

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-296

FEBRUARY TERM, 2005

Melodie A. Carr	}	APPEALED FROM:
	}	
	}	
v.	}	Orange Superior Court
	}	
Timothy J. Lanctot and Deanna M. Lanctot	}	DOCKET NO. 139-7-02 Oecv
	}	
		Trial Judge: John P. Meaker

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

In this boundary dispute between neighboring landowners, plaintiff appeals the superior court’s dismissal of her complaint for ejectment based on its judgment that defendants are entitled to the disputed strip of land under the doctrine of adverse possession. We affirm.

In 1988, defendants purchased .7 of an acre of land adjoining plaintiff’s 86-acre parcel to the east. Two and one-half years earlier, defendants’ predecessor had bought the property from a man who had lived there for thirty years. The interim buyer had left the house unoccupied that was situated on the eastern edge of the parcel. A ten-foot-wide grassy driveway running approximately 100 feet from the main road up to the eastern side of where the house had stood is the disputed strip of land. In the spring of 1987, in anticipation of purchasing the property, defendants used the driveway to clean up junk around the house. Soon after purchasing the property, defendants moved the house some distance to the west, built a new driveway, and dug a well next to where the house had previously stood.

In June 2002, plaintiff filed a complaint for ejectment after a survey indicated that the lot line separating the parties’ properties was west of the old driveway and defendants’ well. Defendants counterclaimed, alleging adverse possession. Following a site visit and an evidentiary hearing, the superior court ruled that the well, the old driveway, and a few feet of the original footprint of the house were within plaintiff’s deeded land, but that defendants had gained title through adverse possession. Neither party requested findings, but the court made some oral findings from the bench in explaining its decision. On appeal, plaintiff argues that the evidence does not establish the elements of adverse possession with respect to any of the disputed property except the footprint of the original house.

To obtain title by adverse possession, a party must demonstrate open, notorious, hostile, and continuous possession of another’s property for a period of at least fifteen years. Jarvis v. Gillespie, 155 Vt. 633, 638 (1991). “Acts of possession are deemed sufficiently open and notorious if they are conducted in a manner which would put a person of ordinary prudence on notice of the claim.” Id. at 641. Hostility, in the context of adverse possession, does not require ill will, but rather only “that the adverse possessor intends to claim the land and treat it as his own.” Id. “Furthermore, continuous use is not synonymous with constant use.” Darling v. Ennis, 138 Vt. 311, 313 (1980). The acts that are necessary to demonstrate continuous possession depend on the nature, condition, and use of the property. Jarvis, 155 Vt. at 640; see Darling, 138 Vt. at 313-14 (“Continuity of use is merely such use as an average owner would make of the property, taking into account its nature and condition.”). Further, adverse possessors may tack their periods of possession together to demonstrate continuous possession for the statutory period. Deyrup v. Schmitt, 132 Vt. 423,

425 (1974). In the end, “each case must be examined individually, viewing the claimant’s acts in light of the nature of the land.” Jarvis, 155 Vt. at 639. “ ‘The ultimate fact to be proved in an adverse possession case is that the claimant has acted toward the land in question as would an average owner, taking properly into account the geophysical nature of the land.’ ” Id. at 638-39 (quoting 7 R. Powell, *The Law of Real Property* ¶ 1013[2][h], at 91-62 (1990)).

Here, viewing the evidence most favorably for defendants and disregarding the effects of modifying evidence, Jarvis, 155 Vt. at 637, the record demonstrates that defendants satisfied their burden of showing each element of adverse possession. A long-time neighbor who used to visit the subject property to buy junk car parts testified that the original house was situated right next to where defendants had dug their well. Another witness who grew up in the area testified that the old house had been occupied continuously since his grade school days in the 1950’s, except for a two-or-three-year period when the property changed owners between 1986 and 1988. Plaintiff’s own witness, who had lived in the area since 1947 and had delivered mail in that location beginning in 1965, testified that he had driven by the disputed area on many occasions since the mid-to-late 1950’s and seen a set of tracks beaten down enough to show that there had been occasional traffic in the area. One of the defendants testified that in the mid-1970’s, when he was mowing neighboring fields, he saw cars parked in the old driveway just east of where the house had stood. He also testified that he saw propane tanks on the east side of the house, as well as the tracks of the old driveway where the trucks could back up to get to the tanks. Further, he testified that he used the old driveway in 1987 to remove junk and to work on the house in preparation for its move.

This evidence demonstrated that (1) defendants’ well is situated within the curtilage of where the old house had stood for at least thirty years; and (2) since the 1950’s, the old driveway was used, at least occasionally, to approach the house at its original location. The tracks of the driveway were visible for all to see, even in 1987, after the interim owner had left the house unoccupied for a couple of years. Given these circumstances, there is support for the trial court’s conclusion that defendants demonstrated an open, notorious, hostile, and continuous use of the disputed strip of land for at least fifteen years.

Plaintiff’s claim of abandonment during the two-year period when the house was unoccupied in the mid-1950’s is unavailing. As stated above, the evidence demonstrated that adverse possession had been established long before the house was left unoccupied. Moreover, the tracks of the old driveway were still visible when defendants began using the area again in 1987. As this Court stated in the case that plaintiff relies on:

The kind and frequency of the acts of occupancy necessary to constitute a continuous possession depend somewhat on the condition of the property, and the uses to which it is adapted in reference to the circumstances and situation of the possessor, and partly on his intention. If, in the intermediate time between the different acts of occupancy, there is no existing intention to continue the possession, or to return to the enjoyment of the premises, the possession, if it has not ripened into a title, terminates, and can not afterwards be connected with a subsequent occupation so as to be made available toward gaining title; while such continual intention might, and generally would, preserve the possession unbroken.

Barrell v. Renehan, 114 Vt. 23, 29 (1944). Here, the evidence suggested a continual intention to preserve use of the old driveway running to the back of the house. The fact that the house was not occupied for a couple of years after its owner was placed in a nursing home and before the new owners arrived does not indicate an intent to abandon use of the driveway.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned