NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JEFFREY DURDACH Appellant v. RICHARD REVTA AND ANN JOYCE REVTA Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 828 MDA 2012

Appeal from the Judgment Entered October 19, 2011
In the Court of Common Pleas of Lackawanna County
Civil Division at No(s): 2010-03580

JEFFREY DURDACH Appellee v. RICHARD REVTA AND ANN JOYCE REVTA, HUSBAND AND WIFE Appellants	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 871 MDA 2012

Appeal from the Judgment Entered March 27, 2012
In the Court of Common Pleas of Lackawanna County
Civil Division at No(s): 2010-03580

BEFORE: SHOGAN, J., LAZARUS, J., and OTT, J.

MEMORANDUM BY LAZARUS, J. Filed: January 2, 2013

Before the Court are cross-appeals filed in a dispute between neighbors over the boundary line between their properties. Jeffrey Durdach filed an action against Richard and Ann Joyce Revta ("Revta") in which he sought to eject Revta from a piece of property on which Revta had laid a

macadam driveway. Revta asserted that "the respective boundary line has become established by the course of conduct of the property owners for over 30 years" and, as such, Revta is entitled to possession of the disputed parcel of land. New Matter, 6/15/10, at ¶ 16. After a non-jury trial, the Honorable Terrence R. Nealon concluded that a consentable boundary line had been established and found in Revta's favor. Upon review, we affirm.

The trial court made findings of fact as follows:

> Durdach's mother, Mary Baulovich Durdach, and Revta's mother, Helen Baulovich Revta, were sisters.
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> On February 7, 1955, Durdach's parents, [Edward and Mary Durdach], purchased property located at 504 North Apple Street, Dunmore ("Durdach's property") from the Pennsylvania Coal Company. On that same date, Revta's parents, [Michael and Helen Revta], purchased property located at 506 North Apple Street, Dunmore ("Revta's property") from the Pennsylvania Coal Company. The Durdach and Revta properties are contiguous[,] with the Durdach property situated to the west of the Revta parcel.
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> Durdach's parents constructed a residential home on Durdach's property in approximately 1960. Revta's parents never constructed a home on [their parcel] and that property remained vacant from 1955 to 1977.
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> On February 14, 1977, [Michael and Helen Revta] conveyed [their parcel] to [Revta]. In the late 1970s, Revta constructed a home on Revta's property and installed a driveway comprised of two concrete strips that were approximately three feet in width and were bordered by grass on both sides.
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> From 1979 until at least the date of Edward Durdach's death on April 9, 2004, passenger-side

> occupants of vehicles parked on Revta's concrete driveway would exit and enter vehicles by using and traversing the bordering grassy area with the consent of Edward Durdach, including the western portions of grass which were located on Durdach's land.
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> From 1979 until at least the date of Edward Durdach's death on April 9, 2004, and with the knowledge and consent of Edward Durdach, [Revta] exclusively maintained the grassy area bordering his concrete driveway, including those western portions of grass which were located on Durdach's property. In fact, Durdach's own brother, [Mark], testified that when he resided at [the Durdach home] between May 1978-March 1980, July 1980-1982 and 1984-November 1986, as well as during frequent visits there from 1986 to April 2004, the only individual that he ever observed trimming or maintaining that grassy area on Durdach's property was his cousin, [Revta].
>
> From 1979 through April 2004, Edward Durdach and Revta mutually recognized the edge of the foregoing grassy area as constituting the boundary line between their properties.
>
> In early 2005, Revta removed the concrete driveway and installed a macadam driveway in its stead. A triangular piece of the macadam driveway[,] which is 4.29' wide at its widest point, extending approximately 75' in length as it progressively narrows and comprising roughly 150 square feet in total, encroaches upon Durdach's 11,250 square foot lot according to the survey performed by George Dunda. The disputed triangular piece of land . . . represents the same land that [Revta] used and maintained with the permission of Edward Durdach from 1979 until at least April 2004[.]

Trial Court Opinion, 10/19/11, at 1-3 (paragraph numbers and citations to record omitted).

On October 19, 2011, the trial court issued a non-jury verdict awarding the disputed piece of land to Revta based upon the doctrine of consentable boundary. Durdach filed a post-trial motion, which the court denied by order dated March 27, 2012. Durdach filed a timely notice of appeal on April 25, 2012; Revta filed a timely notice of cross-appeal on May 2, 2012, ***see*** Pa.R.A.P. 903(b). The trial court ordered both parties to file statements of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), but did not issue a Pa.R.A.P. 1925(a) opinion.

In his brief, Durdach raises two questions for our review. However, both questions concern whether the trial court erred in holding that a consentable boundary line exists between the Revta and Durdach properties.

We begin by noting that, in an appeal from a trial court sitting in equity, our standard of review is rigorous:

> A chancellor's findings of fact will not be disturbed absent an abuse of discretion, a capricious disbelief of the evidence, or a lack of evidentiary support on the record for the findings. A chancellor's conclusions of law are subject to stricter scrutiny. Unless the rules of law relied on are palpably wrong or clearly inapplicable, however, a grant of injunctive relief will not be reversed on appeal.

Lilly v. Markvan, 763 A.2d 370, 372 (Pa. 2000) (citation omitted). An abuse of discretion occurs when a judgment is "manifestly unreasonable." ***Id.***

Durdach asserts that the trial court erred in concluding that Revta had acquired title to the disputed property by virtue of a consentable boundary.

The doctrine of consentable boundary "functions as a rule of repose to quiet title and discourage vexatious litigation." ***Zeglin v. Gahagen***, 812 A.2d 558, 561 (Pa. 2002). A consentable boundary may be established in two ways. A party may establish that a boundary has been agreed to after a dispute and compromise. ***Sorg v. Cunningham***, 687 A.2d 846, 849 (Pa. Super. 1997). Proof of consentable lines may also be established by recognition and acquiescense. ***Id.*** Two elements are prerequisites to establishing a consentable boundary by acquiescence: (1) each party must have claimed and occupied the land on his side of the line as his own; and (2) such occupation must have continued for the statutory period of twenty-one years.[1] ***Zeglin***, 812 A.2d at 561.

> When a consentable line is established, the land behind such a line becomes the property of each neighbor regardless of what the deed[s] specif[y]. In essence, each neighbor gains marketable title to that land behind the line, some of which may not have been theirs under their deeds.

Moore v. Moore, 921 A.2d 1, 5 (Pa. Super. 2007). To establish a boundary by acquiescence, the parties need not have specifically consented to the location of the line. ***Sorg***, 687 A.2d at 849, quoting ***Dimura v. Williams***, 286 A.2d 370, 371 (Pa. 1972). Proof of passage of the

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[1] Twenty-one years is the statutory period beyond which the true owner no longer has a cause of action in ejectment. ***See*** 42 Pa.C.S.A. § 5530(a)(1) (action for possession of real property must be commenced within 21 years).

statutory period may be shown by tacking the current claimant's tenancy to that of his predecessor. ***Moore***, 921 A.2d at 5.

Here, the trial court found that Revta maintained and occupied the disputed tract for approximately twenty-five years. According to Revta's testimony, which the trial court found to be credible, this maintenance included laying sod, mowing the grass, shoveling or blowing snow, laying and maintaining gravel, and employing a lawn care company to fertilize and treat the grass. Revta's family also used the area to enter and exit vehicles parked in their driveway.

We acknowledge that the cases in which our courts have previously found a consentable boundary involve significantly more activity by the claimants. ***See, e.g., Moore***, ***supra*** (consentable boundary found where claimants paid taxes, maintained access road, timbered and planted on disputed parcel); ***Sorg, supra*** (consentable line found where parties each mowed lawn to either side of row of pine trees and claimants improved house, dug cellar, maintained lawn, cleared trees, built shed and smokehouse and dug well in contested area); ***Schimp v. Allaman***, 659 A.2d 1032 (Pa. Super. 1995) (consentable line found where claimants grew crops, pastured cattle and constructed road on disputed parcel); ***Plauchak v. Boling***, 653 A.2d 671 (Pa. Super. 1995) (consentable line found where claimants had planted hedge row at boundary and mowed grass, performed maintenance, installed septic system leach bed, parked trailer and installed

gravel parking on disputed parcel). However, as our Supreme Court has previously stated:

> The ultimate issue in this case is not whether this court would have reached the same result had it been performing the role of the trial court, but whether a judicial mind, on due consideration of the evidence, as a whole, could reasonably have reached the conclusion of the chancellor.

Lilly, 763 A.2d at 372. Based upon the credibility determinations made by the trial court, which are supported in the record, as well as a careful review of the relevant case law, we are constrained to conclude that the trial court did not abuse its discretion in awarding the disputed plot of land to Revta based on the existence of a consentable boundary.

On cross-appeal, Revta claims that the trial court erred by not finding that he was entitled to possess the land under the doctrines of adverse possession and prescriptive easement.[2] We disagree.

One who claims title by adverse possession must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land for twenty-one years. ***Baylor v. Soska***, 658 A.2d 743, 744 (Pa.

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[2] Revta also challenges the trial court's finding that he waived his adverse possession claim by failing to raise it in new matter. Revta claims that he properly alleged adverse possession in his answer and then "referred" to the doctrine, although not by name, in his new matter. In response, Durdach cites to ***Norbeck v. Allenson***, 293 A.2d 92 (Pa. Super. 1972), for the proposition that a defense of adverse possession must be pled in new matter or be waived. Because Revta did raise adverse possession in his answer, thus placing Durdach on notice as to his claim, we will address the merits of Revta's claim herein.

1995). Possession is hostile when the person claiming adverse possession enters and remains on the land without the permission of the true owner. ***Lehmann v. Keller***, 684 A.2d 618, 620 (Pa. Super. 1995), citing ***Tioga Coal v. Supermarkets General Corp.***, 546 A.2d 1, 4-5 (Pa. 1988). When possession of the land is permissive, there is no hostile nexus and, thus, no adverse possession. ***Id.*** citing ***Plott v. Cole***, 547 A.2d 1216, 1223 (Pa. Super. 1988).

Similarly, a finding of a prescriptive easement requires that the claimant's use of the land in question be adverse, open, continuous, notorious and uninterrupted for twenty-one years. ***Boyd v. Teeple***, 331 A.2d 433, 434 (Pa. 1975). If the claimant's use is permissive, a prescriptive easement cannot arise, no matter how long the use continues, and the passing of time under such circumstances does not raise the presumption of a grant. ***Morning Call, Inc. v. Bell Atlantic-Pennsylvania, Inc.***, 761 A.2d 139, 143 (Pa. Super. 2000).

Here, Revta testified, and the trial court found as fact, that Revta's use of Edward Durdach's property was permissive and that Edward Durdach never objected to his activities on the disputed plot of land. Accordingly, the doctrines of adverse possession and prescriptive easement are inapplicable to this matter. ***See Lehman***, ***supra***; ***Morning Call, Inc.***, ***supra***. As such, the trial court did not err in denying Revta's claims.

Judgment affirmed.