

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-293

FEBRUARY TERM, 2004

	} APPEALED FROM:
	} }
N.A.S. Holdings, Inc	} Rutland Superior Court
	} }
v.	} DOCKET NO. 719-9-92 Rdcv
	} }
Connie Pafundi	} Trial Judge: Richard W. Norton
	} }
	} }

In the above-entitled cause, the Clerk will enter:

Plaintiff N.A.S. Holdings, Inc. appeals from a superior court decision on remand from this Court directing the court to determine the boundary lines of certain property that defendant Connie Pafundi had acquired through adverse possession. N.A.S. contends: (1) the evidence fails to support the court= s location of the boundary lines; and (2) the trial court exceeded the scope of this Court= s mandate. We affirm.

This is the third appeal in this dispute over the ownership and exact boundaries of a slate quarry in West Pawlet. The facts are set forth in detail in N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437 (1999) (Pafundi I), and may be summarized as follows. In 1972, Pafundi= s father-in-law, Ted Pafundi, purchased the quarry in question and began quarrying operations, using the floor of the quarry to work the west wall until his death in 1979. Thereafter, his son, Gary, worked the east wall until he died in 1989. The deed to Pafundi vaguely described the eastern boundary of the property as the A westerly boundary of the lands of Rising & Nelson,@ a largely absentee adjoining landowner that sold its property to N.A.S. Holdings, Inc. in 1992. A survey at the time revealed that virtually the entire quarry was within the parcel purchased by N.A.S.

A conflict arose when N.A.S. attempted to begin operations in the quarry, leading to this suit by N.A.S. to establish title. Pafundi conceded the issue of record title, but maintained that she had achieved title to the quarry through adverse possession. The trial court concluded that Gary and Ted Pafundi= s open, hostile and continuous possession of the quarry floor between 1972 and 1989 had established adverse possession to that area, but that neither of the Pafundis had continuously used the west and east walls for the requisite fifteen-year period. Cross-appeals by both parties resulted in the first decision and remand in this matter.

In brief, we ruled in Pafundi I that the trial court had erroneously failed to apply the doctrine of A constructive possession,@ under which a claimant may achieve ownership of an entire parcel of land through adverse possession of a part. 169 Vt. at 441. In such cases, one of two conditions must exist, including A when the land is marked by clear and definite boundaries.@ Id. Although the trial court had not applied the doctrine, we noted that it had made findings A to the effect that the quarry was a distinct and recognizable parcel,@ with slate dumps on both the east and west sides, A and that the slate dumps are an acknowledged and clear surface demarcation of the quarry boundaries.@ Id. at 442. Because the trial court had A made findings indicating that the property was clearly bounded,@ id. at 445, we concluded that it had erred in failing to apply the doctrine of constructive possession to conclude that Pafundi had acquired adverse possession of the entire quarry. Nevertheless, because some question remained A as to the exact location of these boundaries for purposes of describing with precision what land has been possessed@ by Pafundi, the case was remanded to the trial court. Id. As we explained, A [t]he limited factual issue to be determined by the trial

court on remand is the precise location of the boundary lines based on the obvious physical characteristics of the property. @ Id. at 446.

Following our remand, the trial court issued a new decision, determining, inter alia, that the eastern boundary of the quarry was the rim of the eastern wall, as urged by N.A.S., rather than the eastern edge of the slate dumps (located to the east of the rim) as urged by Pafundi. Pafundi appealed the decision, arguing that the trial court's ruling was inconsistent with this Court's reasoning and mandate in Pafundi I. We agreed, concluding that the trial court may have based its decision on immaterial considerations, rather than the obvious physical characteristics of the property. N.A.S. Holdings, Inc. v. Pafundi, No. 2001-118 (Vt. March 6, 2002) (unpub. mem.) (Pafundi II). Accordingly, we again reversed and remanded, directing the trial court to determine B consistent with our original decision and mandate B the boundary line A along the slate dumps that > would appear as a bounded parcel so that a person observing occupation of some part of it would be on notice as to the extent of the claim.= @ Id. at 3 (quoting Pafundi, 169 Vt. at 445).

Following our second remand, the trial court conducted a new evidentiary hearing and issued a new, written decision in February 2003. The court concluded that the eastern edge of the slate dumps represented the correct eastern boundary line of the property, and directed Pafundi to submit an order consistent with the decision based on a survey and metes and bounds description prepared by John Grady, a licensed surveyor who had testified at the hearing. N.A.S. filed an objection to the judgment order subsequently filed by Pafundi and a motion to reconsider. In response, the court issued an order amending the judgment. The amended order acknowledged that the metes and bounds description in question had erroneously sited the northeast corner of the property. The court directed that the proper starting point for the northern boundary would begin at a point identified as A Point A@ in the original trial court opinion, and extend easterly to the eastern edge of the slate dumps, terminating at a point identified on the Grady survey as A point 314.@ The court recognized that the northern boundary line thus described traveled along a slightly different angle from that of the original trial court decision. As the court explained: A It is unavoidable that in extending [to] the eastern edge of the slate dumps, the northern property line will terminate at a point further north than had the eastern property line simply been along the edge of the quarry.@ The court directed Pafundi to file a proposed judgment consistent with the amended order, and issued a final judgment, over objection by N.A.S., in May 2003. This appeal followed.

N.A.S. contends the evidence fails to support the court's finding that the eastern edge of the slate dumps represents the proper extent of Pafundi's constructive possession. Findings of fact must stand unless, viewing the evidence in the light most favorable to the judgment, and excluding the effect of modifying evidence, there is no credible evidence to support them. Quenneville v. Buttolph, 2003 VT 82, & 11, 833 A.2d 1263. The evidence here easily meets this standard. The court relied on the testimony of John Grady, a licensed surveyor who had examined and surveyed the site and stated that the eastern edge of the slate dumps, beyond which lay a more forested area, defined the clear and logical end of the area where quarrying had occurred. Another witness, Robert Tatco, testified that the slate dumps were created by old quarrying methods and were a prominent physical feature of the quarry. This evidence amply supports a finding that a line along the eastern edge of the slate dumps represents a natural demarcation of the A extent of the claim@ of adverse possession. Pafundi, 169 Vt. at 445. Accordingly, we discern no error.

N.A.S. further contends the trial court exceeded the scope of this Court's mandate by locating the northern boundary line of the slate quarry along a line different from the trial court's original decision. As noted, the court here fixed the eastern end of the northern boundary line at a point somewhat north of where the court's original northern line would have ended if it had extended to the eastern edge of the slate dumps. The court relied on Grady's survey, which ran the northern line along a land bridge between two quarry holes, and through a valley between slate dumps, ending at a fixed point on the eastern edge of the dumps.

The purpose of each of the remands in this case was to fix the boundary lines A based on the obvious physical characteristics of the property.@ Id. at 446; Pafundi II, slip. op. at 2. Although the focus was on determining the precise eastern boundary of the slate quarry, we did not specifically preclude the court from making any other necessary adjustments to other boundary lines resulting from its location of the eastern boundary. The adjustment of the northern boundary line to follow the natural topographic features of the quarry was consistent with our mandate to fix the boundary lines based on the obvious physical characteristics of the property. Accordingly, we discern no error.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice