STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: November 21, 2023)

JOHN BUFFUM, ET AL.	:	
	:	
V.	:	**C.A. No. PC-2020-00554**
	:	
EDGAR SEPULVEDA	:	
		Consolidated with
EDGAR SEPULVEDA	:	
	:	
V.	:	**C.A. No. PC-2020-02432**
	:	
JOHN BUFFUM, ET AL.	:	

DECISION

LANPHEAR, J. This matter is before the Court for decision after the completion of a bench trial.

Findings of Fact

In December 2003, Mr. and Mrs. Sepulveda purchased property at 7 Half Mile Road in Barrington, Rhode Island. Mr. Sepulveda holds a real estate license and is an appraiser. In October 2012, he transferred that real estate to the 7 Half Mile Living Trust, for which he is the trustee. The property next door at 5 Half Mile Road was owned by Mr. and Mrs. John Ryan. The two properties share a common border. In 2007, David Gardner, a registered land surveyor, performed work in the area to create a new administrative subdivision for Mr. Sepulveda and Mr. Zawatsky, a neighbor who lives several doors down. Apparently, they were reconfiguring the property lines for the areas behind their properties. Mr. Gardner set two separate capped rebars as boundary markers between the two properties at issue and located a concrete monument which was an existing boundary marker near the established boundary between the two properties at the street. That concrete

marker is pictured in Joint Exhibit 19.[1] In 2015 or 2016, Mr. Ryan became infirm and moved into a nursing home. Mr. Buffum and Ms. Salem, husband and wife, purchased Mr. Ryan's property in June 2018.

After Mr. Ryan became ill, moved to a nursing home, and the house was vacant, Mr. Sepulveda reconfigured the driveway in the front of his home. Under his supervision, a straight driveway became a circular driveway, and the vegetated area adjacent to the driveway and on the Ryan/Buffum/Salem side of the boundary was trimmed, replanted, and mulched. The Court finds the new driveway was installed in 2016 or 2017. There were no signs or other markers placed along the driveway or border area.

In June 2018, Mr. Buffum and Ms. Salem moved into their new home (the former Ryan home). They promptly set about cleaning up the overgrown vegetation on the property, starting with the growth along the two borders on the sides of 5 Half Mile Road. Having just moved in, seeing no notices and seeing nothing along the Sepulveda border, Mr. Buffum trimmed the shrubs, removed large vines, cleaned and mulched the garden areas, and cleaned along the borders from the street to the fence line behind their home. Buffum/Salem then moved to repair fences to seal some of their backyard, installing a chain link fence across the backyard. They installed a six-foot stockade fence near the Sepulveda border stretching to the Buffum/Salem garage. A portion of the Sepulveda border had a separate older and leaning stockade fence. Buffum/Salem approached Mr. and Mrs. Sepulveda, introduced themselves, complimented them on the appearance of their home and yard, and described their plans. They asked the Sepulvedas to share the cost of the new fence. Mr. Sepulveda refused to contribute but did not object to the installation.

[1] Joint Exhibit 19 appears to be a colored photocopy of an enlarged photograph which is exhibit 13 in Mr. Gardner's deposition. The deposition exhibit is clearer and shows how the survey marker is about three inches above the ground.

In September 2018, Buffum/Salem surveyed their property with Mr. Gardner. Mr. Gardner looked at the town hall records as well as an earlier survey he had done of the plat before conducting his field study. *See* Joint Ex. 35. Mr. Gardner looked at a 2007 survey which is Joint Exhibit 35. Mr. Gardner had set a rebar boundary with a cap and his identity tag on it along the border of the two properties in July 2008. That stake, circled on Joint Exhibit 21, was no longer there when Mr. Gardner conducted his 2018 survey. There was also a concrete monument which marks the intersection of the Sepulveda/Buffum/Salem border with the street which was located on the site when Mr. Gardner surveyed the area in 2007. The concrete monument is shown on Joint Exhibit 19 and is described in footnote one herein. Mr. Gardner also discovered that the concrete monument was gone when he conducted his 2018 survey, and he placed a new rebar at that corner.

In 2017, when Ms. Salem noticed stakes along the border (presumably guiding snowplows to the edges of the driveway) she thanked Mr. Sepulveda for protecting their property. Mr. Sepulveda declared it was his land. When Ms. Salem continued to question him, Mr. Sepulveda told her to have her husband discuss it with him. When Mr. Buffum addressed the border issues, Mr. Sepulveda asked Mr. Buffum why he was cutting hedges on his property. Mr. Buffum replied that the survey said it was his own property, and Mr. Buffum quoted Mr. Sepulveda as replying, "I've been maintaining this property exclusively and continuously for over ten years." (Trial Tr. 112:8-9, Oct. 3, 2023.) Later, Mr. Buffum pointed out the survey rebar on the ground (circled on Joint Exhibit 21). Mr. Buffum testified that the survey stake was missing from the area about ten days later.

In October 2019, Buffum/Salem placed Halloween decorations across the front of their yard. Their decorations near the Sepulveda border were removed.

Throughout their ownership, Mr. Buffum maintained and continued to maintain the disputed area. Mr. Sepulveda's landscaper would also go on the disputed area to blow leaves and rake. Mr. Buffum mulched the area. Within days after Mr. Buffum's mulching, Mr. Rufino (the landscaper for the Sepulvedas) added additional mulch and planted rhododendrons in the same area. When the two men met again, Mr. Sepulveda refused to look at the printed survey and repeated his "exclusive and continuous use" response.

Large white rocks were moved along the disputed area by Ms. Salem and the Sepulvedas. Mr. Buffum and Mr. Rufino continued to landscape the area. Mr. Rufino, the contractor for the Sepulvedas, was on the Buffum/Salem property and is pictured in the disputed area on Joint Exhibit 24. There were never any signs or indicia of ownership placed on the disputed area by the Sepulvedas—just the driveway itself crossing over the property line about eighteen inches and various plantings. Some of the Sepulvedas' circular driveway is on the Buffum/Salem land. Mr. Sepulveda never paid taxes on the disputed area or any of the Buffum/Salem property. All taxes and assessments were billed to Buffum/Salem and paid by them. The rebar boundary markers which Mr. Gardner installed are no longer inserted in the ground.

Travel

The two lawsuits consolidated here for trial were instituted in 2020. In January 2020, Mr. Buffum and Ms. Salem filed case number PC-2020-554 against Mr. Sepulveda claiming a trespass and praying for a declaratory judgment. In March 2020, Mr. Sepulveda instituted a separate action against Mr. Buffum and Ms. Salem in case number PC-2020-2432. Mr. Sepulveda's Complaint claimed adverse possession and harm from Buffam/Salem's use and enjoyment of his property and prayed for a declaration and an injunction. Mr. Buffum and Ms. Salem counterclaimed in trespass and a declaratory judgment. The parties stipulated to an agreement limiting the prejudgment use

of the property and disputed area in March 2020. The cases were consolidated for trial. A nonjury trial was held on October 3 and 4, 2023.

Presentation of Witnesses

Mr. Rufino was Mr. Sepulveda's first witness. He served as the landscaper for several of the Sepulveda properties since about 2003. Mr. Rufino testified concerning his care of the disputed area but was extremely unsure of the dates stating, "I'm not good with dates." (Trial Tr. 15:16, Oct. 3, 2023.) He testified that he never saw or touched the boundary markers. He discussed with Mr. Sepulveda where the circular driveway would go. He produced no paperwork at trial. While he seemed like a pleasant man, he was not specific or reliable about when the driveway was built or when the mulching was done in the disputed area. His lack of memory about the concrete monument coming up four inches in the supplicated driveway (*see* Joint Exhibits 19 through 21) was very odd. The Court concludes that while he appeared straightforward, he was concerned about attempting to keep Mr. Sepulveda, his customer, satisfied with his testimony.

Mr. Sepulveda testified next but was not specific about the events which occurred. He produced no paperwork (but for his deeds) particularly concerning when the driveway was constructed. On cross-examination, he admitted seeing the missing boundary markers, but denied knowing where they were. This lessened his credibility. He claimed he did not remove the rebar, but saw it lying horizontal on the ground. Asked several times where the removed survey sticks were, he replied, "in my property" and refused to be more specific. (Trial Tr. 77-78, Oct. 3, 2023.) This answer was unresponsive and confrontational and just as vague as his deposition answers.

Mr. Sepulveda's lack of specifics, lack of paperwork to substantiate his testimony, and his vague response to what Mr. Gardner told him of the encroachments lessened his credibility considerably. He claimed he did not recall whether he filed anything on the land evidence records

for this dispute or whether he prepared the outline of the disputed area shown on Joint Exhibit 6. He was just as vague about how he exercised control over the area or whether his use was notorious as well as about whether he had been shown the gardener survey before suit commenced. He later denied seeing the yellow surveyor's cap. This left the Court to question the reliability of his testimony.

Mr. Buffum was pleasant, thorough, and well-spoken during his testimony. He was methodical and detailed in his description of the work on his property, conversations with Mr. Sepulveda, and the other events. He was cooperative and consistent, even on cross-examination. The Court found him quite credible.

Ms. Salem was respectful, thorough, and cooperative. She detailed her events in dealing with the property and Mr. Sepulveda, even describing a note she left on the boulders which were moved back and forth. She was clearly upset by Mr. Sepulveda's refusal to cooperate (or even speak with her). There were no inconsistencies but for the dates she added to some of the photographs which were introduced into exhibits. The Court finds the surveyor's testimony more reliable concerning when certain events occurred.

Mark Zawatsky is a neighbor who lives on the same street as the parties. Living in or near the area for most of his life, he walks and drives the street almost every day. He knew the prior owners of each of the properties and noticed the driveway changes. Apart from estimating that the date of the new driveway was 2006, his testimony was of limited assistance. He has had past disagreements with Mr. Sepulveda but was credible, courteous, and consistent.

Mr. Gardner, the surveyor hired by Mr. Buffum, testified at a deposition and his transcript was made a full exhibit. He was consistent and credible and, of course, analytical, and methodical in describing his work and involvement. He testified about the monument, the encounters with the

parties, and the disappearance of the monument. He noted that the concrete monument stood about five inches above the ground, and he told Mr. Sepulveda he was over the boundary during Mr. Gardner's survey of the property.

Analysis

Adverse Possession

"In Rhode Island, obtaining title by adverse possession requires actual, open, notorious, hostile, continuous, and exclusive use of property under a claim of right for at least a period of ten years." *Cahill v. Morrow*, 11 A.3d 82, 88 (R.I. 2011) (citing *Corrigan v. Nanian*, 950 A.2d 1179, 1179 (R.I. 2008)); *see* G.L. 1956 § 34-7-1. Moreover, '"[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."' *Cahill*, 11 A.3d at 88 (quoting *Corrigan*, 950 A.2d at 1179).

"[T]he notorious and openness elements are established by showing that 'the claimant goes upon the [disputed] land openly and uses it adversely to the true owner. The owner then becomes chargeable with knowledge of what is done openly on the land.'" *Carnevale v. Dupee*, 853 A.2d 1197, 1201 (R.I. 2004) (quoting *Gammons v. Caswell*, 447 A.2d 361, 367 (R.I. 1982)). To establish the hostility element, "the adverse possessor need only establish a use 'inconsistent with the right of the owner, without permission asked or given, * * * such as would entitle the owner to a cause of action against the intruder [for trespass].'" *Tavares v. Beck*, 814 A.2d 346, 351 (R.I. 2003) (quoting 16 *Powell on Real Property*, § 91.05[1] at 91–23 (2000)). Further, the Rhode Island Supreme Court has explained 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."' *Cahill*, 11 A.3d at 89 (quoting *Tavares*, 814 A.2d at 351).

Mr. Sepulveda claims he has acquired the disputed property by way of adverse possession because he has "been maintaining [the] property exclusively and continuously for over ten years." (Trial Tr. 112:8-9, Oct. 3, 2023.) Despite his claim, Mr. Sepulveda has not presented any credible evidence as to his use or possession of the disputed property prior to the construction of his driveway, which partially sits on said property. Therefore, this Court finds that Mr. Sepulveda's use of the property started when a portion of his driveway was first built on the disputed area and not before that date.

From the date of the driveway's construction (2016 or 2017) through the commencement of this action (2020), Mr. Sepulveda did actually and continuously use that portion of the disputed area upon which his driveway sits. Further, with respect to the driveway portion of the disputed area, Mr. Sepulveda's use was open and notorious as he went "upon the disputed land and use[d] it adversely to the true owner" by constructing and using his driveway openly. *Tavares*, 814 A.2d at 352. However, the same cannot be said with respect to the rest of the disputed area, which is a grassy area with shrubs and a garden. In that unpaved area, Mr. Sepulveda did not do any obvious trimming or planting, and he did not have any signage or fencing to mark off the land he claimed dominion over until after Buffum/Salem moved to the adjacent parcel in 2018. Even if Mr. Rufino cleaned the patch from time to time when the Ryans were infirm (which was never clearly proved), Mr. and Mrs. Sepulveda did not establish they were openly and notoriously exercising dominion over the area. As such, outside of the driveway itself, Mr. Sepulveda has not established by strict proof that his use of the disputed property was "sufficiently open and notorious to put a reasonable property owner on notice of [his] hostile claim." *Id*.

As for hostility and under a claim of right, apart from the driveway, all evidence presented in support of these elements regarded events from after Buffum/Salem moved in. The driveway

predates the Buffum/Salem ownership, is necessarily "inconsistent with the right of the [true] owner, [and was constructed] without permission asked or given," but the other evidence of hostility—planting the rhododendron plants, placing (and replacing) the white stones, and mulching—occurred in 2018 or thereafter and thus cannot establish ten years of hostile use as required for adverse possession. *Id.* at 351.

Further, Mr. Sepulveda's use of the unpaved portion of the disputed area was not exclusive. There was no proof to establish that the Ryans or anyone else had been excluded from their garden area or any other part of their property. From the time they moved in, Buffum/Salem also regularly used and maintained that land by trimming shrubs, mulching, and placing Halloween decorations there. As for the driveway, there is no evidence that Buffum/Salem or Mr. Ryan ever used any portion of Mr. Sepulveda's driveway. Accordingly, since expanding his driveway onto the disputed area, Mr. Sepulveda has maintained exclusive use over that small portion of land—the driveway itself.

With respect to the unpaved portion of the disputed area, Mr. Sepulveda failed to establish the essential elements for a claim of adverse possession under § 34-7-1. For this reason, Mr. Sepulveda's claim for adverse possession over that area must fail. As to the small portion of the disputed area upon which the driveway sits, Mr. Sepulveda has established "actual, … hostile, [and] continuous … use of [the] property under a claim of right" from the time the driveway was built there. *Cahill*, 11 A.3d at 88 (citing *Corrigan*, 950 A.2d at 1179).[2] Therefore, Mr. Sepulveda would have been able to establish adverse possession over that small area if he could have presented clear and convincing evidence that his driveway was built on the disputed land at least

[2] For the garden area, raking and trimming by a landscaper was not inconsistent with the rights of the Ryans. It appears to be a kind, neighborly act.

ten years prior to this action, in satisfaction of § 34-7-1. Unfortunately for Mr. Sepulveda, neither he nor Mr. Rufino, the landscaper who built the driveway, could recall the date that the driveway was built when they testified. Moreover, neither Mr. Sepulveda nor Mr. Rufino presented any documentation concerning the driveway. Based on the evidence that was presented, this Court finds that Mr. Sepulveda's new driveway was installed in 2016 or 2017. Mr. Sepulveda, who bears the burden of proof, has not established that the driveway was installed before these dates. Neither date is sufficient for Mr. Sepulveda to establish possession of the disputed property for a period of ten years as required by § 34-7-1. To that end, Mr. Sepulveda's claim for adverse possession must also fail as to the driveway portion of the disputed area.[3]

Trespass

Consequently, because Mr. Sepulveda conclusively established before this Court that he impermissibly intruded upon the Buffum/Salem land but did not establish adverse possession, Buffum/Salem have demonstrated that Mr. Sepulveda's actions constitute a trespass to land. "[T]orts such as trespass are intentional and do not require a plaintiff to have sustained an actual loss—instead, the invasion of one's property alone gives rise to the cause of action." *Newstone Development, LLC v. East Pacific, LLC*, 140 A.3d 100, 106 (R.I. 2016). Moreover, "[a] trespasser is '[o]ne who intentionally and without consent or privilege enters another's property.'" *Id.* (quoting *Bennett v. Napolitano*, 746 A.2d 138, 141 (R.I. 2000)). In this case, Mr. Sepulveda himself admitted that he intentionally went onto the Buffum/Salem land regularly and even built

[3] As the Court finds that Mr. Sepulveda has not established possession for ten years (or any period constituting ten years), it need not reach the issues of whether his use was open, notorious, or exclusive. These are somewhat challenging given the removal of the survey marker in the driveway itself and the fact that the prior owner of the Buffum/Salem property was ill and housebound. Moreover, Buffam and Salem were trimming and cleaning the same area when they moved into their home, paying taxes on it, and displaying decorations.

part of his driveway there, all without consent or privilege. Therefore, Mr. Sepulveda trespassed on the Buffum/Salem property.

As the focus of the trial was whether or not adverse possession had occurred, remedies were not discussed at length. However, our high court has held:

> "Likewise, we have generally held that the appropriate remedy for a continuing trespass is injunctive relief. *See Raposa v. Guay*, 84 R.I. 436, 444, 125 A.2d 113, 117 (1956) (acknowledging the general rule that an owner of land is entitled to demand the removal of an encroaching building)[.]" *Rose Nulman Park Foundation ex rel. Nulman v. Four Twenty Corp.*, 93 A.3d 25, 29 (R.I. 2014).

Accordingly, this Court will order an injunction requiring the Sepulvedas to remove the driveway and to replace the survey markers. The Court reserves to Buffum/Salem the opportunity to request further relief.

Conclusion

Judgment will enter for John Buffum and Angie Salem against Edgar Sepulveda on their claims for trespass and declaratory judgment of ownership of the disputed area. Judgment is entered against Mr. Sepulveda and for Mr. Buffum and Ms. Salem in regard to Mr. Sepulveda's claims of adverse possession and his claim of loss of use and enjoyment. Costs are awarded to Mr. Buffum and Ms. Salem.

An injunction shall issue barring Mr. Sepulveda from entering upon or using the disputed area forthwith. Counsel shall prepare any appropriate orders.

Mr. Buffum and Ms. Salem shall submit a memorandum within ten days indicating what other relief is requested, if any.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**John Buffum, et al. v. Edgar Sepulveda**
	Consolidated with
	Edgar Sepulveda v. John Buffum, et al.
CASE NOS:	**PC-2020-00554 and PC-2020-02432**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**November 21, 2023**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For John Buffum, et al.:	**Harris Weiner, Esq.**
For Edgar Sepulveda:	**Armando Batastini, Esq.**