NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 1303

WILLIAM HAYWARD, III, CHRISTINE RODRIGUEZ, AND GERMANIA PLANTATION, INC.

VERSUS

L.J. NOEL, INC., AND BETTY GRAY AS ADMINISTRATRIX OF THE ESTATE OF DOUGLAS HAYWARD, HIS HEIRS AND ASSIGNS, AND HISTORIC GERMANIA PLANTATION LLC

Judgment Rendered: APR 2 4 2015

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Appealed from the
23rd Judicial District Court
In and for the Parish of Ascension, Louisiana
Trial Court Number 91,388

Honorable Thomas J. Kliebert, Jr., Judge

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Plaintiffs – Christine Rodriguez,
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Plaintiff – William Hayward, III

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Defendant – L.J. Noel, Inc.

* * * * * *

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WELCH, J.

In this action for damages arising out of an alleged trespass on a rural tract of land, plaintiffs, Christine Hayward Rodriguez, Germania Plantation, Inc., and Historic Germania Plantation, L.L.C., appeal a judgment in favor of defendant L.J. Noel, Inc., which granted summary judgment in favor of L.J. Noel, Inc. declaring it to be the owner of the property at issue, determined that the plaintiffs' partial motion for summary judgment was moot, and dismissed the plaintiffs' claims against the defendant. For reasons that follow, we reverse the judgment of the trial court insofar as it grants summary judgment in favor of L.J. Noel, Inc. and dismisses the plaintiffs' claims; we vacate the portion of the judgment determining that the plaintiffs' motion for partial summary judgment was moot; we render judgment denying the plaintiffs' motion for partial summary judgment and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

A. Factual Background

The defendant, L.J. Noel, Inc.,[1] is the record owner of a rural tract of land known as Elise Plantation, which is located along the western bank of the Mississippi River in Ascension Parish, Louisiana. The plaintiffs, William C. Hayward, III, Christine Hayward Rodriguez, Germania Plantation, Inc., and Historic Germania Plantation, L.L.C., are the record co-owners of the center front portion of Elise Plantation, which is known as the school grounds of the Elise Memorial School ("the school property").[2]

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[1] The record establishes that L.J. Noel, Inc. was also identified as Lawrence J. Noel, Inc. in the public records.

[2] In the plaintiffs' original petition, the plaintiffs were identified as William Hayward, III, Christine Hayward Rodriguez, and Germania Plantation, Inc. and the named defendants were L.J. Noel, Inc., Betty Gray, as administratrix of the estate of Douglas S. Hayward, Sr., and Historic Germania Plantation, L.L.C. However, on June 1, 2012, the plaintiffs filed a first amended petition dismissing Betty Gray, as administratrix, and Historic Germania Plantation, L.L.C. as defendants; joining Historic Germania Plantation, L.L.C. as plaintiff; and adding Pine

The school property is described in the public records as fronting the public road (river road) and includes the batture on the Mississippi River in front of the school property ("the school batture"). It is undisputed that the school property is approximately 3.13 acres and is a long, narrow tract of land that was carved out of the middle of the 900-plus acre Elise Plantation and was reserved by George Reuss, the plaintiffs' ancestor-in-title, when he sold the Elise Plantation in 1917 to J. Rene Waggenspack, who is L.J. Noel, Inc.'s ancestor-in-title.[3] The school property was described in the reservations to include both frontage on the public road and on the Mississippi River and is surrounded on the north, west, and south sides by the larger Elise Plantation tract. As a result of the carve-out of the school property, the ownership of the Elise Plantation batture was divided into three parts: the north part and the south part, which are both owned by L.J. Noel, Inc., and the narrow middle part (the school batture), which remained owned by George Reuss and now by the plaintiffs. The school batture is the property at issue in this case and where the alleged trespass occurred.

B. Prior Legal History

The record ownership of the school batture was previously litigated by both parties' ancestors-in-title in **Hayward v. Noel**, 225 So.2d 638 (La. App. 1st Cir.), writ refused, 254 La. 857, 227 So.2d 595 (La. 1969), which likewise involved an alleged trespass on the school batture. In **Hayward**, 225 So.2d at 639, the plaintiffs, Mr. and Mrs. William C. Hayward, Sr., (the ancestors-in-title of the plaintiffs and the grandparents of plaintiffs William C. Hayward, III and Christine Hayward Rodriguez) brought suit against the defendants, Lawrence J. Noel, Jr., et

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Bluff Sand and Gravel Company as defendant. Pine Bluff Sand and Gravel Company was subsequently dismissed by the plaintiffs as a defendant.

[3] Although the parties agree the reservation by Reuss was to Waggenspack, see also **Hayward v. Noel**, 225 So.2d 638, 640 (La. App. 1st Cir.), writ refused, 254 La. 857, 227 So.2d 595 (La. 1969), the record contains references identifying the reservation as having been made to J. Rene Waguespack.

al., (the ancestor-in-title of the defendant L.J. Noel, Inc.) for damages for alleged acts of trespass (cutting of timber and grazing of cattle) on the school batture. In response, the defendants claimed ownership of the school batture both by title and by acquisitive prescription of ten and thirty years. After noting that the suit was not a petitory action, the court explained that plaintiffs' right to recover was based on their alleged title to the property; however, since it was "undisputed that [the] defendants ha[d] been in possession of the disputed property [(the school batture)] for more than one year," under La. C.C.P. art. 3654[4], the plaintiffs had to prove their title in order to prevail. **Hayward**, 225 So.2d at 639-640.

After examining the title of the plaintiffs therein, this court determined that Mrs. William C. Hayward and her two sisters, who were the heirs of George Reuss, were the record owners of the school batture. **Hayward**, 225 So.2d at 642. This court also found that the record title of defendants to Elise Plantation, which was derived from the sale by George Reuss to René Waggenspack and specifically excluded the school batture from that transfer of property, did not include the school batture. **Hayward**, 225 So.2d at 642. Thus, the defendants were not the record owners of the school batture. This court then determined that while the defendants had been in possession of the school batture for approximately twenty-eight years, the defendants did not have an act translative of title so as to acquire the property by acquisitive prescription of ten years and further, that they also failed to possess the property for the requisite period of time to acquire it by

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[4] At the time of the **Hayward** decision, La. C.C.P. art. 3654 provided, in pertinent part, as follows:

> When the issue of ownership of immovable property or of a real right is presented in an action for a declaratory judgment, or in a concursus, expropriation, or similar proceeding, or the issue of the ownership of funds deposited in the registry of the court and which belong to the owner of the immovable property or of the real right is so presented, the court shall render judgment in favor of the party:
>
> (1) Who would be entitled to the possession of the immovable property or real right in a possessory action, unless the adverse party makes out his title thereto ....

acquisitive prescription of thirty years. *Id.* Thus, this court concluded that the defendants did not have title to or own the school batture and that they were liable to the plaintiffs for damages (or rent) in the amount of $40.00 for using the property for grazing cattle. *Id.*

C. Present Legal Dispute

On January 9, 2009, the plaintiffs herein filed a petition seeking damages for trespass from defendant, L.J. Noel, Inc. The petition alleged that around June 15, 2008, L.J. Noel, Inc. entered upon the plaintiffs' property (the school batture) for the purpose of constructing a sand pit without the permission of the plaintiffs and that the actions of L.J. Noel, Inc. constituted a trespass, which caused damage to the plaintiffs' property. L.J. Noel, Inc. filed an answer essentially denying the allegations of the plaintiffs' petition and asserting the affirmative defenses of error or mistake, transaction and compromise, *res judicata*, and failure of consideration. Essentially, L.J. Noel, Inc. claimed that it was the owner of the school batture by virtue of acquisitive prescription as it had possessed the property at issue in excess of thirty years.[5]

On October 25, 2013, the plaintiffs filed a motion for partial summary judgment on the issue of L.J. Noel Inc.'s liability for damages, essentially claiming that it was entitled to summary judgment in its favor because there was an absence of factual support for L.J. Noel, Inc.'s claim or defense that it acquired the school batture through acquisitive prescription and thus, no issue of material fact as to the liability on the part of L.J. Noel, Inc. for damages for trespass on the property.[6]

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[5] A trespass occurs when there is an unlawful physical invasion of the property or possession of another. **Sellers v. St. Charles Parish**, 2004-1265 (La. App. 5th Cir. 4/26/05), 900 So.2d 1121, 1127, writ denied, 2005-1650 (La. 1/13/06), 920 So.2d 239. Thus, as in **Hayward**, 225 So.2d at 639, the plaintiffs' right to recover herein is premised on their ownership of the school batture.

[6] Previously, on September 28, 2009, the plaintiffs filed a motion for partial summary judgment with regard to ownership of the property at issue. Although the record does not contain a judgment concerning the trial court's ruling on that motion, the minutes of the trial court reflect that it was denied in open court on December 14, 2009.

L.J. Noel, Inc. filed a counter motion for summary judgment claiming that there were no genuine issues of material fact that it had been in possession of the property at issue for more than thirty years and had not been evicted from the property, thus, was entitled to summary judgment in its favor declaring it to be the owner of the property at issue by acquisitive prescription.

After a hearing, the trial court took the matter under advisement. Thereafter, for written reasons assigned, the trial court rendered judgment finding that there were no genuine issues of material fact that L.J. Noel, Inc. was in continuous possession of the school batture for more than thirty years. In reaching this conclusion, the trial court relied on the argument by L.J. Noel, Inc., that pursuant to this court's statements in **Hayward**, 225 So.2d at 639 and 642, that since L.J. Noel, Inc.'s ancestor-in-title was undisputedly in possession of the school batture, and that since this court's decision in **Hayward**, L.J. Noel, Inc. had not been evicted from the property or abandoned its possession in accordance with La. C.C. art. 3433, L.J. Noel, Inc. had maintained its possession of the property for more than thirty years. In accordance with the trial court's written reasons, by amended judgment signed on November 26, 2014, the trial court granted the counter motion for summary judgment filed by L.J. Noel, Inc.; declared L.J. Noel, Inc. to be the owner of the school batture; determined that the motion for partial summary judgment filed by the plaintiffs was moot; and dismissed plaintiffs' claims against L.J. Noel, Inc.[7] From this judgment, Christine Hayward Rodriguez, Germania Plantation, Inc., and Historic Germania Plantation, L.L.C. appeal.

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[7] The original judgment lacked appropriate decretal language disposing of and/or dismissing the plaintiffs' claims. Following a rule to show cause issued by this court, an amended judgment that complied with La. C.C.P. arts. 1911 and 1918 was issued by the trial court, and this appeal was maintained. See **William Hayward, III, Christine Rodriguez, and Germania Plantation, Inc. v. L.J. Noel, Inc., and Betty Gray as Administratix of the Estate of Douglas Hayward, his Heirs and Assigns, and Historic Germania Plantation LLC**, 2014-1303 (1/12/2015) (*unpublished action*).

On appeal, the appellants contend that the trial court erred in: finding that there was no genuine issue of material fact that defendant had been in continuous possession of the school batture in excess of thirty years and determining that the plaintiffs' motion for summary judgment on the issue of liability or ownership was moot.[8]

LAW AND DISCUSSION

Summary Judgment

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. **Granda v. State Farm Mutual Insurance Company**, 2004-2012 (La. App. 1st Cir. 2/10/06), 935 So.2d 698, 701. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue of material fact, and that mover is entitled to judgment as a matter of law. LSA–C.C.P. art. 966B(2). Summary judgment is favored and "is designed to secure the just, speedy, and inexpensive determination of every action." La. C.C.P. art. 966A(2). Its purpose is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. **Hines v. Garrett**, 2004-0806 (La. 6/25/04), 876 So.2d 764, 769 (*per curiam*).

When the mover will bear the burden of proof at trial, that party must support his motion with credible evidence that would entitle him to a directed verdict if not controverted at trial. **Hines**, 876 So.2d at 766. See also La. C.C.P. art. 966C(2). Such an affirmative showing will then shift the burden of production

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[8] Although a denial of a motion for summary judgment is an interlocutory judgment that is not appealable, when an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse interlocutory judgments prejudicial to him, in addition to the review of a final judgment. See La. C.C.P. art. 968; **Ascension School Employees Credit Union v. Provost Salter Harper & Alford, L.L.C.**, 2006-0992 (La. App. 1st Cir. 3/23/07), 960 So.2d 939, 940; **Dean v. Griffin Crane & Steel, Inc.**, 2005-1226 (La. App. 1st Cir. 5/5/06), 935 So.2d 186, 189 n.3., writ denied, 2006-1334 (La. 9/22/06), 937 So.2d 389.

to the party opposing the motion, requiring the opposing party either to produce evidentiary materials that demonstrate the existence of a genuine issue for trial or to submit an affidavit requesting additional time for discovery. **Hines**, 876 So.2d at 766-67. If the mover has put forth supporting proof through affidavits or otherwise, the adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. La. C.C.P. art. 967(B); **Mitchell v. Southern Scrap Recycling, L.L.C.**, 2011-2201 (La. App. 1st Cir. 6/8/12), 93 So.3d 754, 757, writ denied, 2012-1502 (La. 10/12/12), 99 So.3d 47.

In ruling on a motion for summary judgment, the trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. All doubts should be resolved in the non-moving party's favor. **Hines**, 876 So.2d at 765. Additionally, courts generally cannot decide credibility issues when entertaining a motion for summary judgment. **Hines**, 876 So.2d at 769. Furthermore, summary judgment is seldom appropriate for determinations based on subjective facts of motive, intent, good faith, knowledge, or malice, and should only be granted on such subjective issues when no genuine issue of material fact exists concerning that issue. **Monterrey Center, LLC v. Ed.ucation Partners, Inc.**, 2008-0734 (La. App. 1st Cir. 12/23/08), 5 So.3d 225, 232.

A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. A genuine issue is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. **Hines**, 876 So.2d at 765-66.

An appellate court reviews a trial court's decision to grant a motion for summary judgment *de novo,* using the same criteria that govern the trial court's

consideration of whether summary judgment is appropriate. **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 750. Because the applicable substantive law determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Lemann v. Essen Lane Daiquiris, Inc.**, 2005-1095 (La. 3/10/06), 923 So.2d 627, 632.

In this case, the issues raised by the competing motions for summary judgment filed by the plaintiffs and L.J. Noel., Inc. center on whether L.J. Noel, Inc. possessed the school batture for at least thirty years, and thus, acquired ownership of the school batture by virtue of acquisitive prescription of thirty years.

Acquisitive prescription

Ownership of immovable property may be acquired by the prescription of thirty years without the need of just title or possession in good faith. La. C.C. art. 3486. Stated another way, ownership of immovable property under record title may be eclipsed and superseded by ownership acquired under prescriptive title. **George M. Murrell Planting & Mfg. Co. v. Dennis**, 2006-1341 (La. App. 1st Cir. 9/21/07), 970 So.2d 1075, 1081. As provided in the comments to La. C.C. art. 3486, the attributes or requirements of possession for acquisitive prescription of thirty years are the same as those set forth in La. C.C. art. 3476 (attributes of possession for acquisitive prescription of ten years), which states that "[t]he possessor must have corporeal possession, or civil possession preceded by corporeal possession, to acquire a thing by prescription" and that "[t]he possession must be continuous, uninterrupted, peaceable, public, and unequivocal."

To acquire possession, one must intend to possess as owner and must take corporeal possession of the thing. La. C.C. art. 3424. Corporeal possession is the exercise of physical acts of use, detention, or enjoyment over a thing. La. C.C. art. 3425. For purposes of acquisitive prescription without title, possession extends

only to that which has been actually possessed; "[a]ctual possession is determined according to the nature of the property." La. C.C. art. 3487 and comment (c), Revision Comments-1982; see also **Hill v. Richey**, 221 La. 402, 59 So. 434 (1952). Thus, what constitutes adverse possession depends on the type or nature of the property and must be determined based on the facts of each case. See **Liner v. Louisiana Land & Exploration Co.**, 319 So.2d 766 (La. 1975); **Ryan v. Lee**, (La. App. 2nd Cir. 4/14/04), 870 So.2d 1137, 1141-42.

Actual possession must be either inch-by-inch possession or possession within enclosures. An enclosure is any natural or artificial boundary. La. C.C. art. 3426, comment (d), Revision Comments–1982, citing A.N. Yiannopoulos, Property §§ 212-214, 2 Louisiana Civil Law Treatise (2d ed.1980). Thus, the party who does not hold title to the disputed tract has the burden of proving actual possession within enclosures sufficient to establish the limits of possession with certainty, by either natural or artificial marks, giving notice to the world of the extent of possession exercised. **George M. Murrell Planting & Mfg. Co.**, 970 So.2d at 1080-81; **Secret Cove, L.L.C. v. Thomas**, 2002-2498 (La. App. 1st Cir. 11/7/03), 862 So.2d 1010, 1015, writ denied, 2004-0447 (La. 4/2/04), 869 So.2d 889.

Thus, based on these precepts, at trial, L.J. Noel, Inc. will have the burden of proving that it intended to possess the school batture, as owner and adverse to the plaintiffs and/or their ancestors-in-title, and that it exercised actual, adverse, corporeal possession over that property, which was continuous, uninterrupted, peaceable, unequivocal, and within visible bounds, for thirty years.[9] Therefore, in

[9] We note that L.J. Noel, Inc. has essentially argued (and the trial court agreed) that L.J. Noel, Inc, did not have to establish its possession of the school batture because its possession was already established pursuant to statements by this court in **Hayward**, 225 So.2d at 639 and 642 that the defendants (L.J. Noel, Jr. et al.) were undisputedly in possession of the school batture. L.J. Noel, Inc. further argues that because there is no evidence that it lost the possession already established in **Hayward** (either through abandonment or eviction pursuant to La. C.C. art. 3433), it has remained in possession of the property since this Court's 1969 ruling in **Hayward**—a

reviewing the trial court judgment, we must determine, based on the evidence offered by the plaintiffs and by L.J. Noel, Inc. in support of their respective motions for summary judgment, whether there are genuine issues of material fact as to L.J. Noel, Inc.'s claim or defense in this regard. Since the trial court granted the motion for summary judgment filed by L.J. Noel, Inc. on this issue, we will first examine its supporting evidence.

In support of its motion for summary judgment, L.J. Noel, Inc. offered the affidavits of Donald O. "Skip" Noel, Jr., Donald O. Noel, Sr. (now deceased), and Mark Noel.[10] According to the affidavit of Skip Noel, the Vice-President of L.J. Noel, Inc., he is 55 years old and has personal knowledge of the property at issue. From his personal knowledge, he stated that he was aware that L.J. Noel, Inc. has

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period in excess of thirty years from the date the suit for trespass herein was filed—and is, therefore, the owner of the property pursuant to acquisitive prescription of thirty years. We disagree with L.J. Noel, Inc.'s argument in this regard and find its reliance on this Court's statements in **Hayward** to be misplaced for several reasons.

In **Hayward**, while it was undisputed that the defendants (L.J. Noel, *Jr.*, et al.) were in possession of the school batture, in the present dispute, whether L.J. Noel, *Inc.* is in possession of the property is clearly disputed. And, although it is true that possession, once acquired, is retained through the intent to possess, see La. C.C. art. 3431, and that possession is lost by either abandonment or eviction, see La. C.C. art. 3433, L.J. Noel, Inc.'s argument in this regard ignores the legal ramifications of the **Hayward** decision.

The filing of the suit for trespass against L.J. Noel, Jr., et al. in **Hayward**, the determination by this court therein that the plaintiffs were the owners of the school batture (*i.e.*, that ownership of the property was vested adversely to the possessor, L.J. Noel, Jr., et al.), and the award by this Court of damages or rent in favor of the plaintiffs against L.J. Noel, Jr., et al., constituted disturbances in fact and disturbances in law to L.J. Noel Inc.'s possession of the school batture, and was thus, an eviction from the school batture. See La. C.C.P. art. 3659. Accordingly, by virtue of **Hayward**, L.J. Noel, Jr., et al. lost possession of the school batture, and because the record does not reveal that L.J. Noel, Jr. recovered possession within a year of the eviction by means of a possessory action, L.J. Noel, Inc. also lost the right to possess the school property in the year following the **Hayward** decision. See La. C.C. arts. 3433 and 3434; and La. C.C.P. arts. 3655 and 3659. Furthermore, when the plaintiffs filed suit in **Hayward**, prescription was *interrupted*, see La. C.C. art. 3462, and the time that L.J. Noel, Jr., et al., had possession of the school batture is not counted, is "wiped out," and therefore, is not relevant to determining whether, in this current action, L.J. Noel, Inc. has acquired the school batture by acquisitive prescription. See La. C.C. art. 3466 and the comments therein. As such, L.J. Noel, Inc.'s burden of proof is to establish that it intended to possess the school batture, as owner and adverse to the plaintiffs and/or their ancestors-in-title, and that it exercised actual, adverse, corporeal possession over that property, which was continuous, uninterrupted, peaceable, unequivocal, and within visible bounds, for thirty years.

[10] The affidavits offered by L.J. Noel, Inc. in support of its motion for summary judgment were the same affidavits offered by it in opposition to the earlier motion for summary judgment filed on September 28, 2009 by the plaintiffs, which was denied by the trial court. See footnote 4.

had actual possession and control of the property at issue, that L.J. Noel, Inc. has maintained fencing on the property at issue for as long as he can remember, and that the only access to the property at issue was through the property of L.J. Noel, Inc. Skip Noel also stated that as Vice-President of L.J. Noel, Inc., he was in custody and control of certain documents of the corporation, including but not limited to the tax notices and maps from the Ascension Parish Assessor's office for the years 2007, 2006, 2005, and 2004, which show that the property in question was recognized as the property of L.J. Noel, Inc. and for which L.J. Noel, Inc. paid taxes. Additionally, Skip Noel further stated that from his personal knowledge and review of corporate documents of L.J. Noel, Inc., that L.J. Noel, Inc. leased the property at issue at certain times to Maurice Gautreaux, Jr. and that fence permits were obtained by Maurice Gautreaux as lessee of the property at issue. Lastly, Skip Noel stated that at all times, the property at issue was fenced by L.J. Noel, Inc., until recently when William Hayward (one of the plaintiffs herein) cut the fence.

The affidavit of Donald Noel, the President of L.J. Noel, Inc., reiterates the same factual statements as the affidavit of Skip Noel. In addition, Donald Noel stated that he was aware of the **Hayward** judgment, but from his personal knowledge, at no time was L.J. Noel, Inc. ever evicted from the property at issue, including but not limited to the twenty-eight years discussed in **Hayward** nor the forty years since that lawsuit (in 1969) through the date the affidavit was executed (2009). Donald Noel also stated that L.J. Noel, Inc. has maintained possession and control of the property at issue for his entire life in excess of thirty years, including in excess of thirty years from 1969.

According to the affidavit of Mark Noel, his family has had possession of the land known as L.J. Noel, Inc. a/k/a Elise Planting Company, Inc. since 1969, and that in 1969, this Court found that L.J. Noel, Inc. a/k/a Elise Planting

Company, Inc. had possession of said property for twenty-eight years. Mark Noel further stated that from 1969 to the present, his family had maintained the property at issue, fenced the area, had cattle on the property at issue, "and in truth and in fact the interest in the property [at issue] was not accessed on maps and was recently done."

The plaintiffs, in support of their motion for summary judgment, offered the deposition testimony of Mark Noel, with attachments; the deposition testimony of Skip Noel, with attachments; the plaintiffs' first request for admissions, interrogatories, and request for production, together with L.J. Noel, Inc.'s responses thereto; documents relative to the plaintiffs' chain of title; the affidavit of Christine Ann Hayward Rodriguez, with attachments; the affidavit of Paula Rodriguez, with attachments; and the affidavit of M.J. Smiley, Jr., with attachments.

Mark Noel admitted that L.J. Noel, Inc.'s entry onto and activities on the school batture were conducted without permission or right of use being granted by the Haywards, the record owners of the school property. He testified that L.J. Noel, Inc. and his family, directly and/or through its ancestors in title to Elise Plantation, hunted, fished, waterskied in the ponds, and grazed cattle on the school batture and fenced the outside of the levee along the river road to the west of the school batture. However, Mark Noel admitted that the fishing, hunting, and waterskiing took place during a period of time from 1962 to 1972, although Mark Noel stated that he still shoots his guns on the batture.

Mark Noel admitted that there were several means of unimpeded access onto the school batture from the north and south via ungated ramps running from the river road up to the levee road (on top of the levee) and from the east via the Mississippi River and that, at no time, have the boundaries of the school batture been fenced in by L.J. Noel, Inc.

Mark Noel further testified that prior to and ending around 1980, the batture along the Mississippi River, including the school batture, was leased by L.J. Noel, Inc. for barge fleeting under a lease with Carline Fleet, and that since 2008 or 2009, L.J. Noel, Inc. has leased the batture to James Construction for sand harvesting operations, which have not commenced. Mark Noel stated in his deposition that L.J. Noel, Inc. had paid the property taxes on the 900+ acre Elise plantation property owned by L.J. Noel, Inc. for many years and believed that their property tax assessment included the school batture.

Skip Noel likewise testified in his deposition that L.J. Noel, Inc. directly and/or through its ancestors-in-title to Elise Plantation, cut timber, and grazed cattle on the school batture and fenced the outside of the levee along the river road to the west of the school batture. Skip Noel also admitted that, after 1969, tree cutting (or timber harvesting) occurred once, while Maurice Geautreau was farming Elise Plantation, but he did not know how much or even if any of that timber was cut on the school batture at that time. Skip Noel testified that cattle grazing occurred over the entire batture (the school batture and the batture owned by L.J. Noel, Inc.) and was conducted sometimes by Noel family members and sometimes by lessees of Elise Plantation.

Skip Noel also testified that in 1992, L.J. Noel, Inc. replaced the deteriorated fence along the river road and fenced a short portion of land on the north side of the school batture running from the river road over the protection levee to the borrow pit on the east side of the levee, including the installation of ungated cattle guards giving unimpeded access to the school batture from the north and south via the levee road on top of the levee. Skip Noel admitted that there were several means of unimpeded access onto the school batture from the north and south via ungated ramps running from the river road up to the levee road on top of the levee and from the east via the Mississippi River. Skip Noel also admitted that there had

never been fencing all along the perimeter of the school batture, that access to the school batture from the Mississppi River had never been prevented by fencing, and that at no time have the boundaries of the school batture been fenced in by L.J. Noel, Inc.

Skip Noel confirmed that prior to and ending around 1980, the batture along the Mississippi River, including the school batture, was leased by L.J. Noel, Inc. for barge fleeting under a lease with Carline Fleet. Skip Noel also testified that since 1969 and the **Hayward** decision, Elise Plantation was leased for agricultural purposes to Maurice Geautreaux from 1990 to 2000 or 2002, and thereafter through the present, to Landry Brothers and that both of these lessees used the batture for cattle grazing. Skip Noel stated that L.J. Noel, Inc. has paid the property taxes on parcel number 324700, which includes the 900+ acre Elise Plantation property owned by L.J. Noel, Inc. for many years. However, he admitted that L.J. Noel, Inc. has never paid the property taxes on parcel number 267200, which included the 3.13 acres of the school property owned of record by the plaintiffs.

According to L.J. Noel, Inc.'s responses to request for admissions, it admitted that it entered upon the school property, including the batture, and that it leased the school batture, or a portion thereof, to a third party. In its answers to interrogatories, it essentially claimed that it had continuously entered the school batture and that it had acted as owner of the school batture for in excess of thirty years, and thus the plaintiffs could not assert that L.J. Noel, Inc. had trespassed on its own property.

According to the affidavit of Christine Ann Hayward Rodriguez, who is the daughter of William Campbell Hayward, Jr. (now deceased), and the attachments thereto, on September 13, 2002, she and her brother, William Campbell Hayward, III, each acquired (inherited) an undivided one-eighth interest in the school

property including the school batture. Since Christine Rodriguez and her brother inherited their interests in the school property, they have owned their interest continuously and neither of them has sold any portion of their interest in the school property to anyone. Christine Rodriguez explained that, until a few months prior to the filing of the petition for trespass in this matter, she was unaware of any adverse possession of the school batture other than by her co-owners of record, William C. Hayward, III, Germania Plantation, Inc., and Historic Germania Plantation, L.L.C. It was brought to her attention, prior to filing this suit, that a trespass against her property had been committed in that large amounts of dirt, sand, clay, and/or other materials had been mined and removed from the school batture for which no compensation had been paid to her or the other co-owners.

Christine Rodriguez also explained that she learned that in 1992 or thereafter, Maurice Gautreaux, Jr., a tenant of L.J. Noel, Inc. on the land and batture on each side of the school property, applied for and was granted a permit to construct a fence along the river road, which appears on several surveys. And while the west side of the levee to the west of the school batture is fenced along the river road and for a short distance across the levee along its northern side, the remainder of the school batture was unfenced at the time she and her brother acquired their ownership interest in the school property (and school batture) and that it remains unfenced. Mrs. Rodriguez also stated that as constructed, an ungated cattle guard was installed on the fence across the road on top of the levee, to allow free access to the property by her and her brother, their co-owners and all other landowners of the batture lying on the river side of the levee, including the school batture. She also stated that several ungated ramps from the river road up to the road running along the top of the levee existed at the time she and her brother acquired their interest in the school property and continue to exist, by which such

landowners are able to continue to gain access to their property on the other side of the fence, including the school batture.

Christine Rodriguez further stated that, as the school batture remained unfenced along most of its northern side, along the entirety of its east side on the Mississippi River, and along its entire south side, access to the school batture by her and her co-owners of the school property exists via the road on top of the levee and by entry from the Mississippi River. She also stated that she never received any notice or knowledge of any claim by L.J. Noel, Inc., by word or deed, of any intention to acquire by acquisitive prescription all or any portion of the school batture by possession or otherwise, and that no "No Trespassing" or "Posted" signs have ever been placed by anyone on the school batture, or the land adjacent thereto, and that no oral or written demands or notices by L.J. Noel, Inc., or its ancestors-in-title to land adjacent to the school batture, have ever been made or given to her declaring the intention of L.J. Noel, Inc. or anyone to possess the school batture and/or acquire the school batture through possession.

Paula Rodriguez is the president of Germania Plantation, Inc. ("Germania") and the duly authorized manager of Historic Germania Plantation, L.L.C. ("Historic"). According to Paula Rodriguez's affidavit and the attachments thereto, Germania acquired a one-fourth interest in the school property, including the school batture, on December 31, 1996, and Historic acquired a one-half interest in the property on November 2, 2007. Thus, Germania and Historic have owned an aggregate three-fourths of the school property continuously since they were acquired and neither have sold any portion of their interest to anyone. Paula Rodriguez stated that the remaining one-fourth undivided interest in the school property is owned by Christine Ann Hayward Rodriguez and William C. Hayward, III. Paula Rodriguez explained that, until a few months prior to the filing of the petition for trespass in this matter, Germania and Historic were unaware of any

adverse possession of the school batture on the school property other than by the co-owners of record, Christine Rodriguez and William C. Hayward, III. She further stated that it was brought to the attention of Germania and Historic, prior to filing this suit, that a trespass against its property had been committed in that large amounts of dirt, sand, clay, and/or other materials had been mined and removed from the school batture, for which no compensation had been paid to Germania, Historic, or their co-owners.

Paula Rodriguez also explained that Germania and Historic learned that in 1992 or thereafter, Maurice Gautreaux, Jr., a tenant of L.J. Noel, Inc. on the land and batture on each side of the school property, applied for and was granted a permit to construct a fence along the river road, which appears on several surveys. And while the west side of the levee to the west of the school batture is fenced along the river road and for a short distance across the levee along its northern side, the remainder of the school batture was unfenced at the time Germania and Historic acquired their ownership interest in the school property (and school batture) and that it remains unfenced. Paula Rodriguez also stated that as constructed, an ungated cattle guard was installed on the fence across the road on top of the levee, to allow free access to the property by Germania, Historic, their co-owners, and all other landowners of the batture lying on the river side of the levee, including the school batture. She further stated that several ungated ramps from the river road up to the road running along the top of the levee existed at the time Germania and Historic acquired their interest in the school property and continue to exist, by which such landowners are able to continue to gain access to their property on the other side of the fence, including the school batture.

Paula Rodriguez further stated that as the school batture remained unfenced along most of its northern side, along the entirety of its east side on the Mississippi River, and along its entire south side, access to the school batture by Germania,

Historic, and their co-owners of the school property exists via the road on top of the levee and by entry from the Mississippi River. She also stated that neither Germania nor Historic ever received any notice or knowledge of any claim by L.J. Noel, Inc., by word or deed, of any intention to acquire by acquisitive prescription all or any portion of the school batture by possession or otherwise, and that no "No Trespassing" or "Posted" signs have been placed by anyone on the school batture, or the land adjacent thereto, and that no oral or written demands or notices by L.J. Noel, Inc., or its ancestors-in-title to the land adjacent to the school batture, have ever been made or given to her declaring the intention of L.J. Noel, Inc. or anyone to possess the school batture and/or acquire the school batture through possession.

According to the affidavit of M.J. Smiley, Jr., he is the Assessor for the Parish of Ascension and issued a report as to how the property of L.J. Noel, Inc. (Assessment Number 324700) and the property of the Haywards (the plaintiffs and their ancestors-in-title) (Assessment Number 267200) were listed on the official Ascension Parish Tax Rolls from 1979 through 2013. Mr. Smiley stated that the property under Assessment Number 324700, listed in the name of L.J. Noel, Inc. as the record owner, includes and has always included the batture sitting in front of that property, and that as assessed by the Assessor's office, the annual property taxes due under that assessment also included the taxes due on the batture in front of the property described under the assessment. Mr. Smiley further stated that the property under Assessment Number 267200, listed in the name of the Haywards (the plaintiffs and their ancestors-in-title) as the record owner, includes and has always included the batture sitting in front of that property, and that as assessed by the Assessor's office, the annual property taxes due under that assessment also included the taxes due on the batture in front of the property described under the assessment. Mr. Smiley also stated that any payment of the taxes as assessed under Assessment Number 324700 (L.J. Noel, Inc. property) alone would not

constitute payment of taxes for the batture sitting in front of the property assessed under Assessment Number 267200 (Hayward property). Lastly, Mr. Smiley stated that the first map attached to his affidavit, which showed L.J. Noel, Inc. as the owner of the batture in front of the property listed under Assessment Number 267200 (school property), was corrected by the Assessor's office, at the request of the record owners of that property, to the second map attached to his affidavit, which reflected the record ownership of that batture by the Haywards (the plaintiffs and their ancestors-in-title).

Based on our *de novo* review of the record, we find there are genuine issues of material fact as to whether L.J. Noel, Inc. intended to possess the school batture, as owner and adverse to the plaintiffs and/or their ancestors-in-title, and whether L.J. Noel, Inc. exercised actual, adverse, corporeal possession over the school batture that was continuous, uninterrupted, peaceable, unequivocal, and within visible bounds, for thirty years. Although the depositions and affidavits of Skip Noel and Mark Noel established that L.J. Noel, Inc., through the Noel family, used the school batture as its own for recreation, such as hunting, fishing, and waterskiing, and that it cut timber once, periodically grazed cattle, placed and/or maintained fencing on the batture, including the school batture, leased the batture, including the school batture, to third parties for periods of limited duration, and purportedly paid taxes on the school batture, the affidavits of Christine Rodriguez and Paula Rodriguez established that they were unaware of any of the acts by L.J. Noel, Inc., that the plaintiffs were paying taxes on the school batture, and that the boundaries of the school batture were not fenced in and their access to it was not blocked. Thus, there are genuine issues of fact as to whether the acts by L.J. Noel, Inc. and/or the Noel family, were acts of possession and, if so, whether those acts were apparent and continuous, and therefore, sufficient to give the plaintiffs notice that L.J. Noel, Inc. was exercising possession as owner of the school batture (either

inch-by-inch or within enclosures) in a manner that was open, public, continuous and unequivocal. Accordingly, the trial court improvidently granted summary judgment in favor of L.J. Noel, Inc. declaring it to be the owner of the school batture based on acquisitive prescription by thirty years of adverse possession and dismissed the plaintiffs' action; and therefore, we reverse that portion of the November 26, 2014 judgment.

Having determined that L.J. Noel, Inc. was not entitled to summary judgment, we must next consider the plaintiffs' next contention on appeal that the trial court erred in finding that its motion for partial summary judgment on the issue of L.J. Noel, Inc.'s liability for damages, was moot. We note that our ruling herein renders the partial summary judgment filed by the plaintiffs no longer moot, and therefore, we vacate that portion of the November 26, 2014 judgment. However, for the same reasons we find that L.J. Noel, Inc. was not entitled to summary judgment in its favor declaring it to be owner of the school batture and dismissing the plaintiffs' claims, we must likewise conclude that the plaintiffs were not entitled to summary judgment in its favor as L.J. Noel, Inc. set forth sufficient evidence establishing a material issue of fact as to its claim or defense that it owned the school batture by virtue of acquisitive prescription. Therefore, we render judgment denying the plaintiffs' motion for partial summary judgment and remand this matter for further proceedings.

CONCLUSION

For all of the above and foregoing reasons, the November 26, 2014 judgment of the trial court is reversed in part and vacated in part. We render judgment denying the plaintiffs' partial motion for summary judgment and remand this matter for further proceedings.

All costs of this appeal are assessed to the appellee/defendant, L.J. Noel, Inc.

REVERSED IN PART, VACATED IN PART, RENDERED, AND REMANDED.