



**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STACEY MCELVAIN,)
)
 Respondent,)
)
 v.) WD83737
)
 JASON STOKES, ET AL.,) Opinion filed: April 20, 2021
)
 Appellants.)

**APPEAL FROM THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
THE HONORABLE JANET L. SUTTON, JUDGE**

Division Three: Thomas H. Newton, Presiding Judge,
Gary D. Witt, Judge and W. Douglas Thomson, Judge

Jason and Theresa Stokes (collectively, "the Stokes") appeal from the trial court's judgment in favor of Stacey McElvain ("McElvain") on her claim of adverse possession of real property. On appeal, the Stokes claim the trial court erred in holding that McElvain proved the actual and hostile elements of adverse possession. The Stokes claim that the trial court's findings as to both elements of adverse possession are not supported by substantial evidence. We affirm.

Factual and Procedural History

Viewed in the light most favorable to the trial court's judgment,¹ the evidence adduced at trial reflects that McElvain owns real property adjacent to real property owned by the Stokes in Clay County, Missouri. They share a common property line running east to west, with the McElvain property north of the line and Stokes' property south of the same line. Both properties are accessed from Nation Road which is located along their eastern boundary lines and runs north and south. Often, the parties refer to the eastern area near Nation Road as the "front" of their respective properties, with the western area not near Nation Road being the "back" of the properties.

McElvain purchased her property with her now deceased husband on April 23, 2007, and continues to reside there. McElvain's property consists of 23 acres, which is completely fenced and includes a home and a barn. McElvain and her late husband purchased the property from Ronnie Mick who told her that he built the house in 1998-99, and the whole fence line was there at that time. When McElvain purchased the property, she was told everything within the fence was her property.

The Stokes moved into the property adjoining McElvain's property in 2017.² In June 2018, McElvain received a letter from the Stokes stating that they were going to unilaterally move the fence line between their properties north, such that the

¹"We view the evidence and all reasonable inferences in the light most favorable to the court's judgment." *Ferguson v. Hoffman*, 462 S.W.3d 776, 780 (Mo. App. W.D. 2015).

²At one time, the Stokes property and the McElvain property were one parcel. Theresa Stokes testified the combined parcel was owned by her great-grandfather, Bill Mick. Over time the parcel was divided and passed through various members of the Mick family.

McElvain fenced property would be smaller. The Stokes disputed McElvain's ownership of a strip of land of approximately 2.89 acres, located inside McElvain's fencing, on the southern border of McElvain's property and adjacent to the northern edge of the Stokes' property ("Disputed Property").³ McElvain informed the Stokes that she believed the Disputed Property belonged to her. The only way to access the back pasture of the McElvain property is through the Disputed Property because a creek divides the front (east) and back (west) parts of her property.

On April 11, 2019, McElvain filed a petition to quiet title by adverse possession, ejectment, and trespass damages against the Stokes, The Hamilton Bank, and Larry Snyder.⁴ A bench trial was held on February 18, 2020. On March 9, 2020, the trial court entered judgment in favor of McElvain and against the Stokes on McElvain's claim of adverse possession finding she "established all elements of adverse possession and is entitled to obtain record title to the disputed property."⁵ The trial court found in favor of the Stokes on the counts of ejectment and trespass.⁶ The Stokes appeal.

³The legal description of the Disputed Property is contained in the trial court's judgment affirmed herein.

⁴Hamilton Bank is the grantee of the Stokes' deed of trust and Snyder is the trustee for such deed of trust, both made parties due to their interest in the Stokes' parcel.

⁵The trial court entered no judgment or findings of fact as to Hamilton Bank and Snyder. It is evident, however, that any interest either of them could possibly have would be derived solely from the Stokes being found to have an ownership interest in the Disputed Property, and therefore their absence from the judgment bears no consequence to this appeal.

⁶The trespass and ejectment counts against The Hamilton Bank and Larry Snyder were dismissed via stipulation prior to trial.

Standard of Review

"The appellate court will affirm the trial court's determination 'unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.'" *Watson v. Mense*, 298 S.W.3d 521, 525 (Mo. banc 2009) (quoting *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)). "The trial court is free to believe or disbelieve all, part or none of the testimony of any witness." *Id.* "A claim that there is no substantial evidence to support the judgment . . . necessarily involves review of the trial court's factual determinations." *Sauvain v. Acceptance Indem. Ins. Co.*, 437 S.W.3d 296, 302 (Mo. App. W.D. 2014) (citation omitted). "An appellate court 'will overturn a trial court's judgment under [this] fact-based [standard] of review only when the court has a firm belief that the judgment is wrong.'" *Id.* (citation omitted).

"In reviewing questions of fact, the appellate court defers to the trial court's assessment of the evidence if any facts relevant to an issue are contested." *Id.* at 303. "When the evidence is contested, we defer to the trial court on factual issues; a trial court is free to disbelieve any, all, or none of the evidence, and the appellate court's role is not to re-evaluate the evidence through its own perspective." *Id.* "Accordingly, we review the evidence in a light most favorable to the judgment, accept the evidence favorable to the judgment as true, and disregard any contradictory evidence." *Id.*

Analysis

Points I and II

We address Points I and II together because both points assert the trial court's findings are not supported by substantial evidence.⁷ In Point I, the Stokes assert the trial court erred in holding McElvain proved the actual possession element of adverse possession as it was *not supported by substantial evidence*. In Point II, the Stokes assert the trial court erred in holding McElvain proved the hostile possession element of adverse possession as it was *not supported by substantial evidence*. Preliminarily, however, we must address the fact that both points fail due to the Stokes' failure to conform to mandatory requirements for not-supported-by-substantial-evidence challenges. *Taney County Title & Escrow, LLC v. Jensen*, 600 S.W.3d 16, 28 (Mo. App. S.D. 2020) (citing *Houston v. Crider*, 317 S.W.3d 178 (Mo. App. S.D. 2010)).

A not-supported-by-substantial-evidence challenge has a distinct analytical framework where the Stokes must: "(1) identify a challenged factual proposition necessary to sustain the judgment; (2) identify all of the favorable evidence supporting that position; and (3) demonstrate why that supporting evidence, when

⁷McElvain alleges the Stokes fail to comply with Rule 84.04(e) in failing to identify how their claims were preserved for appeal, failing to identify the standard of review for each claim, and in including arguments beyond the scope of each point relied on. We agree. Rule 84.04(e) requires that the argument is limited to the claim in the point relied on; that it includes a statement of how the claim was preserved for review; and that it includes the standard of review for each point. "Compliance with Rule 84.04 briefing requirements is mandatory in order to ensure that appellate courts do not become advocates by speculating on facts and arguments that have not been asserted." *Stickley v. Auto Credit, Inc.*, 53 S.W.3d 560, 562 (Mo. App. W.D. 2001). Failure to comply with Rule 84.04 preserves nothing for appellate review. *Id.* at 564. Here, the Stokes do not provide any statement on how or if the claims were preserved; the Stokes arguably only provide the standard of review for point one; and the arguments of each point exceed the allegations of error made in each point relied on. The Stokes' failure to comply with the requirements of Rule 84.04 preserves nothing for review. In any event, the Stokes' claims asserted in their points relied on fail on the merits as the Stokes fail to demonstrate that the trial court's judgment is not supported by substantial evidence.

considered with the reasonable inferences drawn therefrom, is so lacking in probative value that the trier of fact could not reasonably believe the proposition." *Sauvain*, 437 S.W.3d at 303. "Substantial evidence is that which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case." *Id.* (citation omitted). "Any citation to or reliance upon evidence and inferences contrary to the judgment is irrelevant and immaterial to an appellant's point and argument challenging a factual proposition necessary to sustain the judgment as being not supported by substantial evidence." *Id.* (citation omitted). "Such contrary facts and inferences provide no assistance to this Court in determining whether the evidence and inferences favorable to the challenged proposition have probative force upon it, and are, therefore, evidence from which the trier of fact can reasonably decide that the proposition is true." *Houston*, 317 S.W.3d at 186. "[T]he trial court's judgment is presumed valid, and the burden is on the [Stokes] to demonstrate its incorrectness." *Sauvain*, 437 S.W.3d at 303 (quoting *Houston*, 317 S.W.3d at 186).

The Stokes' argument for each point does not attempt to follow or even acknowledge this mandatory three-step framework. Nonetheless, for both points on appeal, the Stokes satisfy the *first* step by identifying a challenged factual proposition necessary to sustain the judgment. "To acquire title by adverse possession . . . possession must be: (1) hostile . . . (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the necessary period of years prior to the commencement of action." *Watson*, 298 S.W.3d at 526. "Failure to prove even one element is fatal to a claim of adverse possession." *Daniels-Kerr v. Crosby*, 484 S.W.3d 798, 802 (Mo. App.

W.D. 2016). In Point I, the Stokes challenge the trial court's finding that McElvain proved actual possession of the Disputed Property. In Point II, the Stokes challenge the trial court's finding that McElvain proved hostile possession of the Disputed Property. Thus, for both points on appeal, the Stokes satisfy the first step by identifying a challenged factual proposition necessary to sustain the judgment.

However, the Stokes fail to satisfy steps two or three in that they do not identify all the favorable evidence in the record supporting the position that McElvain's possession of the Disputed Property was both actual and hostile or demonstrate why the favorable evidence along with reasonable inferences drawn therefrom is so lacking in probative value that the trial court could not reasonably find that McElvain's possession of the Disputed Property was both actual and hostile.

Instead, in direct contravention of the distinct analytical framework expressly required for the type of challenges they assert, the Stokes rely on incomplete evidence and inferences *contrary* to the judgment to support their arguments. For example, in Point I, the Stokes rely only on McElvain's testimony regarding some of her activities on the Disputed Property and then argue that those activities are insufficient to amount to actual possession. Likewise, in Point II, the Stokes argue that Theresa Stokes' cousin, Chris Mick, hayed the Disputed Property demonstrating permissive use such to defeat a claim of hostile possession, ignoring McElvain's testimony that she *hired* Chris Mick to hay the Disputed Property.

The Stokes make no attempt to identify *all* the favorable evidence that supports the trial court's judgment, nor do they explain why the favorable evidence,

when considered along with the reasonable inferences drawn from that evidence, does not have probative force such that the trial court could not reasonably find that McElvain proved actual and hostile possession. Additionally, the Stokes argue negative inferences should be drawn from the facts that McElvain did not pay taxes on the Disputed Property, cultivate crops on the Disputed Property, erect improvements on the Disputed Property, or conduct substantial clearing activities on the Disputed Property. However, referring this court to evidence and inferences contrary to the judgment is irrelevant and immaterial to an appellant's point challenging a factual proposition necessary to sustain the judgment as being not supported by substantial evidence. *Sauvain*, 437 S.W.3d at 303. "An argument repeatedly and materially based on such evidence and inferences has no analytical or persuasive value and offers no support for [the Stokes'] claim of error." *Sugar Ridge Properties v. Merrell*, 489 S.W.3d 860, 870 (Mo. App. S.D. 2016). "Arguments raised in the points relied on which are not supported by argument in the argument portion of the brief are deemed abandoned and present nothing for appellate review." *Id.* (citation omitted). Thus, the Stokes' "[f]ailure to follow the applicable framework means the appellant's argument is analytically useless and provides no support for [their] challenge." *Langston v. Langston*, 615 S.W.3d 109, 116 (Mo. App. W.D. 2020) (citation omitted).

In any event, even if the Stokes had conformed their arguments to the correct analytical framework, their claims fail. The record demonstrates substantial

evidence supports the trial court's findings of actual and hostile possession by McElvain.

"The claimant's 'present ability to control the land' and 'his intent to exclude others from such control' are relevant considerations in determining whether the actual possession element is satisfied." *Brasher v. Craig*, 483 S.W.3d 446, 451 (Mo. App. W.D. 2016) (citation omitted). "Where the claimant occupies land without color of title, in order to prevail, he must show physical possession of the entire area claimed." *Id.* (citation omitted). "This is shown by any combination of 'continued acts of occupying, clearing, cultivating, pasturing, building fences or other improvements, and paying taxes.'" *Id.* (citation omitted). "'The performance of all or any combination of these acts of occupancy serves as evidence of actual possession but is not conclusive.'" *Murphy v. Holman*, 289 S.W.3d 234, 238 (Mo. App. W.D. 2009) (citation omitted). "Each case must be decided on its own peculiar facts." *Id.* (citation omitted).

"To satisfy the hostile element, the claimant must show that he intended to occupy the disputed parcels as his own." *Brasher*, 483 S.W.3d at 451. "Hostile possession does not imply 'ill will or acrimony.'" *Id.* (citation omitted). "In other words, it is not necessary that the claimant intend to take the property away from the true owner." *Id.* "Instead, '[i]t is the intent to possess, and not the intent to take irrespective of his right, which governs.'" *Id.* at 452 (citation omitted).

Here, the trial court found:

12. Plaintiff, and/or her assignees have continuously cleared, maintained, farmed, and otherwise physically utilized the Disputed Property for a period of more than ten years before June of 2017[.]

13. Plaintiff, and/or her assignees have continuously cleared, maintained, farmed, and otherwise physically utilized the Disputed Property, with the intent to possess the Disputed Property as her own against the claim of any other person, for a period of more than ten years before June of 2017[.]

14. Plaintiff, and/or her assignees did in fact occupy, possess and farm the Disputed Property for a period of more than ten years before June 2017 by traveling over, clearing[,] maintaining[,] and farming the Disputed Property[.]

15. Plaintiff, and/or her assignees cleared, maintained, farmed, and otherwise physically utilized the Disputed Property for a period of more than ten years before June of 2017, with the full knowledge of the Defendants and the Defendants' predecessors in ownership, and in open view to the public[.]

16. Plaintiff, and/or her assignees were the only parties that cleared, maintained, farmed, and otherwise physically utilized the Disputed Property, for a period of more than ten years before June of 2017[.]

17. The disputed area is the only way for Plaintiff to access the back portion of her property and she has used that area for such purpose since April of 2007[.]

....

The Court finds that Plaintiff has established all elements of adverse possession and is entitled to obtain record title to the disputed property[.]

At trial, McElvain testified that when she purchased the property, she was told everything within the fence was her property. The previous owner, Ronnie Mick told her that he built the house in 1998-99, and the whole fence line was there at that time. McElvain testified that since 2007, when she purchased the property, she has continuously treated and maintained the entire property located within the fences as

her property. McElvain stated that the Disputed Property is used for hay for the horses, hunting, hiking, and riding horses. She stated that it is the only access to the back portion of the property. McElvain testified that she seeded, hayed,⁸ mowed and cleared the property. She stated that she has fixed the fencing and fence posts. McElvain testified she maintained the fencing of the property to keep others out in addition to keeping horses on the property. McElvain testified that she hired Chris Mick and Jim Hurley to cut the hay on the property every summer beginning in 2007, and paid them for their services with a portion of the hay. McElvain stated she posted a "no trespassing" sign on the fence on the front (east) boundary line. McElvain testified that for approximately 13 years, at the time of trial, she had maintained the property in the same manner as anyone who is a property owner of a similar rural property that needs continuous maintenance.

Jimmie Ranetta Adams ("Adams") testified that she has owned the property across the street of McElvain's property since 1984 and that the fence separating McElvain's and the Stokes' properties has been there, unchanged, since that time. Adams stated that she saw the prior owner access the back pasture through the Disputed Property. Adams stated that she has witnessed the McElvains hay the Disputed Property. Adams stated that she has never seen any owner from the Stokes' property working on the Disputed Property.

⁸In the rural vernacular, "hay" is an action verb used to describe the aggregate process of cutting, harrowing, baling, and transporting for storage the hay itself. As used here, "hayed" is the past tense of "hay."

Judith Ann Case ("Case") testified that she has owned the property to the north of McElvain's property since 1994. She stated that the fence in between McElvain's property and the Stokes's property is visible from the road. She stated that the fence has "been there forever," at least since she has lived there and it has not changed.

Jim Hurley ("Hurley") testified that he owns property "around the corner" from McElvain. Hurley testified that he baled hay on McElvain's property from approximately 2012 to the time of trial and that no one else cut the hay since that time. Hurley stated that while he was working on McElvain's property, no one ever claimed that he was not authorized to be on the Disputed Property.

The following evidence adduced at trial supports the trial court's judgment that McElvain's possession of the Disputed Property was both actual and hostile:

1. The Disputed Property is within McElvain's the fence line of her property.
2. McElvain has continuously treated and maintained the entire property within the fence line since she purchased the property in 2007. McElvain has seeded, mowed, hayed, and cleared trees from the Disputed Property.
3. McElvain has maintained the fencing of the entire property to keep others out and keep her horses contained including fixing broken fences and replacing fence posts when needed.
4. McElvain has used the Disputed Property as a hay field for her horses and for hunting, hiking, and riding horses. It is also the only access to the back portion of her property.
5. McElvain was told by the previous owner that the Disputed Property was part of the parcel; that everything within the fencing was part of her parcel.
6. McElvain posted a no trespass sign on the front boundary line fence of her property.

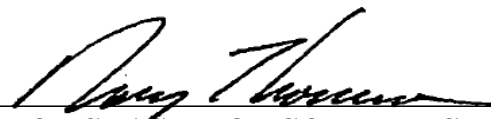
7. Neighbor Adams testified that the fence separating the McElvain's property from the Stokes' property has been there since 1984 and has never been changed.
8. Neighbor Adams stated she has only witnessed the McElvain maintain the Disputed Property. She has never seen the Stokes or the previous owner of the Stokes' property maintain the Disputed Property.
9. Neighbor Case stated that the fence separating the McElvain's property from the Stokes' property has been there since at least 1994 and has not changed.

Thus, even in the absence of the analytical defects, the Stokes' points would fail. The trial court, as fact-finder, found that McElvain established that she intentionally possessed, occupied, and maintained the Disputed Property to the exclusion of others. The trial court's findings are supported by substantial evidence.

Points I and II are denied.

Conclusion

We affirm the trial court's judgment.



W. DOUGLAS THOMSON, JUDGE

All concur.