Affirmed in Part and Reversed and Rendered in Part and Memorandum Opinion filed September 23, 2021.

In The

Fourteenth Court of Appeals

NO. 14-19-00643-CV

DOROTHY RINN, Appellant

V.

MIND PROPERTIES LLC, Appellee

On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 1109927

MEMORANDUM OPINION

Appellant Dorothy Rinn appeals the trial court's judgment against her awarding damages for lost rents to appellee Mind Properties, LLC and concluding that appellant failed to establish adverse possession over a portion of disputed land containing a fence and a driveway on the portion of appellee's lot that bordered appellant's lot. In her first issue, appellant argues that because she brought her counterclaim for adverse possession within thirty-days of appellee filing its suit to

quiet title, section 16.069 of the Civil Practice and Remedies Code allows her to bring this claim even though her claim would otherwise be barred by limitations. In her second issue, appellant argues that "the undisputed evidence established adverse possession of the land." Because we overrule appellant's second issue, we do not address the first issue. *See* Tex. R. App. P. 47.1. In her third issue, appellant contends that the trial court erred by awarding appellee damages on its trespass claim because there was no evidence of any damages. Because we conclude that there is no relevant evidence of lost rents, we reverse this portion of the judgment.

I. ADVERSE POSSESSION

Appellant contends that the undisputed evidence established all the elements of her claim of adverse possession as a matter of law. Appellee argues that appellant failed to meet her burden on each element of her claim and, therefore, the trial court's judgment should be upheld.

A. General Legal Principles

We review the trial court's decision for legal sufficiency of the evidence by the same standards applied in reviewing the evidence supporting a jury's finding. *Wood v. Kennedy*, 473 S.W.3d 329, 334 (Tex. App.—Houston [14th Dist.] 2014, no pet.). A party attacking legal sufficiency relative to an adverse finding on which it had the burden of proof must demonstrate that the evidence conclusively establishes all vital facts in support of the issue. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001) (per curiam). We review the entire record to determine if the contrary proposition is established as a matter of law only if there is no evidence to support the judgment. *See id.* Anything more than a scintilla of evidence is legally sufficient to support the judgment. *See City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). The final test for legal sufficiency is

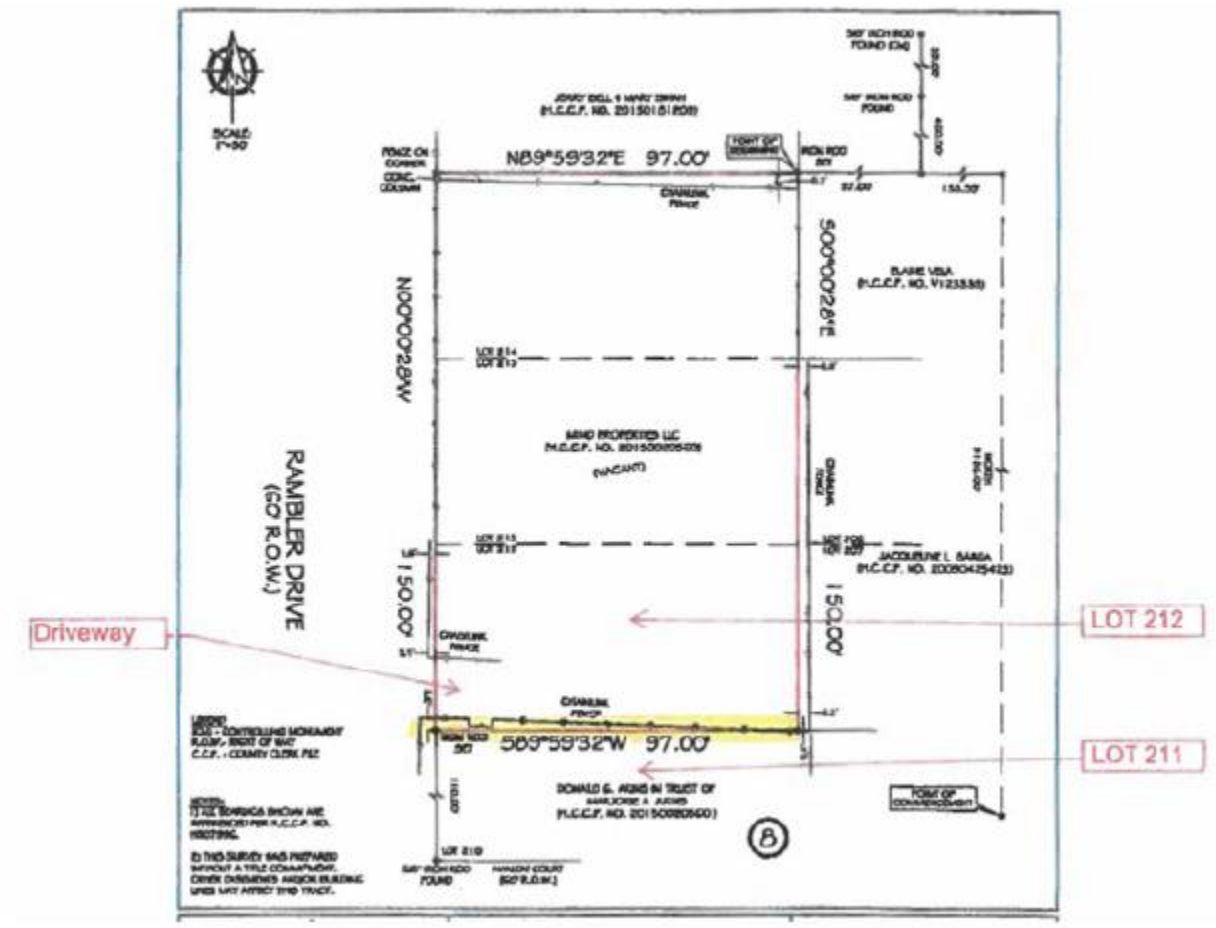
whether the evidence would enable reasonable and fair-minded people to reach the verdict under review. *Id.* at 827. The factfinder is the sole judge of witness credibility and the weight to give witnesses' testimony. *Id.* at 819.

"Adverse possession means an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person." Tex. Civ. Prac. & Rem Code § 16.021(a). "In order to establish adverse possession as a matter of law, the claimant must show by undisputed evidence his actual peaceable and adverse possession of the property continuously for more than ten years." *Bywaters v. Gannon*, 686 S.W.2d 593, 595 (Tex. 1985). "[T]he claimant must submit undisputed and conclusive evidence of probative force on each essential element of adverse possession, and inferences are never indulged in his favor." *Id*.

"The statute requires visible appropriation; mistaken beliefs about ownership do not transfer title until someone acts on them." *Tran v. Macha*, 213 S.W.3d 913, 914 (Tex. 2006). Such possession must be "inconsistent" and "hostile to" the claims of all others, possession must unmistakably indicate an assertion of a claim of exclusive ownership in the occupant. *Id*. (quoting *Rhodes v. Cahill*, 802 S.W.2d 643, 645 (Tex. 1990). "Hostile" use does not require the intention to dispossess the rightful owner, or even knowledge that there is a rightful owner. *Id*. at 915. "Belief that one is the rightful owner and has no competition for the ownership of the land is sufficient intention of a claim of right." *Kazmir v. Benavides*, 288 S.W.3d 557, 564 (Tex. App.—Houston [14th Dist.] 2009, no pet.). However, there must be an intention to claim property as one's own to the exclusion of all others; the mere occupancy of land without any intention to appropriate it will not support the statute of limitations. *Tran*, 213 S.W.3d at 915.

B. Background

Appellant purchased Lot 211 on September 1, 2015. Lot 211 shares its northern border with the southern border of Lot 212.



There is a driveway between lots 211 and 212. Appellant claims ownership of the entirety of the driveway. Appellee, on the other hand, claims ownership of the entire driveway and that a chain link fence between lots 211 and 212 encroaches slightly over the driveway. The disputed driveway and chain link fence are depicted here:

Appellee purchased Lot 212 pursuant to an order of sale in a delinquent tax suit in November 2014. Appellee recorded its deed on January 16, 2015. Appellee's manager testified that there was a chain link fence identified on the survey. The manager observed the chain link fence and did not realize that it was encroaching on Lot 212 until the survey of Lot 212 was completed. The manager testified that no one was living on Lot 211 when appellee purchased Lot 212, so there was no one that was claiming the encroaching fence and driveway.

Appellant's deed is dated September 1, 2015, but was not recorded until January 2016. Appellant testified that she thought that the driveway was part of the property that she purchased. Appellant did not have a survey completed of the property prior to trial. Appellant's deed described the land she purchased as "Tract #210 and #211 in block #8 of Meadowlake Mobile Home Village Section II. Harris County." Appellant testified that it was her understanding that the driveway was part of Lot 211 that she purchased. Appellant did not have any documentation but believed that she had paid taxes on all of Lot 211, including the driveway. Appellant testified that the prior owner told her that it was her driveway and that

when she was purchasing the property it included the driveway and everything inside of the fence.

Two witnesses testified for appellant regarding the driveway. The first witness testified that she has lived in the area since the 1970's and saw the driveway being poured by the witness's father and the prior owner but did not give an exact date of when the driveway was poured.[1] The witness testified that after completing the driveway, the prior owner also installed a fence between the driveway and Lot 212. It is unclear whether the fence enclosed the driveway and Lot 211. The prior owners used the driveway frequently and the witness never saw anyone else using the driveway other than the owners of Lot 211.

The second witness testified that in 1985 the driveway was already in place when he started visiting his friends that lived on Lot 211. The second witness testified that the driveway was "their main driveway for getting in and out of their property." He testified that he was hired by the prior owner to do maintenance work on Lot 211 such as removing trash and maintaining landscaping. The work he performed included maintaining the area around the driveway and to the fence that ran next to the driveway between Lots 211 and 212.

C. Analysis

To establish adverse possession, at a minimum appellant must conclusively establish each element of her claim for adverse possession for the prior owners or occupants that she contends adversely possessed the disputed land. *Dale v. Stringer*, 570 S.W.2d 414, 416–17 (Tex. Civ. App.—Texarkana 1978, writ ref'd n.r.e.) (to prove adverse possession through tacking "it must be shown that (1) the possession and claim of the claimant's predecessors met all the requirements of the

[1] Appellant's brief asserts the driveway was constructed in the early 1980's and appellee does not dispute this; thus we take appellant's assertion as true. Tex. R. App. P. 38.1(g).

limitation statute; (2) the possession and claim of the claimant and those of his predecessors were continuous and without interruption; and (3) the earlier occupant's possession and claim were passed or transferred to the latter occupant by agreement, gift, devise, or inheritance"). Appellant contends that the evidence established that the concrete driveway was poured in the 1980s and witnesses had seen it used by those residing at Lot 211 in 1985. The witnesses saw "Mrs. Margie" use the driveway consistently to park, take out the garbage and bring in the mail. Appellant contends that adverse possession by the prior occupants of Lot 211 divested any prior owner of Lot 212 of the disputed piece of land before November 2014 when appellee purchased Lot 211. Appellant argues that this evidence is "much more than sufficient evidence" to establish her claim for adverse possession.

The testimony of appellant and her witnesses failed to conclusively establish each of the elements of her claim for adverse possession for a period of ten consecutive years of continuous use. While the two witnesses testified that the driveway was poured in the early 1980s and that the prior occupants used the driveway exclusively, there is no evidence of the length of time that the driveway was used in this manner. The evidence indicated that the prior owner or occupant used the driveway exclusively, however, there is no evidence to show when and how long the driveway was used exclusively for Lot 211. The second witness testified that he had been away for "several years" and upon his return he was hired to do maintenance around the property such as mowing, landscaping, and cleaning up debris and trash dumped on the property because it was overgrown and "nobody was there at the property." Because appellant failed to demonstrate continuous use for the ten-year period by her alleged predecessors in interest, she has failed to conclusively establish each element of her claim for adverse possession.

Appellant has also failed to establish privity of estate or possession between herself and the occupants that poured the driveway and purported to use it exclusively. *See* Tex. Civ. Prac. & Rem. Code § 16.023 ("To satisfy a limitations period, peaceable and adverse possession does not need to continue in the same person, but there must be privity of estate between *each* holder and his successor." (emphasis added)); *Hutto v. Cook*, 164 S.W.2d 513, 575 (Tex. 1942) ("Privity of estate . . . is shown under the following circumstances: 'Privity of possession between successive occupants or possessors of the land is shown to have existed, * * * by proof that the earlier occupant's possession and claim passed or was transferred to the later occupant by agreement, gift, devise or inheritance.'" (citation omitted)). There are only two deeds in evidence to support appellant's claim for adverse possession. One deed for "Track #210 and #211" in June 2015 is between Kevin Speck and Kimberly Davis as "Grantors" to Christopher Speck as "Grantee." The next deed is dated September 1, 2015, and is between Christopher Speck as "Grantor" and appellant as "Grantee." There was evidence that Christopher Speck is the son of at least one of the prior occupants, but there is no evidence of how the possession or estate transferred from the alleged original adverse possessors to appellant.

We conclude that appellant has failed to demonstrate that the evidence conclusively establishes each element of her claim for adverse possession over the driveway. We overrule appellant's second issue.[2]

[2] Even if we were to decide appellant's first issue in her favor, it would not change the disposition of the appeal and is, therefore, unnecessary. *See* Tex. R. App. P. 47.1; *State v. Ninety Thousand Two Hundred Thirty-Five and no cents in U.S. Currency ($90,235.00)*, 390 S.W.3d 289, 294 (Tex. 2013).

II. DAMAGES FOR LOST RENTS

In appellant's third issue she argues that the trial court erred by awarding $4,200 in damages for lost rent because appellee provided no evidence to support the award.

"The Property Owner Rule creates a rebuttable presumption that a landowner is personally familiar with his property and knows its fair market value, and thus is qualified to express an opinion about that value." *Wood v. Kennedy*, 473 S.W.3d 329, 336 (Tex. App.—Houston [14th Dist.] 2014, no pet.). However, an owner's valuation testimony is not relevant if it is conclusory or speculative. *Id.* at 337. An owner must provide a factual basis on which his or her opinion rests. *Nat. Gas Pipeline Co. of Am. v. Justiss*, 397 S.W.3d 150, 156 (Tex. 2012). An owner must do more than "echo the phrase 'market value' and state a number to substantiate his [valuation]." *Id.*

Appellee's manager testified that she "was going to ask for $300 per lot per month" and that was the "fair market rental value per month" for Lot 212. The trial court rendered a judgment that provided for "damages from lost rents in the amount of $4,200 (for the period from May 2018 through the date of this judgment during which [appellant] was in unlawful possession of the above-described premises, at $300/month)."

Without more, the witness's beliefs concerning the property's fair market value are insufficient to sustain the judgment because the evidence does not indicate the factual basis behind the witness's valuation. *See Id.*at 159; *Wood*, 473 S.W.3d at 338. We sustain appellant's third issue.

III. CONCLUSION

When no evidence supports a judgment, we render judgment against the party with the burden of proof. *Justiss*, 397 S.W.3d at 162. We reverse the trial court's judgment awarding damages for lost rents in the amount of $4,200 to appellee and render judgment that appellee is awarded $0 in damages for lost rents. We affirm the remainder of the trial court's judgment.

/s/ Ken Wise
Justice

Panel consists of Justices Wise, Bourliot, and Wilson.