STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 21, 2026)

WALTER S. FELAG, JR. and ELAINE M. CALITRI a/k/a ELAINE M. FELAG, ***Plaintiffs,***	:	
v.	:	**C.A. No. PC-2022-04877**
ANTHONY PATRIARCA, MARY PATRIARCA, and CASSIE PATRIARCA, ***Defendants.***	:	

DECISION

STERN, J. Before this Court is Plaintiffs', Walter S. Felag, Jr. (Mr. Felag) and Elaine M. Felag (Mrs. Felag), Complaint against Defendants Anthony, Mary, and Cassie Patriarca.[1] Plaintiffs have alleged four counts against Defendants. Count I requests that this Court quiet title by way of adverse possession, Counts II and IV seek declaratory relief affirming Plaintiffs' ownership of the challenged strip of property, and Count III seeks acquiescence.

I

Facts and Travel

This matter came before the Court for a bench trial on October 28, 2025 and October 29, 2025 regarding a boundary dispute between abutting residential properties located at 51 Overhill Road and 49 Overhill Road in Warren, Rhode Island. Plaintiffs seek to quiet title to a disputed strip of land under theories of adverse possession and boundary by acquiescence, while Defendants contest those claims.

[1] As Defendants all have the same last name, this Court will respectfully refer to each by their first name.

Plaintiffs purchased the property located at 51 Overhill Road in October 1980 and have continuously resided there since then. (Trial Tr. 5:22-24, 6:9-11, Oct. 28, 2025.) Plaintiffs purchased the home from the original developer and were the first occupants of the property *Id*. at 6:3-24. The property at 51 Overhill Road abuts the neighboring parcel at 49 Overhill Road. *Id*. at 6:16-19. At the time Plaintiffs purchased their property, the neighboring house at 49 Overhill Road was unoccupied. *Id*. at 6:25-7:2.

In January 1981, Jack and Betty Huss (Mr. and Mrs. Huss) moved into 49 Overhill Road as owner-occupants. *Id*. at 7:5-7:8. When Plaintiffs first occupied their property, the yard consisted primarily of open land with little or no established landscaping.[2] *Id*. at 7:13-17. In the spring of 1981, Mr. Felag planted grass seed throughout his yard, extending up to the driveway of 49 Overhill Road and continuing in a straight line from the driveway to the rear of the property. *Id*. at 7:18-8:1.

Mr. Felag testified that he believed the line along the neighboring driveway constituted the boundary between the two properties at the time he planted the grass seed. *Id*. at 9:5-7. He did not ask for or receive permission from either Mr. or Mrs. Huss to plant, water, fertilize, or maintain the lawn in this area. *Id*. at 10:13-11:18. Neither Mr. nor Mrs. Huss objected to the planting of grass seed or claimed ownership over the area being maintained by Plaintiffs. *Id*. at 8:18-9:4. After the grass grew, Mr. Felag exclusively mowed, watered, and maintained the lawn up to the driveway of 49 Overhill Road and along the same straight line to the rear of the property. *Id*. at 11:19-21. Mr. and Mrs. Huss did not mow, water, or otherwise maintain the lawn in the disputed area, nor did they thank Plaintiffs for doing so. *Id*. at 10:13-11:25.

[2] While Mr. and Mrs. Felag testified separately, their testimony substantively overlapped. Accordingly, for purposes of expediency, this Decision will refer mostly to Mr. Felag's testimony, as he testified first.

In the fall of 1981, after the grass seed failed to establish a full lawn, Mr. Felag installed sod throughout the front and side yard, again extending up to the driveway at 49 Overhill Road. *Id*. at 12:21-13:2. Plaintiffs paid for and installed the sod themselves without objection from the Husses, before, during, or after installation. *Id*. at 12:21-14:9.

In the fall of 1983, Mr. Felag planted approximately twenty to twenty-five hemlock trees along the same straight line extending from the driveway of 49 Overhill Road toward the rear of the properties. *Id*. at 15:1-7. Prior to planting the hemlocks, Mr. Felag spoke with Mr. Huss and informed him that he intended the hemlock line to represent the boundary between the two properties. *Id*. at 17:5-10. Mr. Felag testified that Mr. Huss agreed that this line would serve as the boundary. *Id*. at 17:11-12. At the time, no boundary stakes or survey markers were visible on the properties. *Id*. at 17:13-15. Mr. Felag purchased, planted, watered, fertilized, trimmed, and maintained the hemlock trees himself. *Id*. at 17:18-18:17. Mr. Felag also continued to mow and maintain the lawn up to the driveway and along the tree line to the rear of the property. *Id*. at 18:18-24.

In March 1987, Mr. and Mrs. Huss sold 49 Overhill Road to Patrick and Anne McDonough (Mr. and Mrs. McDonough). *Id*. at 20:2-8. After the McDonoughs purchased the property, Plaintiffs continued mowing, fertilizing, and maintaining the lawn up to the driveway and along the hemlock line, as well as maintaining the trees themselves. *Id*. at 20:11-21.

In the fall of 1988, Mr. Felag extended the hemlock line forward from its existing termination point to the street along Overhill Road. *Id*. at 20:22-21:2. Prior to doing so, Mr. Felag discussed this extension with Mr. and Mrs. McDonough, who did not object to the planting of additional hemlocks. *Id*. at 22:10-21. Mr. Felag testified that the McDonoughs never told him the

hemlock line was not the boundary and never objected to his maintenance of the disputed area. *Id*. at 24:12-25:25.

From 1989 through 2022, Plaintiffs continuously maintained the disputed area by mowing the lawn, trimming the hemlocks, and maintaining landscaping features without interruption. *See e.g., id*. at 29:6-52:23. Plaintiffs also installed a white picket fence perpendicular to the hemlock line in approximately 1993, which extended into the tree line. *Id*. at 46:16-19. Plaintiffs used the disputed area for family gatherings, children's play, birthday parties, and graduation parties, including the placement of tents and guests within the area. *See e.g., id.* at 46:16-19; 103:9-10; 105:7-11. These uses were open and visible, and no neighboring owner objected or asserted competing ownership during this time. *Id*. In 2011, Plaintiffs constructed a retaining wall within the disputed area following significant storm-related water intrusion into their basement. *Id*. at 115:8-10. Plaintiffs also planted shrubs, flowers, and installed a sprinkler system in the same area. *Id*. at 116:20-23.

Defendants purchased the property at 49 Overhill Road in April 2022. (Defs. Anthony Patriarca, Mary Patriarca, Cassie Patriarca's Answer and Countercls. ¶ 11.) Anthony Patriarca was the only Defendant to testify at trial and acknowledged having known Mr. Felag personally for several decades prior to purchasing the property. Trial Tr. 143:12-18, Oct. 28, 2025. He testified that Mr. Felag would occasionally visit 49 Overhill Road. *Id*. at 143:22-24. During one of those visits, Anthony testified that Mr. Felag informed him that he had received permission from the prior owners of 49 Overhill Road to plant the trees because of a water issue. (Trial Tr. 143:12-18, Oct. 28, 2025.) Anthony also testified that he did not have a survey conducted before purchasing the property. *Id*. at 146:17-19. This Court found both his and Plaintiffs' testimony credible.

At the close of Plaintiffs' evidence, Defendants moved for judgment as a matter of law on Counts I, II, and IV, arguing that Plaintiffs failed to establish adverse possession by clear and convincing evidence due to permissive use and alleged boundary agreements. *Id*. at 135:14-139:19. Defendants further argued that permissive use defeats hostility and that adverse possession and acquiescence cannot run against municipally owned land. *Id*. at 138:5-7.

Plaintiffs opposed the motion, asserting that the evidence supported both adverse possession and acquiescence, including longstanding mutual recognition of the hemlock line as the boundary. *Id*. at 139:22-140:13. The Court denied the motion without prejudice, reserving decision until the close of all evidence. *Id*. at 141:3-12. As this would necessitate a decision on the credibility of witnesses and determinations of fact, this Court then decided to reserve judgment on this motion until its decision. (Trial Tr. 2:18-24, Oct. 29, 2025.)

II

Analysis

A

Adverse Possession

To succeed on a claim for adverse possession, "'a claimant must prove actual, open, notorious, hostile, continuous, and exclusive use of [the] property under a claim of right for at least a period of ten years.'" *O'Keefe v. York*, 308 A.3d 983, 991 (R.I. 2024) (quoting *Clark v. Buttonwoods Beach Association*, 226 A.3d 683, 690 (R.I. 2020)).

When considering whether a party's occupation was open and notorious, a court will "'inquire[ ] whether the party claiming ownership by adverse possession used the property in a manner consistent with how owners of similar property would use such land and whether these uses were inclined to attract attention sufficient to place the world on constructive notice.'"

O'Keefe, 308 A.3d at 991 (quoting *Union Cemetery Burial Society of North Smithfield v. Foisy*, 292 A.3d 1205, 1215 (R.I. 2023)).

To prove that use was hostile, a claimant needs to only prove their use was "'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)).

Regarding exclusivity, the Rhode Island Supreme Court has noted "'in order for a defendant to successfully defend against an adverse possession claim of disputed land, 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.'" *Clark*, 226 A.3d at 691 (quoting *Anthony v. Searle*, 681 A.2d 892, 898 (R.I. 1996)).

The Rhode Island Supreme Court has also noted that, in determining whether the claimant had actual and continuous use, "'[t]he test is whether 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.'" *Lee v. Raymond*, 456 A.2d 1179, 1183 (R.I. 1983) (quoting *Russo v. Stearns Farms Realty, Inc.*, 117 R.I. 387, 392, 367 A.2d 714, 717 (1977)).

Following the conclusion of oral arguments, Defendants moved for judgement as a matter of law on Plaintiffs' claim for adverse possession. (Trial Tr. 135:14-136:13, Oct. 28, 2025.) In making this motion, Defendants emphasized that Plaintiffs admitted that they sought permission to occupy the land, which was then given by both of their previous neighbors. *Id*. at 137:22-138:18. Accordingly, they argue that Plaintiffs' use of the land was not hostile and thus they did not gain the land through adverse possession. *Id*. at 138:19-22.

In opposing Defendants' motion for judgement as a matter of law, Plaintiffs argue that they received permission to plant the trees because they believed it was part of their land. *Id*. at 140:5-13. Accordingly, since permission was based on a mutual mistake, the occupation of the land was hostile. *Id* at 140:14-23.

This Court ultimately finds that Plaintiffs did not gain title to the land under a theory of adverse possession. Granted, this Court does find that Plaintiffs' use and occupation of the land was open and notorious. Mr. Felag testified that he routinely maintained the land and did so over the course of decades. *See e.g., id.* at 29:6-52:23. He also openly planted the trees on the property and routinely used the non-tree land to host family gatherings. *See e.g., id* at 17:18-18:17; 20:22-21:2; 46:16-19; 103:9-10; 105:7-11. Plaintiffs' occupation of the land was also exclusive. Mr. Felag testified that he was the sole person responsible for caring for the land and trees. *See e.g., id.* at 29:6-53:2. He received no help from his neighbors in mowing the lawn, planting the trees, and other outdoor activities. *See e.g., id*. He also treated the land on his side of the tree line as his own. They made routine improvements to the land and used it in the same way any person would use their own property. *See e.g., id.* at 115:8-10; 116:20-23. This use was also actual and continuous. Plaintiffs occupied the land for longer than ten years and used the land for a variety of social and family functions that an ordinary user would. *See e.g., id*. at 46:16-19; 103:9-10; 105:7-11.

However, Plaintiffs' use of the land was not hostile. As noted previously, the Rhode Island Supreme Court interprets "hostile" use to mean that the occupant has entered the land "'without permission asked or given, . . . such as would entitle the owner to a cause of action against the intruder [for trespass].'" *Tavares*, 814 A.2d at 351 (quoting 16 *Powell on Real Property*, § 91.05[1] at 91–23 (2000)). That is not what happened here. Mr. Felag admitted that he sought and received

Mr. and Mrs. Huss's permission to plant the trees in 1983. (Trial Tr. 17:5-10, Oct. 28, 2025.) He then received permission from Mr. and Mrs. McDonough to expand the tree line in 1989. *Id*. at 22:19-23. Accordingly, Plaintiffs cannot claim that they entered onto the land "without permission asked or given," and their occupation of the land was therefore not hostile.

While it is true that Plaintiffs' occupation of the land began because of a mutual mistake, this is ultimately irrelevant. The Rhode Island Supreme Court has held that a party's motivation or knowledge is irrelevant in determining adverse possession. Rather, what matters is whether the use is "'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*, 814 A.2d at 351 (quoting 16 *Powell on Real Property*, § 91.05[1] at 91–23 (2000)).

As Plaintiffs' use of the land was not hostile, they cannot satisfy all the elements of adverse possession. Accordingly, this Court finds for Defendants on Count I.

B

Acquiescence

To succeed on a claim of acquiescence, three elements are required. *See Acampora v. Pearson*, 899 A.2d 459, 464–65 (R.I. 2006). First, a physical "'boundary marker [must have] existed.'" *Acampora*, 899 A.2d at 464-65 (quoting *Locke v. O'Brien*, 610 A.2d 552, 556 (R.I. 1992)). Second, both parties must have agreed to that physical boundary marker. *Id*. at 464-65. This agreement can be explicit, but also "can be inferred from the silence of a party, or his predecessor in title, who is aware that it exists." *Id.* at 465. Third, and finally, the recognition of the boundary line must last for at least ten years. *Id*.

Addressing the first element, it is generally true that "the [property] line must be marked in a manner that customarily marks a division of ownership . . . and the marker must have been

used for boundary purposes." *Acampora*, 899 A.2d at 465 (internal quotations omitted). Moreover, while the boundary line must be physical, there is no requirement that the boundary marker be any specific material. Rather, the Rhode Island Supreme Court has ruled that the focus is on whether "the purported boundary has been obvious to the allegedly acquiescing party." *Id*. (internal quotations omitted). For example, in *Acampora*, the Court found a plaintiff who planted a row of arborvitaes, tended to them, mowed the grass around the trees, and held routine family events on the occupied land had established an obvious boundary. *Id.* at 465–66.

Accordingly, this Court finds that there was a physical boundary marker and the first requirement of acquiescence is met. Obviously, there was a physical boundary line between the parties. At trial, Plaintiffs credibly testified that in 1983 they planted the first section of trees along what they believed was the property line. (Trial Tr. 15:1-7, Oct. 28, 2025.) This line was then expanded in 1988 to span the whole length of the property. *Id*. at 20:22-21:2. Therefore, the growing trees would have been visible to both the Huss and McDonough families and were fully grown by the time Defendants purchased their property. Plaintiffs also credibly testified that they have been maintaining the trees and the lawn area around them since the trees were first planted in 1981. *See e.g., id*. at 55:23-56:16. At trial, Plaintiffs also similarly produced ample photographic evidence of the various family events, social gatherings, and improvements they made during this time. *See generally id.* at 111:4-8, Pls.' Exs. 5, 6, 7, 9, and Defs.' Exs. A, C.

Moreover, this Court also finds that this tree line was meant to be the boundary line between the parties' properties. Plaintiffs credibly testified that they expressed to both the Huss and McDonough families that the tree line was where the property line was. (Trial Tr. 17:5-12; 22:23-25, Oct. 28. 2025.) Defendants have not produced any evidence from any of the former neighbors that would cast doubt on Plaintiffs' testimony. Granted, Anthony testified that Mr. Felag

informed him that the trees were planted to remedy water issues that were plaguing Plaintiffs' property. *Id*. at 145:22-146:6. However, while this Court finds that his testimony is credible, this Court does not think that such a statement is dispositive of this matter. As noted previously, the Rhode Island Supreme Court has said that the purpose of the border marker must be to serve as a property line. *Acampora*, 899 A.2d at 465 (citations omitted). However, there was no suggestion that the marker must exist *solely* to serve as the property line. It is entirely possible that the trees served both as a property line and as a water mitigation device. Accordingly, this Court finds the first requirement of acquiescence is satisfied as there was a physical marker that was used primarily for the purpose of establishing a boundary.

The second element, recognition of the property line, "may be inferred from the silence of one party or their predecessors in title who are aware of the boundary." *Locke*, 610 A.2d at 556 (citing *Peloquin v. Ciaccia*, 413 A.2d 799, 800 (R.I. 1980); *Doyle v. Ralph*, 49 R.I. 155, 157, 141 A. 180, 181 (1928)). However, it is also well established that an express parol agreement can have a similar effect "if such an agreement is immediately executed and given effect by actual possession according to such line[.]" *LaFreniere v. Sprague*, 108 R.I. 43, 46-47, 271 A.2d 819, 821 (1970) (citing *O'Donnell v. Penney*, 17 R.I. 164, 20 A. 305 (1890); *Di Santo v. De Bellis*, 55 R.I. 433, 182 A. 488 (1935)). If so, "the agreement is binding and conclusive and such division line shall not be disturbed, though it afterwards may be made to appear that it was not the true line according to the paper title." *Id*. at 47, 271 A.2d at 821.

This Court also finds that this requirement is satisfied. As mentioned *supra*, Plaintiffs credibly testified that they informed the Huss family in 1983 that they were planting the trees along what they believed to be the property line. (Trial Tr. 17:5-10, Oct. 28, 2025.) The Huss family agreed. *Id.* at 17:11-12. In 1988, when the tree line was expanded, the McDonough family never

objected to the planting of the trees or its apparent use as a boundary line between the two properties. *Id*. at 22:24-25. This is despite Plaintiffs' conducting routine lawn work around the trees and openly using the occupied land for social events. *See e.g.*, *id*. at 29:6-53:2; 103:9-10; 105:7-11. Accordingly, this Court infers that the McDonough family also agreed to the use of the trees as a property line.

Defendants have not presented any persuasive evidence that would suggest that these conversations did not happen or that these understandings were not reached. They are correct that Plaintiffs did not secure the written agreement of the Huss and McDonough families. (Trial Tr. 13:24-14:1, Oct. 29, 2025.) However, as discussed *supra*, this is not a requirement for acquiescence. *LaFreniere*, 108 R.I. at 46–47, 271 A.2d at 821 (citing *O'Donnell*, 17 R.I. 164, 20 A. 305; *Di Santo*, 55 R.I. 433, 182 A. 488). Moreover, this Court is similarly unpersuaded that the accuracy of Plaintiffs' belief in the ownership of the land is relevant. Throughout the trial, Defendants have repeatedly questioned why Plaintiffs thought the boundary line was where they claimed and how reasonable this belief was. *See* Trial Tr. 60:17, Oct. 28, 2025; Trial Tr. 18:19-25, Oct. 29, 2025. However, there is no requirement that a party asserting acquiescence prove their good intentions. *See O'Donnell*, 17 R.I. 164, 20 A. 305 (imposing no requirement of good faith or reasonable belief). In other words, acquiescence is similar to adverse possession where "even when claimants know that they are nothing more than black-hearted trespassers," they can still lay claim to the property. *Tavares*, 814 A.2d at 351. Accordingly, this Court finds that the second requirement of acquiescence is met by Plaintiffs' interactions with the Huss and McDonough families.

Finally, this Court will consider whether the boundary line was occupied for ten years. While this is the most temporally burdensome requirement, its satisfaction is also the easiest to

see. At trial, Plaintiffs produced voluminous and credible evidence showing that they had occupied the land since the tree line was completed in 1988. This included both testimony as to improvements they made on the land as well as photos of family functions. *See* Trial Tr. 111:4-8, Oct. 28, 2025, Pls.' Exs. 5, 6, 7, 9, and Defs.' Exs. A, C. Plaintiffs also took care of the land as if it was their own by pruning the trees and mowing the lawn. *See e.g.*, Trial Tr. 115:11-15, Oct. 28, 2025. Defendants could not refute this evidence, nor did they seriously attempt to challenge whether Plaintiffs occupied the land for more than ten years. Accordingly, this Court finds that the occupation lasted for more than ten years and thus the third and final element of acquiescence is met.

This Court also rejects Defendants' contention that continuing the doctrine of acquiescence will somehow impose a unique and unfair burden on Rhode Island homeowners. (Trial Tr. 22:12-22, Oct. 29, 2025.) Rhode Island adopted the doctrine of acquiescence well over one hundred years ago. *See generally O'Donnell*, 17 R.I. 164, 20 A. 305. It is highly unlikely that there will be any new or unanticipated effects on future homeowners. Moreover, any decision on the overall wisdom of the doctrine of acquiescence is beyond the authority of this Court.

III

Conclusion

For the foregoing reasons, this Court finds for Defendants on Count I and for the Plaintiffs on Count III. This Court will also exercise its discretion under the Uniform Declaratory Judgments Act and will not enter judgment as to Count II and Count IV. *See Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket School Committee*, 694 A.2d 727, 729 (R.I. 1997) ("A decision to grant a remedy under the Uniform Declaratory Judgments Act is purely discretionary . . .") (citations omitted); *see also Nortek, Inc. v. Molnar*, 36 F. Supp. 2d 63, 69 (D.R.I. 1999)

("[C]ourts have broad discretion to decline to hear or enter a declaratory judgment.") (citations omitted). The parties shall submit the appropriate order and separate judgment.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 21, 2026**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Michael J. McCaffrey, Esq.**
For Defendant:	**Michael Resnick, Esq.** **Scott C. Owens, Esq.**