

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-118

FEBRUARY TERM, 2002

N.A.S. Holdings, Inc., et al.	}	APPEALED FROM:
	}	
v.	}	Rutland Superior Court
	}	
Constance Pafundi	}	
	}	DOCKET NO. S0719-92RcC
	}	
	}	Trial Judge: Alden T. Bryan (ret.), Specially
	}	Assigned
	}	

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

Constance Pafundi appeals from a superior court decision on remand from an opinion of this Court directing the court to determine the exact boundaries of property Pafundi had acquired through adverse possession. Pafundi contends the trial court erroneously determined the eastern boundary of the property, contrary to this Court's decision and mandate. N.A.S. Holdings, Inc., the adjoining landowner, has filed a cross-appeal, contending that this Court erred in its earlier decision, and should set aside the opinion and remand for further findings. We reject N.A.S.'s invitation to set aside our earlier decision, and agree with Pafundi's contention that the trial court improperly applied this Court's mandate. Accordingly, we reverse.

This is the second 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), 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 "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 Pafundi's had continuously used the west and east walls for the requisite fifteen-year period. Cross-appeals by both parties resulted in the decision and mandate at issue here.

In brief, the Court ruled in Pafundi that, although the issue had been fairly - if somewhat confusingly - raised, the trial court erroneously failed to apply the doctrine of "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 "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 "to the effect that the quarry was a distinct and recognizable parcel," with slate dumps on both the east and west sides, "and that the slate dumps are an acknowledged

and clear surface demarcation of the quarry boundaries." *Id.* at 442. We underscored the significance of these findings later in the opinion, as follows:

Here, the findings of the trial court indicate that the boundaries on the surface of the land were definite, and these findings should have been given their proper legal effect. The court observed that "the configuration of the quarry is quite clear," and recognized the slate dumps as obvious features on both the eastern and western sides of the quarry.

Id. at 445 (emphasis added). Because the trial court had "made findings indicating that the property was clearly bounded," *id.*, 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 "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, "[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. The Court's mandate thus affirmed the question of adverse possession of the quarry floor, and remanded "for further proceedings not inconsistent with this opinion and for establishment of the exact boundaries of the property." *Id.* at 447.

Following our remand, the trial court revisited the site with a new survey submitted by Pafundi, and the parties submitted supplemental memoranda, but the court otherwise entertained no new evidence. Thereafter, the court issued a sixteen-page "opinion on remand," determining that the eastern boundary of the quarry (the only boundary at issue in this appeal) was the rim of the eastern wall, as argued by N.A.S., rather than the eastern edge of the slate dump (located to the east of the rim) as urged by Pafundi. The court set forth survey points consistent with this conclusion, and issued a judgment consistent with its opinion. This appeal and cross-appeal followed.

Pafundi asserts on appeal, as she vigorously urged below, that the trial court's ruling is inconsistent with this Court's decision and mandate in *Pafundi*. We agree. Our holding was plainly premised on the factual finding that "'the configuration of the quarry is quite clear,' and recognized the slate dumps as obvious features on both the eastern and western sides of the quarry." *Id.* at 445 (emphasis added). We issued the remand with this precise finding in mind, explaining that it was to determine "the precise location of the boundary lines based on the obvious physical characteristics of the property." *Id.* at 446 (emphasis added). The "obvious" features, as we had explained, were the slate dumps. The remand was merely to determine the "exact location" of the line for purposes of describing with particularity the land held by Pafundi, i.e., the metes and bounds of the boundary line. The opinion, in short, leaves no doubt as to the meaning and intent behind the remand.

Under the law-of-the case doctrine, the trial court on remand was limited to following our specific directions as interpreted in light of the opinion. See *Coty v. Ramsey Assoc.'s, Inc.*, 154 Vt. 168, 171 (1990). That doctrine applies to legal issues resolved as well as to fact questions "absent significant new evidence." *Id.* (citations omitted). Here, the only new "evidence" adduced on remand were the trial court's observations from its second site visit. From that visit, the court deduced that neither of the Pafundi's "had any part in creating the slate dumps, and the slate dumps themselves were never created for boundary line purposes." The court also noted that there was no evidence the Pafundi's "were laying claim to any land beyond the confines of the quarry pit." Neither of these points, however, materially undermines its earlier findings concerning the obvious physical boundaries of the quarry, or the legal conclusion concerning constructive possession that necessarily follows. Accordingly, we conclude that the court improperly revisited legal and factual issues that had been previously resolved, contrary to our decision and the law of the case doctrine.

We acknowledge that the trial court could decide that the eastern boundary of the quarry is the western-most edge of the slate dumps, as argued by N.A.S.. As appellant recognized in oral argument, that result would be substantially the same as that arrived at by the trial court. Nevertheless, the basis for such a determination must relate to the obvious physical demarcation of the slate dumps. Because we cannot determine from the trial court's decision the extent to which its choice of the eastern boundary of the quarry was premised on the legally and factually irrelevant observation that the slate dumps were not created for boundary line purposes, the matter must be remanded a second time. Consistent with this Court's original decision and mandate, however, the boundary shall be that line along the slate dumps that objectively "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." *Pafundi*, 169 Vt. at 445.

In its cross-appeal, N.A.S. contends the Court erred in Pafundi in determining that the quarry boundaries were defined, and in applying the constructive-possession doctrine. The Court's opinion expressly considered, and rejected, these arguments. The remand was limited to the question of determining the exact boundaries of the quarry. The issues raised by N.A.S. are therefore beyond the proper scope of the remand, and any appeal therefrom.

Reversed and remanded for further proceedings consistent with the views expressed herein.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice