

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-429

JUNE TERM, 2004

	}	APPEALED FROM:
	}	
Linda Pelletier	}	Franklin Superior Court
	}	
v.	}	
	}	DOCKET No. S160-01 Fc
Mark Gosselin and Robin	}	
Gosselin	}	Trial Judge: Hon. David A. Jenkins
	}	
	}	

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

Defendants appeal from the trial court's order resolving a boundary dispute. They argue that the court erred by: (1) resolving an ambiguity in their deed in plaintiff's favor; (2) rejecting their estoppel argument; and (3) rejecting their adverse possession claims. We affirm.

Plaintiff and defendants are adjoining landowners. Defendants purchased their property from plaintiff in 1983. Their deed describes the property conveyed as follows:

A parcel of land, together with the buildings thereon, located on the westerly side of the Bronson Road, and having a frontage on said highway of two hundred ninety-five feet (295'), a uniform width of two hundred ninety-five feet (295'), and a uniform depth of three hundred seventy feet (370').

Said land and premises are bounded substantially as follows: On the north by Bernard Pelletier; on the west and south by other land of Linda Pelletier Belisle; and on the east by the Bronson road.

The southeast corner of the land herein conveyed is sixty feet (60') northerly from the northeast corner of Gary Barker. Grantor is reserving a sixty foot (60') strip along the south line of the land herein conveyed, inasmuch as the original lot to Linda Pelletier Belisle, hereinafter set forth, had a frontage on the Bronson Road of three hundred fifty-five feet (355').

The parties had their property surveyed by Steven Brooks in 1983. The survey depicted a rectangular lot as described in the deed. The southeast corner of the lot, however, was depicted as slightly more than sixty feet from the northeast corner of the Barker property. Defendants received a copy of the survey in 1983, and did not complain about the boundaries it depicted. Iron pins were placed in conformance with the survey.

In March 2001, plaintiff filed a complaint against defendants raising a claim of trespass. She asserted that defendants' garbage receptacle, basketball court, driveway, and underground telephone cable were on her property. Plaintiff sought injunctive relief, an order requiring defendants to remove the telephone cable, and damages, including punitive damages.

After a trial, the court determined the boundaries of defendants' lot, and denied plaintiff's other requests for relief. The

court found that defendants' property was that which was described in their deed and laid out by the surveyor: a rectangle 295 feet by 375 feet, having 295 feet of frontage on Bronson Road. The court explained that the reference to the southeast corner of the lot as being sixty feet from the Barker property was an error. To give defendants 308.5 feet of frontage based on a mistaken distance calculation, the court reasoned, would conflict with the grant in the deed. Moreover, the court explained, the parties had accepted the boundaries depicted on the Brooks survey for over fifteen years. The court therefore concluded that the Brooks survey accurately depicted the boundaries of defendants' lot, and it set the boundaries accordingly.

In reaching its conclusion, the court rejected defendants' claims of adverse possession, as well as their assertion that plaintiff was estopped from claiming boundaries different from those allegedly represented to them by plaintiff's ex-husband in 1983. As to the latter, the court explained that plaintiff's ex-husband had never held title to the property, and thus, any general description of the property that he may have given was not binding on plaintiff. Additionally, the court found that the parties had jointly hired Brooks to survey their property, which indicated that there was no reasonable reliance on any approximate property description given by plaintiff's ex-husband. The court explained that a reasonable person would have relied on the deed description of the property's boundaries to understand what was conveyed. Defendants filed a motion to amend, which the court denied. This appeal followed.

Defendants first argue that the court erred in interpreting their deed. They assert that the deed is ambiguous as to the placement of the southeast corner of their lot, and the ambiguity should have been resolved in their favor. Defendants maintain that the southeast corner of their property should be sixty feet north of the northeast corner of the Barker property.

A The construction of the language of a deed is a search for the intentions of the parties as revealed by the wording used when applied to the premises. @ Spooner v. Menard, 124 Vt. 61, 62-63 (1963). The trial court's determination of a boundary line is a question of fact to be determined on the evidence. Monet v. Merritt, 136 Vt. 261, 265 (1978). We review the court's factual findings to determine if they are A supported by the record and whether those findings reasonably support its conclusions. @ MacDonough-Webster Lodge No. 26 v. Wells, 2003 VT 70, & 22, 834 A.2d 25. As we have stated,

When evidence conflicts, the credibility of witnesses, the weight and sufficiency of evidence, and its persuasive effect are matters accorded to the exclusive determination of the trier of fact. If the record contains any credible evidence that fairly and reasonably supports the findings, the trial court's ruling must stand even though inconsistencies or substantial evidence to the contrary may exist.

Id. (citing Lawrence v. Pelletier, 154 Vt. 29, 33 (1990)).

In this case, the trial court found defendants' deed to be unambiguous as to what it conveyed. As the court explained, defendants' deed described a rectangular lot that was 295 feet by 370 feet; it specifically provided that defendants had 295 feet of frontage on Bronson Road. The Brooks survey was consistent with this description, and the parties had accepted these boundaries for over fifteen years. The court rejected defendants' assertion that the deed's reference to the placement of the southeast corner of the lot should control the deed's interpretation. As the court explained, such an interpretation would conflict with the specific grant in the deed, and it would result in a wholesale reconfiguration of the property. Defendants' suggested interpretation of the deed was unreasonable, and the court did not err in rejecting it. Cf. Fairbrother v. Adams, 135 Vt. 428, 429-30 (1977) (where wording of deed is ambiguous, resort may be made to subordinate rules of construction, one of which is that, given equally reasonable constructions of a deed, deed must be construed against grantor and in favor of grantee). The court's findings are supported by the record, and they support its conclusion that the Brooks survey accurately depicted the boundaries of defendants' lot.

Defendants next argue that the court erred in rejecting their argument that plaintiff was estopped from claiming boundaries different from those allegedly represented to them by plaintiff's ex-husband. Defendants assert that plaintiff's ex-husband told them that the westerly boundary of their property was the easterly edge of a ditch and that the southerly boundary was sixty feet north of the fence marking the Barker boundary. They argue that they relied on these statements by purchasing the property, planting trees along the boundaries represented to them, maintaining their

lawn, building an addition to their home, and installing a basketball hoop.

To establish the applicability of equitable estoppel, defendants needed to demonstrate that: (1) the party to be estopped knew the facts; (2) the party being estopped intended that his conduct be acted upon or the acts were such that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting estoppel was ignorant of the true facts; and (4) the party asserting estoppel relied on the conduct of the party to be estopped to his detriment. Wesco, Inc. v. City of Montpelier, 169 Vt. 520, 524 (1999). The trial court found that plaintiff was not bound by her ex-husband's acts, and that defendants failed to show that a reasonable person would rely on such a general description of the property. We agree. Additionally, as the trial court noted, both parties requested the preparation of a professional survey, which further demonstrates the absence of detrimental reliance. Defendants failed to demonstrate that estoppel was appropriate, and the trial court did not err in rejecting this argument.

Finally, defendants argue that the court erred in rejecting their adverse possession claims. They maintain that the uncontroverted evidence shows that their planting of trees on plaintiff's property and the expansion of their driveway were hostile acts.

"Adverse possession is a mixed question of law and fact." Wells, 2003 VT 70, at & 17. To acquire title to a piece of property through adverse possession, a party must establish open, notorious, hostile, and continuous possession of the property throughout the statutory period of fifteen years. Lysak v. Grull, 174 Vt. 523, 526 (2002) (mem.); 12 V.S.A. ' 501. The party claiming adverse possession bears the burden of establishing that these requirements are satisfied. Id. We view the trial court's factual findings in the light most favorable to the prevailing party below and we will not set aside the findings unless they are clearly erroneous. Id. Our review of the trial court's legal conclusions is nondeferential and plenary. Id.

The court did not err in rejecting defendants' claims of adverse possession. Contrary to defendants' assertion, the court did not rely solely on the absence of hostility in rejecting their claims. The court found that defendants' driveway encroached on plaintiff's property to such a slight degree that its use could not be said to be open and notorious. This finding is supported by credible evidence in the record, and it supports the court's conclusion that defendants had not obtained title to this small portion of plaintiff's land through adverse possession. See Jarvis v. Gillespie, 155 Vt. 633, 641 (1991) (Acts of possession are deemed sufficiently open and notorious if they are conducted in a manner [that] would put a person of ordinary prudence on notice of the claim. @ ). As to the tree planting, the trial court credited plaintiff's testimony that she had given defendants' permission for this use of her land. We will not disturb the court's assessment of plaintiff's credibility on appeal. See Wells, 2003 VT 70, at & 22. Where use of property is permissive, a party cannot acquire title through adverse possession. See id. at & 27. Because defendants failed to establish adverse possession, the trial court properly rejected their claims.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Paul L. Reiber, Associate Justice