 181, 189 S.W.3d at 469.

Parkerson also argues that the court erred in refusing to allow her to read specific statements from Thelma Conroy's deposition into evidence at trial. Parkerson is right. Ms. Conroy was an important witness, one of the McMurtreys' predecessors in title. The court admitted the transcript and a videotape of Ms. Conroy's deposition into evidence. But the court refused to allow Parkerson to highlight points from the deposition during her case. The judge said that he would read the deposition in his chambers. In the event, the court rejected her claims as a matter of law mid-trial. The court did so based on Parkerson's failure to offer her deed into evidence, her lack of evidence about the disputed strip's legal description, and her lack of proof of title to the Corvette. The court later ruled for the McMurtreys at the end of their proof.

The court abused its discretion by not allowing Parkerson to present highlights of Conroy's testimony. Though the point is not pressed by Parkerson, the court also erred by not considering Conroy's testimony before deciding the case. These errors, however, do not justify reversing the judgment. Conroy's deposition testimony does not supply the missing essential element of Parkerson's claim: an adequate description

of the disputed property claimed. Nor does the deposition undermine the McMurtreys' record title. The absence of prejudice renders the evidentiary error harmless. *Madden v. Aldrich*, 346 Ark. 405, 422, 58 S.W.3d 342, 355 (2001). Parkerson, moreover, waived the circuit court's procedural error of ruling on less than all the record. It too resulted in no prejudice in any event.

Finally, we see no abuse of discretion in the circuit court's denial of Parkerson's motion for a new trial. *Dodson v. Charter Behavioral Health System of Northwest Arkansas, Inc.*, 335 Ark. 96, 108, 983 S.W.2d 98, 104–05 (1998). Her motion gave many reasons for another trial. But those that she asserts on appeal duplicate points already addressed—denial of a continuance, procedural irregularities, and recusal. As we found no reversal error in the court's rulings before and during trial, we likewise find no abuse of discretion after the fact. *Ibid*.

Affirmed.

KINARD and GLOVER, JJ., agree.