

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeanette E. Robbins and Leslie
Lorraine Woodward,
Appellants-Plaintiffs,

v.

Thomas J. Leffel and Denise K.
Leffel,
Appellees-Defendants.

December 27, 2023
Court of Appeals Case No.
23A-PL-1008
Appeal from the Franklin Circuit
Court
The Honorable J. Steven Cox,
Judge
Trial Court Cause No.
24C01-1911-PL-744

Memorandum Decision by Judge Mathias
Judges Riley and Kenworthy concur.

Mathias, Judge.

- [1] Jeanette E. Robbins and Leslie Lorraine Woodward (collectively “Robbins/Woodward”) appeal the Franklin Circuit Court’s order granting Thomas J. Leffel and Denise K. Leffel’s (collectively “the Leffels”) counterclaim to quiet title to a parcel of real estate that both Robbins/Woodward and the Leffels believed that they owned. The trial court concluded after a fact-finding hearing that the Leffels had established their right-to-title to the disputed acreage via adverse possession.
- [2] Robbins/Woodward appeal, arguing that the Leffels’ use of the property was permissive, and therefore, they could not establish title by adverse possession as a matter of law.¹
- [3] We affirm.

Facts and Procedural History

- [4] Robbins/Woodward and the Leffels are adjoining landowners in Franklin County. The issue presented in this appeal arose because the parties could not agree on the boundary line between their properties. The following exhibit demonstrates the parties’ properties and where they believed their respective boundary lines existed:

¹ We held oral argument in this case on November 28, 2023, at the Allen County Courthouse in the Circuit Court courtroom. We thank both the Allen Circuit Court and the Allen County Bar Association for their kind hospitality. We also thank counsel for the quality of their written and oral advocacy.

- [6] Jeanette Robbins has owned the property at 27160 Stipps Hill Road² in Laurel, Indiana, since 1968. Ex. Vol., Plaintiffs' Ex. 3. After her husband died in 2014, she transferred the property to herself and her daughter Leslie Woodward. Ex. Vol., Defendants' Ex. A.
- [7] When the Robbinses purchased their property in 1968, Bill Myers owned the adjoining 181-acre property at 27152 Stipps Hill Road. Robbins and Myers jointly agreed to construct a wire fence running along the western edge of an unimproved driveway for the purpose of keeping their horses separated. In 1973, Myers sold his property to John and Mary Joan Stonebraker. The Stonebrakers used the driveway to access a barn and house they built on their property. *See* Defendants' Ex. H.
- [8] The Leffels purchased the 27152 Stipps Hill Road property in 1998 from the Stonebrakers. The purchase agreement provided that Mary Joan Stonebraker would continue to reside on the property for the rest of her life, and the Leffels' mortgage payment to Mary Joan would be reduced by her rent amount. The Leffels maintained the property while Mary Joan lived in the residence. After Mary Joan died in 2009, the Leffels' children occupied what is still commonly referred to as the Stonebraker house.
- [9] The Stonebrakers also owned a 1.5 acre tract. The 1.5 acre parcel ("the disputed property") abuts Stipps Hill Road and rests between Robbins/Woodward's

² Stipps Hill Road was formerly known as the Buena Vista and Clarksburg Highway. *See* Defendants' Ex. I.

property and the Leffels' 27152 Stipps Hill Road property. The 1.5 acre parcel was originally part of a six-acre tract. It was exempted out of the original six-acre tract in 1939. Robbins/Woodward own the remaining 4.5 acre parcel from the original tract. The Leffels believed that their 1998 purchase agreement included the 1.5 acre tract, but they later discovered that due to a clerical error the 1.5 acre tract was not included in their deed. Therefore, the Stonebrakers' daughter transferred the 1.5 acre parcel to the Leffels in December 2017. Appellants' App. pp. 14-15.

[10] The driveway leading to the Leffels' barn and house is located on the disputed property. *See* Defendants' Ex. I; Defendants' Ex. H. Robbins/Woodward believed that the boundary line to their property sat east of the driveway. The Leffels believed that the property boundary line was marked by the wire fence running along the west side of the driveway. The driveway begins at Stipps Hill Road and extends the length of the 1.5 acre parcel and ends at the Stonebraker house. *See* Defendants' Exs. H & I.

[11] The Leffels and their predecessors-in-interest have continually used the driveway to access their property.³ The driveway was originally constructed by an electric company for the purpose of installing electric service lines from its existing infrastructure along the roadway to a property south of

³ There is one additional access point to the property via an "old county road." Tr. p. 89. But the road has not been maintained. The Leffels' son testified that the "old county road could be accessed if it was cleaned up" Tr. p. 107; see also Tr. p. 128. The old county road is not shown on the exhibits.

Robbins/Woodward's property. The driveway has existed on the property at least since 1956, before the Stonebrakers built their house in 1974.

Robbins/Woodward testified that they gave the Leffels' predecessors-in-interest, the Myerses, explicit permission to use the driveway, and that they gave the Stonebrakers implicit permission to use the driveway. Tr. p. 66. The Leffels testified that they never asked Robbins/Woodward for permission to use the driveway and have always believed that the driveway was located on their property. Tr. p. 142.

[12] The Leffels eventually hired a surveyor to survey their property because one of their children was interested in purchasing a parcel of the property from them. While surveyor Andrew Scholle was surveying the property, he determined that the legal descriptions in the deeds of the Leffels' property and Robbins/Woodward's property were incorrect. Scholle determined that the description of the 1.5 acre parcel in the Leffels' deed and the description in the deed of the original six-acre tract were mathematically impossible. Scholle concluded that the acreage outlined in orange on the exhibit reproduced above is inaccurately described by the deeds at issue. *See* Defendants' Ex. I.

[13] After the Leffels presented Scholle's findings to Robbins/Woodward, Robbins/Woodward hired surveyor Jeffery French to survey the property. French agreed with Scholle's finding that the legal descriptions in the deeds

were not accurate.⁴ Importantly, both surveyors agreed that the driveway was west of the boundary line as the boundaries were described in the parties' deeds. However, French's measurements of the boundary line between the two properties differed from the measurements in Scholle's survey. French concluded that a gap exists east of the fence that runs along the driveway. French placed the boundary between the two properties east of the driveway as shown by the dashed line on the exhibit reproduced above. *See* Defendants' Ex. I. French's measurements differed from Scholle's, in part, due to French's belief that the road described in the original 1939 deed had moved approximately 114 feet from its original location.

[14] Robbins/Woodward sent a letter to the Leffels in January 2019 requesting that the parties resolve the boundary issue revealed by the surveys. Ex. Vol., Defendants' Ex. 4. The parties could not reach an agreement and the relationship between the neighbors became hostile.

[15] On November 4, 2019, Robbins/Woodward filed a complaint against the Leffels alleging that Robbins/Woodward owned the disputed property and the Leffels were trespassing. Robbins/Woodward sought to quiet title to the disputed property.

⁴ French testified that the driveway "[goes] across something that falls within what I would call the deed boundaries of the" Robbins/Woodward's property. Tr. p. 37.

- [16] In response, the Leffels asserted the affirmative defense of laches and adverse possession. The Leffels also filed a counterclaim to quiet title to the disputed property. They later amended their counterclaim to include a complaint for trespass. The Leffels also claimed that Robbins/Woodward's complaint for trespass and to quiet title was barred by the affirmative defense of adverse possession.
- [17] The court held a bench trial on January 17, 2023. Both surveyors testified and described their methods for completing their surveys of the disputed property. Robbins/Woodward and the Leffels testified to their uses of the disputed property and their activities to maintain the property over the last several decades.
- [18] Specifically, Leslie Lorraine Woodward testified that she had mowed the grass on both sides of the driveway, and that she or her family members continued to do so through 2018. Tr. pp. 57, 80. Woodward admitted that her family removed the fence running along the western edge of the driveway after the boundary dispute arose between the parties. Woodward also conceded that neither she nor her parents ever explicitly gave the Leffels permission to use the driveway. Tr. pp. 66-67. She stated that the Leffels were "just" allowed to use the driveway. *Id.* at 67. Woodward also testified that Denise Leffel offered to purchase the property from Robbins/Woodward. Tr. p. 67. Denise agreed that she had offered to purchase the property but explained that she did so to attempt to avoid a legal dispute. Tr. pp. 126-27.

[19] Denise also testified that she had always believed they owned the property east of the fence and her family always maintained that property. Tr. p. 120. The Leffels paid to have gravel installed on the driveway while Mary Joan Stonebraker was still living on the property. *Id.* at 120. The Leffels also paid property taxes on the disputed property. Thomas testified that because they believed they owned the driveway, they never asked for permission to use it. *Id.* at 142. Quinton Leffel, one of the Leffels' children, stated that he helped maintain the property east of the fence in the 1990s, when he was a teenager, and from 2016 to 2019 when he lived in the Stonebraker house. Quinton paid for three truckloads of gravel to be installed on the driveway while he lived in the Stonebraker house. He said the Robbinses maintained the property on the west side of the fence. He also testified that on one occasion while he lived in the house, a member of the Robbins family asked for permission to come onto the property east of the fence to clear away one of their trees that had fallen on the fence. Tr. p. 111.

[20] On April 6, 2023, the trial court issued its order granting the Leffels' counterclaim to quiet title in the disputed property. In its order, the trial court concluded:

neither Party's deed description[] accurately reflect the use each party testified to at trial, nor could either expert establish the location of the boundaries of either tract in dispute in such a manner that allowed the respective tracts to close without making assumptions not continued within each respective deed.

Appellants’ App. p. 9. The court then determined that the Leffels “have established their right-in-title to the disputed tract by adverse possession and that the fence removed by [Robbins/Woodward] is hereby established as the boundary line between the two competing tracts herein.”⁵ *Id.*

Standard of Review

[21] In this case, the trial court issued a general judgment without findings of fact and conclusions of law. Therefore, the judgment will be affirmed if it can be sustained upon any legal theory consistent with the evidence. *Helmuth v. Distance Learning Sys. Ind., Inc.*, 837 N.E.2d 1085, 1089 (Ind. Ct. App. 2005). In reviewing the trial court’s judgment, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence most favorable to the judgment together with all reasonable inferences to be drawn therefrom. *Id.*

Discussion and Decision

[22] Robbins/Woodward present a focused issue in this appeal: whether the Leffels proved the “intent” element required to establish adverse possession. In *Fraley v. Minger*, 829 N.E.2d 476, 486 (Ind. 2005), our Supreme Court determined that the following elements must be satisfied to establish adverse possession:

(1) Control—The claimant must exercise a degree of use and control over the parcel that is normal and customary considering

⁵ The total area of the parcel east of the fence line is 1.822 acres.

the characteristics of the land (reflecting the former elements of “actual,” and in some ways “exclusive,” possession);

(2) Intent—The claimant must demonstrate intent to claim full ownership of the tract superior to the rights of all others, particularly the legal owner (reflecting the former elements of “claim of right,” “exclusive,” “hostile,” and “adverse”);

(3) Notice—The claimant's actions with respect to the land must be sufficient to give actual or constructive notice to the legal owner of the claimant's intent and exclusive control (reflecting the former “visible,” “open,” “notorious,” and in some ways the “hostile,” elements); and,

(4) Duration—the claimant must satisfy each of these elements continuously for the required period of time (reflecting the former “continuous” element).

And, pursuant to [Indiana Code § 32-21-7-1](#), an adverse possessor must pay all taxes and special assessments that they “reasonably believe[] in good faith” to be due on the property during the period of the claimed adverse possession. *Id.*

[23] In addition, all elements of adverse possession must be satisfied for a ten-year period. *See* [Ind. Code § 34-11-2-1](#). Successive periods of possession may be tacked together to meet the requisite ten-year requirement. *Henry v. Liebner*, 32 N.E.3d 258, 268 (Ind. Ct. App. 2015), *trans. denied*. “[O]nce a party establishe[s] the elements of adverse possession, ‘fee simple title to the disputed tract of land is conferred upon the possessor by operation of law, and title is extinguished in the original owner.’” *Knauff v. Hovermale*, 976 N.E.2d 1267, 1270 (Ind. Ct. App. 2012) (quoting *Garriott v. Peters*, 878 N.E.2d 431, 439 (Ind. Ct. App. 2007), *trans. denied*).

[24] The elements of adverse possession must be established by clear and convincing evidence. *Fraleley*, 829 N.E.2d at 483. “Where overcoming a presumption requires a heightened quantum of proof, however, such determination falls within the sound discretion of the factfinder, whose discretion is afforded deferential review.” *Id.* Therefore, when we review a trial court’s judgment on an adverse possession claim, our court must determine, “by considering only the probative evidence and reasonable inferences supporting the judgment and without weighing evidence or assessing witness credibility, whether a reasonable trier of fact could conclude that the judgment was established by clear and convincing evidence.” *Id.* (citation omitted). “The failure to establish any one element of an adverse possession claim defeats the claim.” *Knauff*, 976 N.E.2d at 1270 (citing *Fraleley*, 829 N.E.2d at 476).

[25] Robbins/Woodward claim that the Leffels did not prove the “intent” element of their adverse possession claim. Intent reflects the former elements of “claim of right,” “exclusive,” “hostile,” and “adverse.” See *Fraleley*, 829 N.E.2d at 486; see also *Wilfong v. Cessna Corp.*, 838 N.E.2d 406 n.1 (Ind. 2005) (explaining that the “intent” element requires that the claimant “demonstrate intent to claim full ownership of the tract superior to the rights of all others, particularly the legal owner”). “[I]ntent is not subjective but is determined by objective, observable conduct measured against the applicable legal standard.” See *Bass v. Salyer*, 923 N.E.2d 961, 966 (Ind. Ct. App. 2010).

[26] Robbins/Woodward rely on the explicit permission the Robbinses gave to Bill Myers to use the driveway on the disputed property to support their argument

that the Leffels' use of the driveway was permissive, and not adverse.⁶ But explicit permission was given to Myers approximately fifty years ago. Myers sold the property to the Stonebrakers, and Robbins/Woodward argue that the Stonebrakers had implicit permission to use the driveway. But even if we accept that claim as fact, the Stonebrakers sold the property to the Leffels approximately twenty years before this dispute arose. Robbins/Woodward conceded that they never gave explicit permission to the Leffels to use the driveway. Tr. pp. 66-67.

[27] The Leffels believed that they owned the disputed property with the driveway that provided the only access to their barn and house located just south of the disputed property. Consistent with their reasonable belief that they owned the property to the east of the fence line, the Leffels never asked Robbins/Woodward for permission to access or use the property.

[28] The Leffels and occupants of the Stonebraker house have used the driveway exclusively since the Leffels purchased the property in 1998. The Leffels maintained the driveway and on two occasions, paid to have gravel installed on the driveway. The Leffels also mowed the area east of the fence that ran along the west side of the driveway. And the Leffels paid property taxes on the disputed property.

⁶ Use of land for access is not adverse if that use is permissive in nature. See *Bass*, 923 N.E.2d at 967.

[29] This evidence established that the Leffels demonstrated intent to claim full ownership of the tract superior to the rights of all others. Robbins/Woodward's argument that the Leffels' use of the property was permissive is only supported by their own testimony. As the fact-finder, the trial court considered their testimony and weighed its credibility against the Leffels' testimony. It was the trial court's role to determine the credibility of the witnesses, and we will not reweigh the evidence and credibility of the witnesses on appeal. See *Fraley*, 829 N.E.2d at 483. The Leffels therefore satisfied all of the required elements of adverse possession.

[30] For all of these reasons, we affirm the trial court's judgment granting the Leffels' counterclaim to quiet title and establishing the fence line west of the driveway as the boundary line between the Robbins/Woodward and Leffel properties.

[31] Affirmed.

Riley, J., and Kenworthy, J., concur.