

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(Filed: February 13, 2012)

JOSEPH HARRISON and NANCY
HARRISON

:
:

C.A. No. PC 08-4177

v.

:
:

OUR REDEEMER EVANGELICAL
LUTHERAN CHURCH

:
:

JOHN SILVESTRI III

:
:

C.A. No. PC 08-4179
(Consolidated)

v.

:
:

OUR REDEEMER EVANGELICAL
LUTHERAN CHURCH

:
:

DECISION

STERN, J. Before this Court is a non-jury trial regarding a matter brought by Plaintiffs Joseph Harrison and Nancy Harrison (herein, “Harrison”) and John Silvestri, III (herein, “Silvestri”), against record owner of land, Our Redeemer Evangelical Lutheran Church (herein, “Church”) to establish title by adverse possession pursuant to R.I. General Laws § 34-7-1. The parcels of real property are located within the Town of Smithfield, Rhode Island.

Facts and Travel

Based upon the testimonial evidence at trial, a view of the property in question and the documents admitted into evidence, this Court finds the following: This case arises from a dispute among abutters over the ownership of a piece of land in Smithfield, Rhode Island. Plaintiffs claim title to the disputed property. Plaintiffs rest their claim upon adverse possession of the

disputed property which is located at their rear property line and that of the Defendant's, Our Redeemer Evangelical Lutheran Church.

The Land in Dispute

Harrison purchased his lot (Plat 10 Lot 14) in May of 1986, and resided continuously at this location for twenty-five years at the time of trial. Silvestri obtained his lot (Plat 10 Lot 13) in July of 1985. The land at issue extends from the rear property line of Plaintiffs' lots into the property of the Defendant (Plat 15 Lot 1). The area near the property line is lined with about fifteen-foot-high grassy knolls.

At the time that Plaintiffs acquired their lots, the abutting parcel behind the lot was vacant land. The Church obtained the land in 1996 and the church building was erected in 1997. Most of the land was developed to accommodate the church building and a parking lot.

History of the Dispute

Plaintiffs claim that they and their families used the disputed property for a prolonged period of time, beginning in 1985 and 1986, respectively, a long time before Defendant acquired the property (Plat 15 Lot 1) from the previous owner in 1996. Both Plaintiffs engaged in significant amounts of landscaping work and pursued a beautification of the disputed land. This involved removing a derelict asphalt basketball court and debris that covered what would later become the grassy knolls. Plaintiffs removed copious amounts of gravel, tree stumps and syringes in order to level the knolls and to keep them from eroding. They brought in large amounts of mulch and installed stairs and railings to facilitate mulch transportation. The stairs also allowed their children and the neighborhood kids to climb the little hills more easily and subsequently to enjoy sliding and skiing down the hill in more or less orderly fashion during the snowy winter months.

During warmer months, Harrison placed a fire pit on a hill to allow for friendly neighborhood gatherings. Also, he erected a wooden shed structure. In 1994, Silvestri decided to build a large pool on his property and had to apply for zoning relief from the zoning board. During that process he learned that his boundary line was actually at the bottom of the hill behind his house. Nevertheless, he continued to landscape and garden the hill. In early 2007, orange stakes appeared on the hill as a result of a survey ordered by Church, to stake out the actual property line. However, no one formally objected to any use of the land until 2008 when Harrison finally received a letter from the Church Board asking him to remove the shed he had placed on the disputed property. He attempted to discuss the letter with the Pastor of the Church, Pastor Nichols, but was informed that all decisions and actions were pursued by the Church Board. He was invited to attend a Church Board meeting, but the invitation was later rescinded. Plaintiffs brought suit in adverse possession in June 2008. Defendant filed Notices of Intent to Dispute Adverse Possession against both Harrison and Silvestri in the city land records in April, 2009.

Use and Possession of the Land

Plaintiffs claim that their use of the land included improving the property by extensive landscaping and gardening, including planting and maintaining grass and spreading mulch. They claim that they held gatherings near a fire pit placed on the disputed property and erected structures like stairs and sheds. Also, they allowed children to traverse the property, just as if the land was theirs, in order to facilitate their walk to school, and to play on the hills in the wintertime and use the small slopes for skiing and similar activities. At trial, in addition to the Plaintiffs, two witnesses testified for the Defendant: Anthony Muscatelli and David Calvi.

Harrison testified that he was under the impression that his property line ran across the top of the hill located at the back of his property. He described engaging in large amounts of yard work, landscaping and gardening. He took out gravel to adjust the slope of the hill, planted grass and subsequently watered and cut it. He further testified that during the years he removed a corral fence from the top of the hill which had rotted away and planted an evergreen plant. Also, Harrison stated that he spread mulch and placed a fire pit on the hill as well as a wooden shack for storage. The Court finds that Joseph Harrison was a credible witness.

Silvestri also testified about his use of the disputed property. He engaged in similar activities as Harrison, which included major landscaping and gardening. He also built wooden stairs leading up the hill that facilitated its climbing and allowed him to spread mulch more easily. He allowed children to use the hill for sledding and skiing in the wintertime. After he decided to build a large swimming pool during the early 1990s, he was required in 1994 to obtain zoning relief in order to get permission to build the pool. During that time he also learned that his actual boundary line was not located at the top of the hill but actually at the bottom, an area which roughly coincided with the placement of railroad ties. Silvestri testified that these railroad ties were placed to keep the hill from eroding, an explanation that seems credible to this Court. Undaunted by the discovery of the actual property line, Silvestri stated that he continued to use the hill and continued to apply mulch and performed a variety of other landscaping activities. The Court finds that John Silvestri was a credible witness.

Anthony Muscatelli, a professional land surveyor since 1976, testified as an expert witness for the Defendant. Mr. Muscatelli testified that he used data from two aerial mappings of the disputed property, once in 1997 and again in 2004. He testified that he also had employees of his company, International Mapping and Surveying Corporation, take field surveys

of the properties. He stated that there were encroachments onto the property of the Church, based on the aerial photogrammetry from 1997 and the field measurements that were taken. He also testified that he never physically walked the property in question between April of 1997 and early 2007. Furthermore, he stated that he had had the fieldwork performed by employees Ken Laker and Richard Lahey. The Court finds that Mr. Muscatelli was a credible witness.

The second witness for the Defendant was David Calvi. Mr. Calvi also testified as an expert witness. He is employed by Arrow Tech Corporation, a mapping and surveying firm, and he works as a photogrammetrist. He testified about two aerial photographs taken of the disputed property in 1997 and 1999. These photographs (Exhibits C and D for ID) were never entered into evidence. Mr. Calvi stated that he used certain base line data obtained from Anthony Muscatelli to interpret the photographs by inserting it into the panimetric detail he had generated. He testified that, based on the 1999 photograph, he was not able to detect any encroachments onto the Church property whatsoever. This Court finds that Mr. Calvi's testimony was credible, albeit somewhat difficult to follow.

Section 34-7-1 of the R.I. General Laws, which addresses adverse possession claims such as the one brought by the Plaintiffs, states as follows:

“Where any person or persons, or others from whom he, she, or they derive their title, either by themselves, tenants or lessees, shall have been for the space of ten (10) years in the uninterrupted, quiet, peaceful and actual seisin and possession of any lands, tenements or hereditaments for and during that time, claiming the same as his, her or their proper, sole and rightful estate in fee simple, the actual seisin and possession shall be allowed to give and make a good and rightful title to the person or persons, their heirs and assigns forever; and any plaintiff suing for the recovery of any such lands may rely upon the possession as conclusive title thereto, and this chapter being pleaded in bar to any action that shall be brought for the lands, tenements or hereditaments, and the

actual seisin and possession being duly proved, shall be allowed to be good, valid and effectual in law for barring the action.”

In order to obtain title under adverse possession in Rhode Island, it is necessary to show actual, open, notorious, hostile, continuous, and exclusive use of property under a claim of right for at least a period of ten years. Corrigan v. Nanian, 950 A.2d 1179 (R.I. 2008) (mem.); see also Sherman v. Goloskie, 188 A.2d 79, 83 (R.I. 1963); Norton v Courtemanche, 798 A.2d 925, 931 (R.I. 2002) (per curiam); Carnevale v. Dupee, 783 A.2d 404, 409 (R.I. 2001).

Furthermore, “[t]he party who asserts that adverse possession has occurred must establish the required elements by strict proof, that is, proof by clear and convincing evidence.” Corrigan, 950 A.2d at 1179 (citing Tavares v. Beck, 814 A.2d 346, 350 (R.I. 2003)).

Actual and Continuous Possession

These two elements are present when the claimant can show that “the use to which the land has been put is similar to that which would ordinarily be made of like land by the owners thereof.” See Anthony v. Searle, 681 A.2d 892, 897 (R.I. 1996) (quoting Lee v. Raymond, 456 A.2d 1179, 1183 (R.I. 1983)). Also, the continuity of the possession must be sufficient to alert the owner of the land that a claim of title contrary to his own is being asserted. See Sherman v. Goloskie, 188 A.2d 79 (1963) at 83.

Here, over a time span of more than twenty years, starting in 1985 and 1986 respectively, Plaintiffs engaged in significant landscaping and maintenance of the disputed property. They improved the property, planted grass, plants and constructed structures like stairs, an artificial waterfall and a shed. They planted evergreens and they removed trees and stumps to make room for activities like sledding in the winter, and fire-pit congregations in the fall. The improvements made to the disputed property were substantial. These improvements have been documented

with a long series of family photos placed into evidence that show members of Harrison's family throughout various periods of their lives. These pictures also give insight into the changes that occurred on the disputed property, and this Court finds that the photographs bolster and corroborate both Plaintiffs' testimony as some of the photographs also show improvements to the disputed area behind Silvestri's property. The recurring changes and adjustments to the disputed property are evidence of the continuous usage of the land. However, Mr. Calvi, Defendant's expert, testified that there was no encroachment in 1999 based on photographs. Defendant's counsel did not submit these photographs into evidence, thus the Court may not consider these photographs. Regardless, the lack of photographs is not dispositive here, since this Court finds that the Plaintiffs' testimony, as well as the photographs submitted into evidence by them, are not only clear but also convincing. The modifications to the disputed property are evident from the photographs and match the testimony. While this Court deems Mr. Calvi to be credible, it nevertheless eludes this Court how he arrived at the conclusion that there was no encroachment in 1999 and therefore, the Court will give no weight to Mr. Calvi's testimony.

Thus, the Court finds that Plaintiffs' use of the disputed property was actual and continuous for the required statutory period which ran in 1995 for Silvestri, and 1996 for Harrison.

Open and Notorious Possession

Plaintiffs' possession of the disputed property must also be open and notorious. See Tavares, 814 A.2d at 350. Plaintiff "must show that [her] use of the land was sufficiently open and notorious to put a reasonable property owner on notice of their hostile claim." Tavares, 814 A.2d at 353 (citing Anthony v. Searle, 681 A.2d 892, 897-98 (R.I. 1996)). No particular act on the part of the claimant is necessary to put the world on notice. Id. at 352. Here, Plaintiffs did

extensive landscaping and made significant adjustments to the disputed property. They removed truckloads of gravel and planted evergreens and grass. Trees were cut down and stumps were removed. Neighbors were invited for gatherings at the fire pit and children were allowed to use the disputed area for walks to school and for sledding in the wintertime. These activities happened in the privacy of the backyards of the abutting properties, not clearly visible from the street. But this does not affect the open and notorious requirement of adverse possession. The true owner is still charged with knowing whatever is done openly upon his land. It is irrelevant whether Plaintiffs' actions were clearly visible from the street and to the world itself. See id. at 354 (citing Sherman, 95 R.I. at 466, 188 A.2d at 84) (quoting Marvel v. Barley Mill Road Homes, Inc., 104 A.2d 908, 911(Del. Ch 1954)). The Court finds that the actions of the Plaintiffs were both open and notorious.

Exclusive Possession

Plaintiffs must have had exclusive possession of the disputed property during the ten-year period. See Tavares, 814 A.2d at 350. In order for the possession to qualify as exclusive, "there would have to be evidence indicating that the defendants or others had made improvements to the land or, at the very least, had used the land in a more significant fashion than merely walking across it." Gammons v. Caswell, 447 A.2d 361, 368 (R.I. 1982). Here, there is no record of anybody besides the families and friends of the Plaintiffs using the disputed land in any fashion relevant to the exclusive element. The owner before the Church and the Church itself did not use the disputed land in any kind of fashion. The Court finds that the Plaintiffs were in exclusive possession of the land throughout the duration of the statutory period, which ran from 1985 to 1995 and 1986 to 1996, respectively.

Hostility and Claim of Right

Our Supreme Court held in Tavares that “requir[ing] adverse possession under a claim of right is the same as requiring hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner.” Tavares, 814 A.2d at 351 (quoting 16 Powell on Real Property, § 91.05[1] at 91–28 (2000)). Defendant, who did not acquire its property until 1996, was not present as true owner when the statutory time limit for Plaintiffs’ adverse possession claim began to run in 1985 and 1986, respectively. Harrison acquired his property on May 1, 1986. Silvestri acquired his on July 24, 1985. Therefore, Plaintiffs began the adverse possession against a third party not present in this case, and if this Court decides that Plaintiffs acted in a hostile manner and claimed right to the property, title in the disputed property has vested since the statutory period ran in 1995 for Silvestri and 1996, respectively, for Harrison. The fact that Silvestri was on notice about his property line due to the zoning board activity in 1994 is irrelevant. Our Supreme Court has said that “even when claimants know that they are nothing more than black-hearted trespassers, they can still adversely possess the property in question under a claim of right to do so if they use it openly, notoriously, and in a manner that is adverse to the true owner’s rights for the requisite ten-year period.” Tavares, 814 A.2d at 351. Silvestri continued to landscape and use the hill in a similar fashion as Harrison even after the zoning board review. Both of them acted as if they owned the disputed property, held themselves out as owners, and continued to do with the land as they saw fit. This behavior also distinguishes the case at bar from our Supreme Court’s recent decision in Cahill v. Morrow, 11 A.3d 82 (R.I. 2011), another adverse possession case. In Cahill, an offer to purchase letter sent by the plaintiff was deemed to be an objective manifestation of evidence for the acknowledgment of the true owner’s superior interest in the

disputed property. The Cahill Court held that “while an offer to purchase does not automatically invalidate a claim already vested by statute . . . the objective manifestations that another has superior title, made after the statutory period and not made to settle an ongoing dispute, are poignantly relevant to the ultimate determination of claim of right and hostile possession during the statutory period.” Id. at 93. Here, both Silvestri and Harrison did not engage in any conduct during the statutory period which betrayed their claim in the disputed land.

Furthermore, the statutory period of ten years for Plaintiffs’ adverse possession claim had run well before any surveys performed by Mr. Muscatelli in 1997. Thus, his testimony is not pertinent to this dispute. It ran before the Church sent out the letter to remove the wooden shed in 2008 or filed the Notice of Intent to Dispute in 2009. While these communications would have certainly served to halt any adverse-possession claims at the time, they do not retroactively extinguish any claims which already had vested. No one objected to the Plaintiffs’ use of the property during their respective ten year statutory periods. Supported by the above reasoning, this Court finds that Plaintiffs met the necessary requirements for hostility and claim of right during the statutory period by a showing of clear and convincing evidence. See Tavares at 350. The evidence presented is indeed clear, and this time, this Court is convinced.

Conclusion

Based on the above findings, this Court renders the following decision: Plaintiffs’ claim for adverse possession is granted. Plaintiffs are found to have been seized and possessed of approximately two thousand five hundred seventy-two (2572) square feet of land northerly of the north boundary line of the Silvestri and Harrison properties for a period of more than ten years. Counsel for the Plaintiffs shall submit an appropriate Order.