

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

PAUL TURNER,	:	
Plaintiff-Appellant,	:	Case No. 16CA21
v.	:	
DALE ROBINSON, et al.,	:	<u>DECISION AND</u> <u>JUDGMENT ENTRY</u>
Defendants-Appellees.	:	RELEASED: 07/27/2017

APPEARANCES:

David E. Stenson, Dayton, Ohio for Appellant.

Dale Robinson, New Vienna, Ohio, pro se Appellee.

Hoover, J.

{¶ 1} Plaintiff-appellant Paul Turner (“Turner”) appeals the judgment of the Highland County Common Pleas Court awarding title by adverse possession to several lots of land contained within a large piece of land known as the Gist Settlement.

{¶ 2} In December 2013, Turner brought an adverse possession action to quiet title to several lots of land contained within the Gist Settlement. David Robinson, Dale Robinson, and Bonnie Robinson (“the Robinsons”) answered Turner’s complaint and asserted their own adverse possession claim to two of those lots: lots 21 and 22. The trial court eventually awarded Turner title to every lot he requested, except lots 21 and 22. The titles to those lots were awarded to David Robinson and Dale Robinson as tenants in common.

{¶ 3} On appeal, Turner claims that the trial court erred in failing to award him title to the southern portion of lot 22. Specifically, he argues that he continuously worked and possessed that portion of land for the past 21 years; and the evidence weighs against a finding that David Robinson and Dale Robinson adversely possessed that portion of land.

{¶ 4} Turner argues in the alternative that “the trial court was confused regarding the separate character of the southern portion of lot 22 and impermissibly combined that parcel with the remaining portion of the lot.” He asks that the matter be remanded so that he can present additional evidence on this issue.

{¶ 5} Upon review, we conclude that there is competent, credible evidence in the record that David Robinson and Dale Robinson exclusively, openly, notoriously, continuously, and adversely possessed the southern portion of lot 22 for 21 years; and therefore, the trial court did not err in awarding them title to that portion of land.

{¶ 6} Furthermore, we cannot conclude that the trial court was so confused regarding the separate nature of the southern portion of lot 22 that the matter must be remanded. The trial court stated on the record that it understood that lot 22 consisted of two parcels: a northern parcel and a southern parcel. It further stated that it intended to award the entire lot to David Robinson and Dale Robinson based on its finding that the brothers had adversely possessed Lot 22 for 21 years.

{¶ 7} Accordingly, we affirm the judgment of the trial court.

I. Facts and Procedural History

{¶ 8} The property at issue here is part of a large piece of land known as the Gist Settlement. Samuel Gist was an English owner of slaves and Virginia land. Gist died in

1815. Gist's will directed that upon his death his slaves were to be freed and the trustees of his estate were to purchase lands on which the freed slaves could live. The slaves were freed; and the trustees purchased land in Highland County. However, taxes on the land went unpaid for several years.

{¶ 9} In 1894, the county treasurer sought recovery of the taxes from the settlers in the Highland County Common Pleas Court. In an 1895 order, the trial court divided the land into 31 lots, determined ownership for each lot, and designated the amount of taxes owed on each lot. Since 1895, ownership in some of the lots has been transferred, while ownership in other lots has not.

{¶ 10} Turner is a descendant of the original freed slaves who had settled on the lands of the Gist Settlement. Turner was born on the settlement in 1931. At the age of 18, he enlisted in the United States Navy. After his discharge from the Navy in 1976, Turner returned to the Gist Settlement. Upon returning to the Gist Settlement, Turner found that a majority of the lots had outstanding back taxes; and he started paying the taxes on each lot.

{¶ 11} Turner initiated this proceeding in December 2013 by filing a complaint to quiet title to several lots of land contained within the Gist Settlement. Turner named several defendants, their spouses, and their heirs as record owners of the lots he sought to quiet title. Turner's complaint did not specifically state the lots to which he wanted to quiet title. Instead, Turner attached several papers to his complaint including the 1895 order in Highland County Common Pleas Court, a map of the original boundaries of the lots in the Gist Settlement, and copies of the post-1895 deeds transferring title to the lots to some of the named defendants. Turner also included a handwritten list that provided

information on 22 of the 31 lots. In the list, Turner noted the lot number, the parcel number, the owner(s) and the acreage associated with each of the listed lots. The lots listed were lots 1, 2, 3, 4, 5, 8, 9, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 26, 27, 28, and 29.¹

{¶ 12} In December 2013, Turner filed a motion for service by publication. Turner stated in an affidavit that only five of the named defendants had addresses capable of service. The trial court granted his motion and directed the clerk to serve the parties by publication.

{¶ 13} In January 2014, the Robinsons filed an answer to Turner's complaint, a counterclaim against Turner, and a cross-claim against all the named defendants in Turner's complaint. In their filings, the Robinsons also demanded legal title to property through adverse possession. Specifically, the Robinsons sought title to lots 21 and 22. The Robinsons did not contest Turner's adverse possession claims as to the other lots. Thus, the only lots that were in dispute between Turner and the Robinsons were lots 21 and 22.²

{¶ 14} The 1895 order of the Highland County Common Pleas Court shows that title of lot 22 was granted to Hester Day and Isaac Day. However, lot 22 consists of two parcels: a northern parcel and a southern parcel. As for the northern parcel, the record does not contain any deed transferring title to anyone else. Therefore, prior to the commencement of this proceeding, Hester Day and Isaac Day remained the record title owners of the northern parcel, parcel number 51-05-100-021.00. This parcel consists of 7 acres of land.

¹ Turner also alleged that illegal dumping occurred on the land but that claim was eventually dismissed.

² The Robinsons also filed a motion for service by publication in order to serve the named defendants in Turner's complaint, which the trial court granted.

{¶ 15} The record reflects that in 1930, Mary Duckwall was granted title to the southern parcel of lot 22. Furthermore, according to the record, Mary Duckwall was the record title owner of this parcel prior to the filing of this action. This parcel of land, parcel number 51-05-100-019.00, consists of 3 acres.

{¶ 16} Turner and the Robinsons each filed their own “stipulations of fact,” memorandums, supporting affidavits, and exhibits. These “stipulations” were not an agreed set of facts between the parties. Instead, both Turner and the Robinsons filed separate sets of facts of which some of the facts were in conflict. Additionally, Turner and the Robinsons each provided the trial court with maps displaying the lots of the Gist Settlement and their boundaries.

{¶ 17} Turner filed the following pertinent facts:

5. Around the early 1970's Lester Robinson moved his family to Lot 22, which is the Lot previously granted to Hester Day.

* * *

7. In 1996 Paul Tuner wrote a letter to Lester Robinson advising him that the property they were staying on is that of his aunt and that they have permission to stay there.

8. Lester Robinson passed away and left his two sons to continue to live on the land David Robinson and Dale Robinson.

9. David Robinson was born on the property and has lived there continuously with the exception of a short period of time (less than a month).

10. Dale Robinson also resided on the property however he left for a much longer period of time (over 3 months) to live at another address.

* * *

12. Improvements that he made to the lots that weren't owned was to remove debris and other refuse that had built up, plow under weeds and return the land to a farmable condition.

13. During the course of living on Lot 22 the Robinson family has continued to bring junk items on the property and have made no improvements to the land that weren't already in place.

14. After Lester Robinson passed away and David and Dale became the primary caretakers the land became increasingly misused and hostile actions towards the Plaintiff commenced.

* * *

17. Plaintiff states that the Robinsons have not improved Lot 21. They have only allowed their horses to graze.

* * *

19. Plaintiff has hay farmed on Lot 21 every year since 1976.

{¶ 18} On the other hand, the Robinsons submitted the following pertinent facts:

1. Lester Robinson is the Father of Dale and David Robinson and lived on Lot 22 of the Gist Settlement until he was 84 years old; this lot contains Seven (7) acres. This lot is titled "Hester Day Et Al" in the Highland County Engineer's Report, attached hereto as "Exhibit A." The property comprising Lot 22 is entirely located in Highland County, Ohio.

2. David Robinson has lived on Lot 22 described above since his birth and has continuously, exclusively, open and notoriously used the property comprising Lot 22 for a period of more than 21 years adversely to the rights of the owner of record.

* * *

4. Lot 21 of the Gist Settlement titled, "Hester Day" on Exhibit A, is directly behind Lot 22 in an Easterly direction and consists of 3.375 acres and this real property is located in Highland County, Ohio.

5. Lester Robinson, while he was living, farmed the land comprising Lot 21 in row crops, made hay and pastured cattle and horses on the same. The area surrounding the lot had been fenced by David Robinson, Lester Robinson's son, over 21 years ago and horses are still pasturing on lot 21 as of the date of the execution of this document. Lot 21 has been used in other manners by David Robinson including hunting and camping for a period more than 21 years.

6. David Robinson has lived on Lot 22 for 47 years and treated the same as his own property, including mowing and general maintenance of the same.

7. David Robinson has farmed and otherwise used the real property comprising Lot 21 as his own of a period longer than 21 years, including, but not limited to pasturing his horses. See Exhibits B–H.

8. David Robinson bought his own mobile home and moved in right next to his father, Lester Robinson, in 1989. This mobile home was installed on Lot 22.

9. David Robinson fenced the entirety of Lot 21 for the purpose of using the ground for his own personal use for farming and otherwise; this fence was installed more than 21 years ago and materials for the installation of the fence were purchased by David Robinson.

10. David Robinson continues to live on Lot 22 and use the property comprising Lot 21 to the date of execution of this document.

11. Dale Robinson lives on Lot 22 right next to his brother, David, and has lived on this property since his birth, with the exception of briefly moving away in calendar years 2005 through 2006.

* * *

14. Dale and/or David Robinson have paid the real estate taxes for lots 21 and 22 since 2005.

{¶ 19} Turner and the Robinsons also filed memoranda in support of their adverse possession claims. In Turner’s memorandum, he argued that the Robinsons could not meet their burden of proof that they adversely possessed lots 21 and 22 for a period of 21 years. Ironically, Turner stated that he also could not meet the requisite elements to support an adverse possession claim. Turner stated that he did have “probate law to support his claim” because he is a direct descendant of Hester Day. (Docket No. 55, p. 5. Turner requested that the court dismiss both parties’ claims of adverse possession and allow him to properly pursue his claim through probate.

{¶ 20} In the Robinsons’ memorandum, they argued that they had adversely possessed lots 21 and 22 for more than the requisite 21–year period. The Robinsons asked that the trial court award legal title to lots 21 and 22 to David Robinson and Dale Robinson, or in the alternative, only David Robinson.

{¶ 21} Turner and the Robinsons agreed to submit the matter to the trial court based upon their “stipulations of testimony” and exhibits.

{¶ 22} On June 26, 2015, the trial court found that Turner had established by clear and convincing evidence the elements of adverse possession for the following lots: 1, 3, 4, 5, 12, 13, 14, 15, 16, 17, two portions of lot 19, lots 20, 24, 26, 27, 28, and 29.

{¶ 23} However, the trial court found that David Robinson and Dale Robinson had established by clear and convincing evidence the elements of adverse possession for lots 21 and 22.

{¶ 24} Turner timely appealed.

{¶ 25} Upon review, this court determined that there were unresolved issues pending in the trial court. Specifically, we noted, “The trial court did not resolve ownership of lot 2, lot 8, lot 9, or the southern portion of lot 22.” *Turner v. Robinson*, 4th Dist. Highland No. 15CA11, 2016-Ohio-2981, ¶ 38. Accordingly, we concluded that the entry was not a final appealable order; and we dismissed the appeal for lack jurisdiction.

{¶ 26} On August 15, 2016, the trial court issued a second judgment entry. It concluded, “[T]itle to Lots 1, the 3.856 acre portion of lot 2, 3, 4, 5, 8, 9, 12, 13, 14, 15, 16, 17, two parts of 19, 20, 24, 26, 27, 28, and 29 of the Plat of Gist Settlement * * * is vested in Plaintiff and title thereto is quieted in his favor against all claims past and future of all defendants in this action.

{¶ 27} The trial court further concluded, “[T]itle to Lot 21 and both parts of Lot 22 of the Plat of the Gist Settlement * * * is hereby vested in David Robinson and Dale Robinson as tenants in common and their title thereto is hereby quieted in their favor against all claims past and future of all parties to this action.” The trial court reasoned,

The Robinsons and their father lived on lot 22. David placed a mobile home on that lot in 1989 next to the house in which his father resided during his lifetime. Defendants David and Dale Robinson and their father have farmed it, fenced it and kept horses on it. While they did not pay the real estate taxes on it until 2005, they did claim it as their home and lived their openly notoriously, continuously, and adversely for more than twenty-one years. * * *

In Ohio, the tacking of the adverse possession of successive claimants who have been in privity with each other is permitted to reach a total of twenty-one years[.] As sons of Lester Robinson, Defendants David Robinson and Dale Robinson are in privity with him being his sons and having lived on the property virtually their entire lives. Lester lived on and farmed those lots from 1970’s until his death in 1999 and his two sons continued after his death. Therefore, the times of possession should be tacked.

{¶ 28} Turner timely appeals.

II. Assignment of Error

Assignment of Error:

THE TRIAL COURT ERRED IN FAILING TO APPELLANT AWARD
[SIC] THE MARY DUCKWALL PARCEL OF LOT 22, AS

APPELLANT PAUL TURNER CONTINUOUSLY POSSESSED AND WORKED THE LAND FOR THE PAST 21 YEARS AND APPELLEES HAVE NOT ADVERSELY POSSESSED THE LAND.

III. Law and Analysis

A. Standard of Review

{¶ 29} “An appeal of a ruling on an adverse possession claim is usually reviewed under a ‘manifest weight of the evidence’ standard of review.” *Nolen v. Rase*, 4th Dist. Scioto No. 13CA3536, 2013–Ohio–5680, ¶ 9. “In other words, an appellate court will not reverse a trial court’s decision on this issue if it is supported by some competent, credible evidence.” *Id.* “This standard of review is highly deferential and even the existence of ‘some’ evidence is sufficient to support a court’s judgment and to prevent a reversal.” *Id.* However, where the appellant challenges the trial court’s choice or application of law, our review is de novo. *Pottmeyer v. Douglas*, 4th Dist. Washington No. 10CA7, 2010–Ohio–5293, ¶ 21.

{¶ 30} Here, Turner argues that the trial court erred failing to award him title to the southern portion of lot 22. In essence, he argues that he should have been awarded title to that land because his evidence was more persuasive than the evidence presented by the Robinsons. Since Turner is not challenging the trial court’s choice or application of law, we review his claim under a “manifest weight of the evidence” standard. Thus, we “will not reverse a trial court’s decision on this issue if it is supported by some competent, credible evidence.” *Nolen* at ¶ 9.

B. General Principles of Adverse Possession

{¶ 31} The party seeking title by adverse possession bears the burden of proving its elements by clear and convincing evidence. *Pottmeyer* at ¶¶ 22–23. “Clear and

convincing evidence is that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 32} While adverse possession is a recognized common law method of obtaining title to real property, it is not favored. *Grace v. Koch*, 81 Ohio St.3d 577, 581, 692 N.E.2d 1009 (1998) (“A successful adverse possession action results in a legal titleholder forfeiting ownership to an adverse holder without compensation. Such a doctrine should be disfavored, and that is why the elements of adverse possession are stringent.”). “Adverse possession is a means of acquiring title to property and its ultimate effect results in the ripening of hostile possession, under certain circumstances, into title by lapse of time.” *Bidlack v. Hubert*, 3d. Dist. Paulding No. 11-07-06, 2008-Ohio-83, ¶ 26, citing *Anderson v. Village of Alger*, 3d Dist. Hardin No. 6-98-10, 1999 WL 378377 (May 14, 1999), citing *Montieth v. Twin Falls United Methodist Church, Inc.*, 68 Ohio App.2d 219, 224, 428 N.E.2d 870 (9th Dist.1980).

C. Elements of an Adverse Possession Claim

{¶ 33} “To acquire title by adverse possession, a party must prove, by clear and convincing evidence, exclusive possession and open, notorious, continuous, and adverse use for a period of twenty-one years.” *Grace* at paragraph one of the syllabus. “Failure of proof as to any of the elements results in failure to acquire title by adverse possession.” *Id.* at 579, citing *Pennsylvania RR. Co. v. Donovan*, 111 Ohio St. 341, 349-350, 145 N.E. 479 (1924).

{¶ 34} For an adverse holder’s use to be considered exclusive, “ ‘use of the property does not have to be exclusive of all individuals.’ ” *Koprivec v. Rails to Trails*, 2016-Ohio-1141, 61 N.E.3d 676, ¶ 12 (9th Dist.), quoting *Franklin v. Massillon Homes II, L.L.C.*, 184 Ohio App.3d 455, 2009-Ohio-5487, 921 N.E.2d 314, ¶ 27 (5th Dist.), quoting *Kaufman v. Geisken Enterprises, Ltd.*, 3d Dist. Putnam No. 12–02–04, 2003-Ohio-1027, ¶ 39. To establish exclusive possession, the “the use of the property does not have to be exclusive of all individuals.” Rather, it must be exclusive of (1) the true owner entering onto the land and asserting his right to possession and (2) third persons entering the land under their own claim of title, or claiming to have permission to be on the premises from the true titleholder. *Kaufman* at ¶ 39.

{¶ 35} “ ‘Open’ and ‘notorious’ use requires that the actual use be of a character that is capable of giving the legal owner notice.” *Dunn v. Ransom*, 4th Dist. Pike No. 10CA806, 2011–Ohio–4253, ¶ 78. For possession to be considered open, the property must be used “ ‘without attempted concealment.’ ” *Id.*, quoting *Hindall v. Martinez*, 69 Ohio App.3d 580, 584, 591 N.E.2d 308 (3rd Dist.1990). To be notorious the use must be “ ‘known to some who might reasonably be expected to communicate their knowledge to the owner if he maintained a reasonable degree of supervision.’ ” *Dunn* at ¶ 78, quoting *Hindall* at 584. “In other words, the use of the property must be so patent that the true owner of the property could not be deceived as to the property’s use.” *Hindall* at 583.

{¶ 36} “In order for use to be continuous, there must not be substantial interruption, ‘with daily or weekly use generally not being required as long as the use is continuous enough to indicate prolonged and substantial use.’ ” *Bullion v. Gahm*, 164 Ohio App.3d 344, 2005-Ohio-5966, 842 N.E.2d 540, ¶ 20 (4th Dist.), quoting

Ault v. Prairie Farmers Co-Operative Co., 6th Dist. Wood No. WD-81-21, 1981 WL 5788 (Sep. 25, 1981), citing *Kunkel v. Ulm*, 9 Ohio Law Abs. 232 (1st Dist.1930).

{¶ 37} “To establish hostility it is not necessary to show that there was a heated controversy, or a manifestation of ill will, or that the claimant was in any sense an enemy of the owner of the servient estate.” *Kimball v. Anderson*, 125 Ohio St. 241, 244, 181 N.E. 17 (1932). Rather, any use of the land inconsistent with the rights of the titled holder is adverse or hostile. *Id.* To be adverse, “there must have been an intention on part of the person in possession to claim title, so manifested by his declarations or acts, that a failure of the owner to prosecute within the time limited, raises a presumption of an extinguishment or a surrender of his claim.” *Lane v. Kennedy*, 13 Ohio St. 42, 47 (1861). “[I]ntent is objective rather than subjective in determining whether the adversity element of adverse possession has been established[.]” *Evanich v. Bridge*, 119 Ohio St.3d 260, 2008-Ohio-3820, 893 N.E.2d 481, ¶ 13. In sum, adverse use is described as non-permissive use. *McCune v. Brandon*, 85 Ohio App.3d 697, 700, 621 N.E.2d 434 (5th Dist.1993).

{¶ 38} Finally, “[i]n order to establish the necessary twenty-one year period, a party may add to his own term of adverse use any period of adverse use by prior succeeding owners in privity with one another.” *Wetzler v. Eagleson’s, Inc.*, 5th Dist. Guernsey No. 01CA14, 2002 WL 552712, *2 (April 11, 2002), citing *Zipf v. Dalgarn*, 114 Ohio St. 291, 151 N.E. 174 (1926). Thus, “[o]ne person may start the adverse possession to land, and another in privity with him may continue it for the statutory period.” *Zipf* at 296, quoting Thompson on Real Property, vol. 3, Section 2527. “ “ “All that is generally necessary to [establish] privity between successive occupants of property

is that one receive his possession from the other by some act of such other or by operation of law.” ’ ’ *Bullion*, 164 Ohio App.3d 344, 2005-Ohio-5966, 842 N.E.2d 540, at ¶ 19 quoting *Keezer v. Deatrick*, 3d Dist. Paulding No. 11–87–8, 1988 WL 126760 (Nov.28, 1988). Thus, “acquisition of title by adverse possession of successive owners [appears] dependent upon continued occupancy and possession rather than the manner in which record title was acquired.” *Pauken v. Rose*, 16 Ohio Supp. 149, 149–150 (C.P.1945), citing *McNeely v. Langan*, 22 Ohio St. 32, 37 (1871). Therefore, “ ‘the adverse claimant need not have a deed or other writing giving color of title or furnishing foundation for belief or claim of ownership or legal right to enter or take possession of land.’ ” *Montieth v. Twin Falls United Methodist Church, Inc.*, 68 Ohio App.2d 219, 222, 428 N.E.2d 870 (9th Dist.1980), quoting 5 *Thompson on Real Property*, Section 2550, at 643 (1979 Ed.). Instead, “[t]he overriding concern in [an adverse possession] case * * * is possession.” *Montieth* at 222, citing *Yetzer v. Thoman*, 17 Ohio St. 130 (1866).

C. The Trial Court’s Decision is Supported by Some Competent, Credible Evidence

{¶ 39} We begin by noting that the parties agreed to submit this case to the trial court for a decision based upon the facts and exhibits they submitted. The parties’ exhibits show that the Lot 22 consists of two parcels: a northern parcel and a southern parcel. The parties’ facts refer to Lot 22 generally, however, and do not differentiate between the two parcels. Thus, we presume that a reference to Lot 22 is a reference to both parcels.

{¶ 40} The record contains evidence that Lester Robinson moved onto Lot 22 in the early 1970’s and treated the lot as his own. David Robinson and Dale Robinson grew up on the lot; and in 1989, David Robinson bought his own mobile home and moved in

right next to his father. Dale Robinson also lived on the lot. When Lester Robinson died in 1999, his sons continued to live on the land and care for it. David Robinson has lived on Lot 22 since his birth; and Dale Robinson has also lived on Lot 22 since birth, with the exception of a brief period of time between 2005 and 2006. This evidence supports the trial court's finding that David and Dale Robinson were in privity with their father and openly, notoriously, and continuously possessed the southern portion of lot 22 for 21 years.

{¶ 41} There is also no evidence in the record that (1) Lester Robinson, David Robinson, or Dale Robinson had permission to use the southern portion of lot 22 from Mary Duckwall (2) Mary Duckwall entered onto the land and asserted her right to possession or (3) third persons entered the land under their own claim of title, or claiming to have permission to be on the premises from Mary Duckwall. This evidence supports the trial court's finding that their possession was hostile and exclusive for the entire 21-year period.

{¶ 42} Turner's brief is largely devoted to the idea that he should have been awarded title to the southern portion of lot 22 because his evidence was more persuasive than the evidence presented by the Robinsons. However, "[T]he trier of fact is in the best position to observe the witnesses, weigh evidence, and evaluate testimony." *Walton v. Walton*, 3d Dist. Union No. 14-10-21, 2011-Ohio-2847, ¶ 20, citing *Clark v. Clark*, 3d Dist. Union No. 14-06-56, 2007-Ohio-5771, ¶ 23, citing *In re Brown*, 98 Ohio App.3d 337 (3d Dist.1994). "Therefore, '[a] reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate

ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.” ’ ’ *Id.*, quoting *Clark* at ¶ 23, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 81 (1984).

{¶ 43} Based on our review of the record, we conclude that there is some competent, credible evidence in the record to support the trial court's finding that David Robinson and Dale Robinson established each element of adverse possession with respect to the southern portion of lot 22.

{¶ 44} Turner argues in the alternative that the transcript from a July 2016 hearing shows that “the trial court was confused regarding the separate character of the southern portion of lot 22 and impermissibly combined that parcel with the remaining portion of the lot.” Consequently, he asks that the matter be remanded so that he can present additional evidence on this issue.

{¶ 45} After reviewing the transcript from the hearing, we cannot conclude that the trial court was so confused regarding the separate nature of the southern portion of lot 22 that the matter must be remanded. The trial court indicated on the record that it understood that lot 22 consisted of two parcels: a northern parcel and a southern parcel. It further stated that it intended to award title to both parcels to David Robinson and Dale Robinson based on its finding that the brothers had adversely possessed lot 22 for 21 years.

C. Conclusion

{¶ 46} Having determined that the trial court did not err in awarding title of the southern portion of lot 22 to David Robinson and Dale Robinson, we overrule Turner’s assignment of error.

{¶ 47} Accordingly, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds that reasonable grounds existed for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Marie Hoover, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.