

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

NO. 2012-CA-002186-MR

DONALD R. SRYGLER  
AND IRENE SRYGLER

APPELLANTS

v. APPEAL FROM HART CIRCUIT COURT  
HONORABLE CHARLES C. SIMMS, III, JUDGE  
ACTION NO. 11-CI-00157

LEON CONSTANT, JOYCE CONSTANT,  
DAVID CONSTANT, WANDA COX,  
JOY SRYGLER, DANNY SRYGLER AND  
THE CONCORD COMMUNITY CEMETERY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, MAZE, AND NICKELL, JUDGES.

NICKELL, JUDGE: Donald R. Srygler (“Donald”) and Irene Srygler (collectively “Srygler”) have appealed from the Hart Circuit Court’s entry of a judgment in favor of Leon Constant, Joyce Constant, David Constant, Wanda Cox, Joy Srygler,

Danny Srygler and The Concord Community Cemetery, in this quiet title action.

Following a careful review, we affirm.

The facts underlying this matter are largely undisputed. In 1974, Donald and Irene Srygler purchased a tract of land consisting of approximately eighty-one acres near Bonnieville, Kentucky, and bordered on its east side by Concord Church Road. Over the years, Srygler has off-conveyed several parcels from the parent tract to other parties including the Constants and other members of the Srygler family.<sup>1</sup> Of importance to this action, on March 4, 1995, Srygler conveyed a five-acre tract to Leon Constant. The property description for the tract was prepared following a survey completed two days earlier indicating the adjoining landowner to the north would be the Mollie Terry Estate and to the east would be “Concord Baptist Church Cemetery.” The deed contained provisions for a fifteen-foot easement for ingress and egress from Concord Church Road. In 2007, Constant conveyed his interest in the property to his children, Joy Srygler and David Constant, but retained a life estate in the acreage.

Lying to the north of the Srygler property and bordering on the west side of Concord Church Road is the Concord Community Cemetery. The record is unclear as to the historical origins of this unincorporated cemetery, but it is clear the cemetery has been in use for many decades—if not over a century—and it was established without a known deed. The easement granted in Constant’s deed lies

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<sup>1</sup> Testimony adduced at the trial of this matter revealed the Srygler and Constant families are related by marriage.

adjacent to the cemetery's southern border. Immediately north of the Concord Community Cemetery is the Concord Baptist Church which has its own cemetery located immediately behind—or west—of the church property. The Terry Estate property adjoins the cemetery to the west.

On January 16, 2009, an affidavit of adverse possession was filed in the Hart County Court Clerk's Office wherein the Concord Community Cemetery by and through Leon Constant and Wanda Cox, its trustees, claimed ownership to a small tract of land at the rear (or west) of the cemetery property where at least four graves were located. The affidavit averred the Concord Community Cemetery and its predecessors in title had "been in the actual, notorious, continuous, exclusive, adverse possession of said premises for more than fifteen years last past." Later that year, in September, Donald commenced construction of a fence in the disputed area although his reasons for doing so are unclear from the record.<sup>2</sup> It was at this point the parties to this action became adversarial.

In March of 2010, Srygler retained a surveyor to examine the boundary lines between Constant, the Concord Community Cemetery, and Concord Baptist Church. The area to be surveyed was the same as that described in the affidavit of adverse possession previously referenced. The survey revealed

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<sup>2</sup> Testimony revealed the fence had been placed approximately one foot in front of one of the headstones in the disputed area, placing it over the chest area of the decedent buried in that grave. Donald was subsequently indicted for desecration of a grave based on his construction of the fence. Although the record from the criminal action is not before us, it appears a settlement was reached in which Donald agreed to pay for relocation of this grave. The decedent's widow testified she reluctantly agreed to have her husband's grave moved mainly in an effort to avoid future conflicts with Donald.

Srygler owned a small, rectangular-shaped parcel of land containing approximately 0.067 acres which was located between the eastern border of the Constant tract and the rear or western boundary of the Concord Community Cemetery. The tract was approximately 190 feet long and ranged in width from approximately eleven to eighteen feet. The property was landlocked between properties owned by Constant, the Concord Community Cemetery and Concord Baptist Church. Further complicating the situation, the survey also confirmed the presence of four graves within this small strip, which the trial court described in detail.

The first grave belongs to Henry H. Butler (hereinafter “Butler”) who was buried on April 19, 1957. See Defendants’ Exhibit 9. From the survey, it appears that part of Butler’s headstone and body is situated within the 0.067 acres. See Plaintiff’s Exhibit 7. The second grave belongs to Herman Chester Matthews (hereinafter “Matthews”) who died on June 18, 1987. See Defendants’ Exhibit 18. The funeral home records indicate that Matthews was buried on June 21, 1987. Id. From the survey, it appears that part of Matthews’s headstone and body is situated within the 0.067 acres. See Plaintiff’s Exhibit 7. The third grave belongs to Carl J. Wilkerson (hereinafter “Wilkerson”) who was buried on October 26, 1990. See Defendants’ Exhibit 9. From the survey, Wilkerson’s entire body is situated within the 0.067 acres. See Plaintiff’s Exhibit 7. The fourth grave belongs to James E. McBride (hereinafter “McBride”) who was buried on November 20, 2002. See Defendants’ Exhibit 9. From the survey, McBride’s entire body is situated within the 0.067 acres. See Plaintiff’s Exhibit 7.

On June 11, 2011, Srygler filed the instant action seeking to quiet title to the 0.067 acres. In the complaint, Srygler initially requested the bodies of Matthews, Wilkerson and McBride be exhumed and relocated as they were

trespassing.<sup>3</sup> These claims were later voluntarily dismissed. The complaint further averred the Concord Community Cemetery may be claiming the disputed property. The defendants responded with an allegation that the cemetery had gained ownership of the property by virtue of adverse possession.

A bench trial was commenced on October 22, 2012, for the sole purpose of establishing ownership of the 0.067 acre tract. All other issues regarding damages or otherwise were specifically reserved for later adjudication, if necessary. The trial court took testimony from no less than eighteen witnesses and admitted thirty-seven exhibits. At the conclusion of the trial, the matter was taken under submission.

On November 20, 2012, the trial court entered lengthy and detailed findings of fact, conclusions of law and judgment. After setting forth the factual background and applicable legal framework, the trial court conducted a careful analysis of the issues presented. It concluded the evidence clearly showed Concord Community Cemetery had proved its claim of ownership to the disputed tract by adverse possession. Specifically, the trial court set forth what it believed to be clear and convincing evidence establishing the five elements of adverse possession. In the interest of judicial economy, we shall quote the trial court's order verbatim.

First, this Court finds by clear and convincing evidence that the defendants have established a "hostile"

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<sup>3</sup> No such claim was made with respect to Butler whose grave had existed since 1957.

possession under a claim of right from at least the burial of Matthews on June 21, 1987, until [Donald] constructed his fence in September of 2009. As grounds, this Court relies upon the following: (1) that Butler's body has remained partially buried within the disputed area since April 15, 1957, (2) that no one asked the Sryglers whether Matthews could be buried in the disputed area on June 21, 1987, (3) that [Donald] admitted that he learned of this burial "one or two weeks later", (4) that [Donald] admitted that he failed to take any action about this burial, (5) that no one asked the Sryglers whether McBride could be buried in the disputed area on November 20, 2002, (6) that [Donald] admitted that he learned of this burial "two or three years" later, (7) that Butler, Matthews, and McBride have headstones within the disputed area, (8) that the Sryglers live about five hundred (500) feet from the disputed area, and (9) that individuals associated with the cemetery have mowed and maintained this disputed strip of land. See Defendants' Exhibit 24. In regard to Wilkerson's gravesite, this Court makes no finding because [Donald] testified that he "thinks" he provided permission for Wilkerson's burial.

The Sryglers have also asserted that the disputed area was enclosed by a fence (the black line on Plaintiff's Exhibit 8). However, this Court finds by clear and convincing evidence that this fence was gone prior to Matthews being buried on June 21, 1987. As grounds, this Court relies on the following: (1) that the Sryglers' son, Donald Dewayne Srygler, testified that Orville Nunn tore the fence down in the fall of 1974, and (2) that family members of Matthews, including Jessie Tommy Matthews, James Ricky Matthews, Josephine Matthews, Virginia Schoenbachler, and Greg Matthews never observed any fencing on the east side of the burial plot. In addition, this Court finds the testimony of the Matthews family to be extremely credible because they were likely to pay close attention to the gravesite area.

In contrast, the Court finds by clear and convincing evidence that there was fencing along the Constant property line when Matthews was buried on June 21,

1987 (the red line on Plaintiff's Exhibit 8). As grounds, this Court relies upon the following: (1) that the Sryglers' son, Donald Dewayne Srygler, testified that the fence was constructed in either 1978 or 1979, (2) that family members of Matthews, including Jessie Tommy Matthews, Bernaldine Matthews, James Ricky Matthews, Josephine Matthews, Virginia Schoenbachlar (sic), Greg Matthews, observed this fence approximately one to two feet from the headstone of Matthews, and (3) that a photograph was introduced into evidence which depicts said fencing. See Defendants' Exhibit 17. Once again, this Court finds the testimony of the Matthews family to be extremely credible because they were likely to pay close attention to the gravesite area.

Second, this Court finds by clear and convincing evidence that the cemetery has enjoyed "actual" possession of the disputed area since at least the burial of Matthews on June 21, 1987, until [Donald] constructed his fence in September of 2009. As grounds, this Court relies on all of the findings previously set forth above. In addition, this Court relies upon the following: (1) that the Sryglers' second witness, Jason Dennis, testified that although the Sryglers knew they owned the disputed area, they never complained about the bodies being buried on their property, (2) that the Sryglers third witness, Henry Matthews, testified that the Sryglers never claimed ownership of this land, and (3) that the Sryglers fourth witness, Jimmy Romines, testified that he had no recollection of the Sryglers ever exercising any control over the disputed strip.

In addition, this Court finds by clear and convincing evidence that [Donald] previously wanted the church and/or cemetery to utilize the disputed area. As grounds, this Court finds as follows: (1) that the Sryglers' son, Donald Dewayne Srygler, testified that the old fence marked in black on Plaintiff's Exhibit 8 was removed in the fall of 1974 to allow access into the back side of the cemetery, (2) that [Donald] testified that he constructed the fence marked in red on Plaintiff's Exhibit 8 so the church could have his 0.067 acres, and (3) that [Donald] testified that this strip of land would have provided the

church with a rear entrance for carrying caskets into the cemetery.

Third, this Court finds by clear and convincing evidence that the cemetery has enjoyed “exclusive” possession of the disputed area since at least the burial of Matthews on June 21, 1987, and until [Donald] constructed his fence in September of 2009. See 2 C.J.S. Adverse Possession, Section 58 (2012) (“There must be an intention to possess and hold land to the exclusion of, and in opposition to, the claims of all others”). As grounds, this Court finds that the disputed area has only been used as a cemetery. In making this determination, this Court relies on the following: (1) that there were graves and headstones within the disputed area, (2) that the disputed area provided a back entrance for equipment to dig the graves, (3) that there was no fencing which severed any portion of the cemetery, and (4) that the individuals associated with the cemetery were responsible for mowing and maintaining same.

Fourth, this Court finds by clear and convincing evidence that the cemetery has enjoyed “continuous” possession of the disputed area from at least the Matthews burial of June 21, 1987, until [Donald] decided to construct his fence in September of 2009. As grounds, this Court relies on all of the findings previously set forth above. In addition, the Matthews family never heard any complaints whatsoever from the Sryglers until the year 2009.

Fifth, this Court finds by clear and convincing evidence that the cemetery’s possession of the disputed 0.067 acres has been open and notorious for more than fifteen (15) years. Those fifteen (15) plus years would run from the burial of Matthews on June 21, 1987, until [Donald] constructed his fence in September of 2009. As grounds, this Court relies on its previous findings, plus the following: (1) that for many years, it was the public’s understanding that Leland Waddell, Kenneth Constant, and Leon Constant were in charge of the cemetery, (2) that the funeral home directors would contact these individuals if a family wanted a loved one buried in said



cemetery, (3) that the families of Matthews and McBride never asked the Sryglers for permission to bury their family member, (4) that the cemetery mowed and maintained the disputed area, and (5) that since the burial of Matthews, there has been no fencing to indicate that the graves of Butler, Matthews, Wilkerson, and McBride, were not within the cemetery.

Based on these findings, the trial court vested title to the disputed tract in the Concord Community Cemetery, enjoined Srygler from committing any acts suggesting different ownership of the tract, and ordering Srygler to pay the costs of the action.

Srygler subsequently moved to alter, amend or vacate the November 20, 2012, judgment. However, approximately twenty minutes after the trial court concluded a hearing on the motion, Srygler voluntarily withdrew it and informed the trial court a direct appeal would instead be pursued to this Court. This appeal followed and Srygler now claims the trial court's judgment is unsupported by any evidence of probative value and is therefore infirm. We disagree.

The party claiming title through adverse possession bears the burden of proving each element by clear and convincing evidence. *Commonwealth, Dep't of Parks v. Stephens*, 407 S.W.2d 711, 713 (Ky. 1966); *Flinn v. Blakeman*, 254 Ky. 416, 433, 71 S.W.2d 961, 970 (1934). With respect to property title issues, the appropriate standard of review is governed by CR<sup>4</sup> 52.01. As stated in *Croley v. Alsip*, 602 S.W.2d 418, 419 (Ky. 1980),

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<sup>4</sup> Kentucky Rules of Civil Procedure.

[t]he law is clear that “findings of fact (of the trial judge) shall not be set aside unless clearly erroneous.” CR 52.01; 7 Clay, Kentucky Practice, Rule 52.01, comment 8. This court has applied this rule in boundary disputes. “It is the rule that, where this Court cannot say on an appeal from the decree in an action involving a boundary dispute that the Chancellor’s adjudication is against the weight of the evidence, the decree will not be disturbed.” *Rowe v. Blackburn*, 253 S.W.2d 25, 27 (Ky. 1952). See also *Story v. Brumley*, 253 S.W.2d 24 (Ky. 1952).

Substantial evidence is defined as “that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994). Moreover, due regard must be given to the opportunity of the trial court to judge the credibility of the witnesses. CR 52.01. With these standards in mind, we now turn to the case before us.

A careful review of the record reveals the existence of substantial evidence to support the trial court’s decision, and we discern no abuse of discretion. It is not for us to determine whether we would have reached a different conclusion if faced with the same evidence. See *Church & Mullins Corp. v. Bethlehem Minerals Co.*, 887 S.W.2d 321 (Ky. 1992). It is axiomatic that even where the evidence presented is conflicting, we may not substitute our judgment for that of the trial court. *Truman v. Lillard*, 404 S.W.3d 863, 868-69 (Ky. App. 2012). Mere doubt as to the correctness of a trial court’s finding is insufficient to justify reversal. *Moore v. Asente*, 110 S.W.3d 336, 355 (Ky. 2003). Srygler’s

disagreement with the trial court's assessment of the evidence and the weight to be given thereto constitutes an insufficient basis upon which to grant reversal. Thus, as the trial court's ruling was based on substantial evidence and was not clearly erroneous nor manifestly against the weight of the evidence, we will not disturb it on appeal. CR 52.01; *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986); *Harry Harris, Inc. v. Quality Const. Co. of Benton, Ky., Inc.*, 593 S.W.2d 872 (Ky. App. 1979).

For the foregoing reasons, the judgment of the Hart Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

James T. Kelley  
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Ronald D. Mather  
Hodgenville, Kentucky