

2012 IL App (2d) 111074-U
No. 2-11-1074
Order filed June 29, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MATTHEW J. SAWYER,)	Appeal from the Circuit Court
)	of Ogle County.
Plaintiff and Counterdefendant-)	
Appellant,)	
v.)	No. 11-LM-34
)	
ROGER BURKHOLDER,)	
)	
Defendant, Counterplaintiff, and)	
Third-Party defendant)	
)	Honorable
(Glen Knight, Defendant and Third-Party)	Robert T. Hanson,
Plaintiff).)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

Held: The trial court's judgment that defendant proved adverse possession of a disputed parcel was not against the manifest weight of the evidence, as he established with reasonable certainty the parcel's boundaries, he proved that he and his predecessors used it openly for a wide variety of purposes, and he showed that no one else used the property without permission.

¶ 1 This case involves real property to which plaintiff, Matthew J. Sawyer, claims title by deed and defendant Roger Burkholder claims title by adverse possession. Plaintiff sued Burkholder and

defendant Glen Knight, a logger, claiming that defendants had wrongfully entered the property and cut down plaintiff's walnut trees. Burkholder filed a counterclaim for adverse possession, and Knight filed a third-party complaint against Burkholder for contribution (see 740 ILCS 100/1 *et seq.* (West 2010)). After a bench trial, the trial court held that Burkholder had proved title by adverse possession; denied plaintiff relief on his complaint; and dismissed Knight's third-party complaint as moot. Plaintiff appeals. We affirm.

¶2 Plaintiff's complaint sought recovery under the Wrongful Tree Cutting Act (740 ILCS 185/2 (West 2010)) and for conversion. As amended, the complaint, including the attached exhibits, alleged the following facts. In 1996, plaintiff purchased a farm. Burkholder owns an adjoining farm. Both properties are located in section 35 of Eagle Point Township in Ogle County. On a tax assessor's plat of 1879 (the Bertolet plat), the land that plaintiff acquired is denominated as lots 1, 2, and 3, of which lot 2 is the important one in this case. Burkholder's property is lot 4. Lot 4 is east of lot 2; the boundary to the north is a straight line, but, farther south, according to the Bertolet plat and a survey that plaintiff commissioned in 1996 (Brandau survey), the boundary is the west bank of Buffalo Creek. Buffalo Creek runs through both Lots 2 and 4, going southwest-to-northeast, then, as it approaches the boundary with lot 4, running more nearly west-to-east. In an area north and west of the west bank of the creek was a stand of more than 40 walnut trees. In or around October 2010, at Burkholder's request, Knight cut down these trees, without plaintiff's permission.

¶3 Burkholder filed an answer and a counterclaim. In the answer, he alleged that the trees had been located on his property, not on plaintiff's property, so that he had properly authorized Knight to cut them down. In his counterclaim, as amended, Burkholder claimed the disputed property by adverse possession, and alternatively under the Bertolet plat, and he sought damages for plaintiff's

alleged trespass onto the land. He alleged specifically that he had lived on the property for 66 years; that his father had lived on the property for more than 80 years; and that a fence line roughly parallel to the west bank of Buffalo Creek had been in place since his family purchased the property. Burkholder alleged that his possession of the disputed property had always been under a claim of right and title; he had continuously cultivated and improved the property, had maintained the fence along the true boundary with plaintiff's property, and had continuously used the disputed property for harvesting trees, horse riding, and pasturing cattle. He claimed that plaintiff and his agents had entered onto the disputed property without permission, causing various types of damage. The amended counterclaim requested damages and injunctive and declaratory relief.

¶ 4 Knight's third-party complaint for contribution alleged that he cut down the trees in reliance on Burkholder's assurance that they were on his property.

¶ 5 On August 30, 2011, the cause proceeded to trial. Plaintiff testified on direct examination as follows. In 1996, he purchased 100 acres of farmland from Richard and Nancy Sarver. Shortly afterward, he retained Ronald Brandau to survey his property. Brandau's survey, admitted into evidence, marked plaintiff's property as extending to the western boundary of Buffalo Creek. In 1997, plaintiff gave Burkholder a copy of the survey; Burkholder had little to say about it. Since then, they had not discussed the disputed property, and plaintiff had not offered to buy any of it. Plaintiff owned lots 1, 2, and 3 on the Bertolet plat (which was also admitted into evidence), and he testified that he had paid the property tax on those lots since 1996.

¶ 6 Plaintiff testified that, in 2010, he learned that black walnut trees were being removed in the area now under dispute. A state conservation officer visited the property and prepared a report, and Department of Natural Resources foresters marked the stumps of the trees that had been cut.

¶ 7 Plaintiff testified on cross-examination as follows. About six weeks before trial, Burkholder put up a fence north and west of the stumps of the trees that had been harvested. To plaintiff's knowledge, there had been no fence posts there previously. There had been a fence running north-to-south between plaintiff's property and Burkholder's property, north of the disputed area but terminating at a tributary of Buffalo Creek. Plaintiff had done some work in the disputed area, including clearing land and removing dead trees. On redirect examination, plaintiff identified some photographs that he had taken of the fence that Burkholder had just installed. The photographs were admitted into evidence.

¶ 8 Brandau testified as follows. In 1996, he surveyed the property that plaintiff had just purchased. The court admitted a copy of his survey and an aerial photograph of section 35. According to the survey, the west bank of Buffalo Creek is the boundary of parcel C (the equivalent of Lot 2 on the Bertolet plat) until a point to the east where the boundary runs due north all the way to the north line of the southwest quadrant of section 35. Thus, the disputed territory is within plaintiff's deed. Since Brandau made the survey, nobody had questioned its accuracy.

¶ 9 Brandau testified that, a few days before trial, he walked the property. He saw a fence that ran along the west bank of Buffalo Creek. Between the west bank and the fence, there were "some tree stumps removed." Asked whether the fence had been up when he surveyed the property in 1996, Brandau testified, "In all honesty, I don't remember, there was [*sic*] fences in the interior, but I don't remember any fence in this location where I seen [*sic*] them [*sic*] recently, no."

¶ 10 William Wentling, a registered land surveyor, testified as follows. Approximately two years before trial, plaintiff hired him to find monuments from Brandau's survey. Wentling located the monuments but did no measuring. Walking the property, he saw that there was a barbed-wire fence

near the eastern boundary. At times, the fence was hard to identify, and at times it was “quite visible.” Wentling identified a quitclaim deed from Renette Burkholder to Burkholder and a copy of Bertolet’s assessor’s plat of the property. He testified that the plat was merely a drawing and that the land depicted might or might not have been surveyed at the time. He stated that “assessor’s maps are only for taxing purposes.” Thus, he would not base a survey on it.

¶ 11 Called as an adverse witness, Burkholder testified that he had told Knight that “[e]verything on the east side of the fence” belonged to him. Asked the basis for his belief, Burkholder testified that he had paid taxes on the disputed property since 1972 and that the fence had always been the boundary line. He added, “I’ve had everything east of the fence, my dad had everything east of the fence ***, number four, has always belonged to us.”

¶ 12 Burkholder agreed with the following statements that Knight had made in an affidavit. First, Burkholder told him that his property lines were correctly depicted on an aerial photograph that Knight had received from the Ogle County Tax Assessor’s Office. Second, Burkholder told Knight that there had been a gentlemen’s agreement between Burkholder’s father and the former neighboring landowner to allow watering cattle in “the area of the fence and the bottom.”

¶ 13 Plaintiff rested. Burkholder called Coventine Fidis, a licensed land surveyor, who testified on direct examination as follows. At Burkholder’s request, he reviewed documents pertinent to the case, including the Bertolet plat, which had been prepared by the county surveyor for assessment purposes, and the Brandau survey. The two documents were not consistent, varying in certain important dimensions. Fidis’s office prepared what was admitted at trial as Defendant’s exhibit No. 2, a drawing that depicts the relationship of the various parcels involved, including both the

dimensions of the parcels according to the recorded deeds and the dimensions as stated on the Bertolet plat.

¶ 14 Fidis testified that, early in spring 2011, he and a crew walked the property. North and west of the creek was an existing fence that followed an old fence line. Asked to estimate the age of the fence that he had observed in the disputed area, Fidis responded, “The portion of fence that I looked at personally was a hedge post fence, and that’s the old sage orange type fence posts, and those are generally pretty old, in the 40 year to 50 year old type fences [*sic*].” He added that farmers have generally not used hedge posts for the last 15 or 20 years.

¶ 15 Fidis testified that, while walking the property, he and members of his staff observed the stumps of walnut trees and measured “their location relative to their geographical position.” The results were shown in what the trial court admitted as Defendant’s exhibit No. 3. This exhibit included a legal description of the area in dispute. Fidis testified that, according to Ogle County assessment records, the owner of lot 4 had been paying taxes on the disputed property.

¶ 16 Fidis testified that the Brandau survey did not draw any fence lines, even though marking fence lines is “required in the Illinois minimum standards for professional surveyors.” Also, the dimensions in the survey were not consistent with the records in the “deed history of the properties.”

¶ 17 In Fidis’s opinion, at some point between 1879 and the present, the location of Buffalo Creek suddenly changed (a process known as “avulsion”), moving to the east and south. The old fence line was located very close to where the west bank of the creek had been in 1879. Thus, according to the pertinent deeds, Burkholder owned the disputed area. Fidis testified further that the “toe of the slope” (the base of the bluff along the west bank of Buffalo Creek) “agreed very close to 1879 dimensions,” meaning that it was very close to where, according to the 1879 plat, the creek’s edge

had been. Moreover, it was consistent with the fence that Fidis had seen when he walked the property. After “com[ing] down from the north, along *** the quarter line,” the fence “hit the toe of the slope and then more or less follow[ed] the toe of the slope.”

¶ 18 Fidis testified on cross-examination that he did not actually survey the property. Neither exhibit was a survey, and neither had Fidis’s surveyor’s seal affixed. Fidis explained that, although he believed that Buffalo Creek had moved since 1879, the toe of the slope (base of the bluff) had not moved. Two days before trial, he visited the property again and saw that new wire had been strung on top of the old fence posts. The first time that he walked the property, there were fence posts in the disputed area as well as other areas. These fence posts were depicted in Defendant’s exhibit No. 2, which used the word “FENCE” on the northwest side of a line while the term “Toe of Slope” appeared on the southeast side of the same line. Also, Defendant’s exhibit No. 3, which reproduced the 1879 plat in part, traced the fence line by a line dotted with “x”s. The line runs north-south but then follows the toe of the slope closely. Fidis testified that the exhibit accurately portrayed the old fence line.

¶ 19 Richard Fuller testified on direct examination as follows. He was born in 1943; at that time, his father owned the farm that now belonged to plaintiff. Fuller visited the property a few days before trial. The last time before then that he had been there was in 1968. On his recent visit, Fuller examined the fence line between plaintiff’s and Burkholder’s properties. The fence posts in (or on the boundary of) the disputed area were “old hedge posts” and had been there ever since Fuller had lived on the farm—about 60 years. They were the same fence posts, to his knowledge. Once in a while, new wire had been put up in order to separate cattle, as both Fuller’s father and the Burkholders had run cattle. Both families had maintained the boundary fence.

¶ 20 Fuller testified that he had always recognized the land between the fence line and the west bank of the creek as belonging to the Burkholders. Fuller's father had never entered the property and nobody in Fuller's family had ever used it without the Burkholders' permission. The Burkholder family had had exclusive use of the land. Burkholder and his father ran cattle and horses on the property. In his youth, Fuller had gone fishing from a rock wall with a ledge on the west bank of the creek, with the Burkholders' permission. In 1957 or 1958, the elder Burkholder had kept stables on the property, and Fuller had done some horse racing there with his permission. Thirty or more years ago, the Burkholders had had someone cut down oak trees in the area between the fence and the creek. Nobody had ever questioned who owned the land. To Fuller's knowledge, the fence line that he had observed a few days before trial had been in the same location for 60 years.

¶ 21 Fuller testified on cross-examination that, on his trip a few days before trial, he had not walked all the way down to the fence but had "just observed it from a ways." He saw part of the fence. The area that he had observed included "the original fence and there was some old posts, hedge posts and stuff." Fuller knew that the elder Burkholder had owned the fence, because the families had taken turns fixing it.

¶ 22 Frank Hatch testified as follows. He had known Burkholder nearly two years and had helped him to repair the fence. While there, Hatch had noticed that much of the fence was old and in disrepair. There were walnut-tree stumps on both sides of the creek, but all were on Burkholder's property. Hatch had last been to the property about two months before trial. He had seen new wire strung on "the original old posts from whenever, years gone by." The new wire was "stretched on original corner posts." Some posts had been added between the existing ones.

¶ 23 Burkholder testified as follows. His father moved onto his farm in 1933. Burkholder was born in 1945 and had always resided on the farm. He had always believed that, since 1879, the fence line had been the boundary between his property and that which now belonged to plaintiff. When Burkholder was young, he and his father made repairs to the fence. The area west of the creek had been pasture. Burkholder's father had run cattle and horses in the area, and, until about 1960, he had had a riding stable there. After 1960, Burkholder's mother kept the riding stable until Burkholder bought the property from her in 1963; he bought his father's property in 1972. (Burkholder did not explain the distinction between his mother's property and his father's property, but all agree that, whatever the extent of the Burkholder property, it has been in the family continuously since 1933).

¶ 24 Burkholder testified that all of the walnut trees that had been cut had been east of the fence line that he had earlier helped his father to repair. About 40 years earlier, he had also harvested hardwood trees in the area west of the creek and east of the fence.

¶ 25 Burkholder testified that, in 2009, he used the disputed property to run cattle. He did not use the property for this purpose in 2010, because someone had cut holes in the fence. In spring 2011, he repaired the fence. He used the existing posts where they were still present and, "where there wasn't one, we put another one in." From 1927 on, his family paid the real estate taxes on lot 4. To Burkholder's knowledge, nobody other than his family and its guests had used the disputed area without permission. The fence had been in existence "all [his] life and then some."

¶ 26 The trial court issued a thorough written order that (1) denied plaintiff relief on his complaint; (2) denied Burkholder any recovery under a theory of avulsion; (3) declared Burkholder the owner of the disputed property by adverse possession; (4) denied Burkholder's trespass claim; and (5) dismissed Knight's third-party complaint as moot. As pertinent here, the court stated as follows.

Proof of title by adverse possession required showing, over a 20-year period, possession that was (1) continuous; (2) hostile or adverse; (3) actual; (4) open, notorious, and exclusive; and (5) under a claim of title inconsistent with that of the true owner. The evidence had “clearly show[n]” that there was a boundary fence between the properties; that the fence was in general disrepair; and that it was present in some areas and not in others.

¶ 27 The court observed that the boundaries of property claimed by adverse possession must be established with reasonable certainty. Here, the location of the boundary fence had been established through the testimony of Burkholder and Fuller. Further:

“[T]here was physical evidence of the fence including fence posts, wire and end posts. Although the fence no longer existed in its entirety along the division line of the two properties[,] remaining portions of the old fence were observed by witnesses for both parties. The evidence is sufficient to show its former location with reasonable certainty.”

¶ 28 Moving to the elements of adverse possession, the court held as follows. Burkholder had proved continuous use of the disputed property for more than 20 consecutive years: his family had owned the property since 1933. In that time, they had openly and notoriously used the disputed property to graze cattle and horses and to harvest hardwood trees. Fuller had testified that the fence had always been the dividing line between the Burkholders’ property and what was now plaintiff’s property; that his family and the Burkholders had always worked on and maintained the fence; that the disputed property had always been considered to belong to the Burkholders and that they had had exclusive use of it; and that to him there had never been any question that the Burkholders owned the disputed property. Thus, Burkholder had proved adverse possession. He had not proved that plaintiff had trespassed. The court denied further relief to any party. Plaintiff timely appealed.

¶ 29 On appeal, plaintiff contends that the judgment is against the manifest weight of the evidence. Plaintiff's argument is somewhat disorganized and highly repetitious, and it deals in part with matters that are irrelevant, such as Burkholder's claim of title by avulsion (which the trial court rejected). However, we perceive that, in essence, plaintiff asserts that (1) Burkholder failed to establish with reasonable certainty the extent of the property claimed by adverse possession; (2) Burkholder failed to prove that his use of the disputed property was open and notorious; and (3) Burkholder failed to prove that his use of the property was exclusive.

¶ 30 To acquire title by adverse possession, a party must prove the concurrent existence for 20 years of (1) continuous, (2) hostile or adverse, (3) actual, (4) open, notorious, and exclusive possession of the premises, (5) under a claim of title inconsistent with that of the true owner. *Joiner v. Janssen*, 85 Ill. 2d 74, 81 (1981). The party claiming adverse possession must prove each element by clear and unequivocal evidence. *Id.* However, we shall not disturb the trial court's finding of adverse possession unless it is against the manifest weight of the evidence. *Knauf v. Ryan*, 338 Ill. App. 3d 265, 269 (2003).

¶ 31 We turn first to plaintiff's contention that Burkholder failed to establish with precision the extent of the property that he claimed. Plaintiff asserts that the evidence was too vague or too unreliable to establish the fence line that Burkholder contended set the claimed property apart from the rest of lot 2. Plaintiff argues that the fence that was on the property had been erected only shortly before trial and could not show the course of the fence that allegedly had been there before.

¶ 32 To establish the location of the boundary in an adverse possession case, the proof must "establish with reasonable certainty the location of the boundaries of the tract to which the five elements of adverse possession are applied ***". While it is not necessary that the land should be

enclosed by a fence, the boundaries must be susceptible of specific and definite location.’ ” *Joiner*, 85 Ill. 2d at 83-84 (quoting *Schwartz v. Piper*, 4 Ill. 2d 488, 493 (1954)).

¶ 33 We hold that the evidence was sufficient to establish the boundaries of the property with reasonable certainty. The evidence showed that, for many years, a fence line had run in a well-defined area from where the north-south fence intersected the creek to where the toe of the slope met the creek. The fence line was portrayed on Fidis’s exhibits; proof of its existence, and the existence of the original fence, came from several witnesses. Further, there was evidence from which to infer that the new fence that was erected in 2011 was, essentially, the old fence that had been in place, if not always in good repair, for much longer than 20 years.

¶ 34 We summarize this evidence and then address plaintiff’s attacks on its sufficiency. Fuller and Burkholder both testified directly that a fence had long separated Burkholder’s property from what became plaintiff’s property—Burkholder stating that the fence had been there since before he was born. Fuller, Burkholder, Hatch, and Fidis provided support for the conclusion that the new fence was in the same place as the old one and, realistically, was the same fence, with improvements. Fuller testified that he had known of the old fence and its location since before 1968 and that the new fence used the same “old hedge posts” that had supported the old one. Burkholder testified that, when he repaired the fence in 2011, he used the existing posts where they were still present. Hatch testified that, when he saw the new fence, the wire was stretched on “the original old posts” and that the only additions were interpolations between long-existing posts. Fidis testified that, when he and his crew walked the property, he saw that the existing fence followed an old fence line. The basis of this conclusion was that the fence in the disputed area used hedge posts of a type not used in the last 15 or 20 years and that were 40 to 50 years old. The exhibits that Fidis’s office prepared under

his supervision located the fence line with specificity. Thus, there was ample evidence that what plaintiff characterizes as the new fence was really the old fence with some repairs. The trial court properly found that the northern and western boundaries of the area claimed by adverse possession were established with reasonable precision. (Plaintiff does not dispute that the west bank of Buffalo Creek sufficiently established the southern and eastern boundaries of the area.)

¶ 35 Although the proof of boundaries is obviously highly fact-specific, we note that *Bakutis v. Schramm*, 114 Ill. App. 3d 237 (1983), supports the judgment. There, the plaintiffs claimed title by adverse possession to a strip of land. The defendants owned property east of the plaintiffs' property. The plaintiffs produced evidence that there had long been, but no longer was, a fence running along the eastern border of the disputed property. Also, a concrete right-of-way marker was on the south side of the property and a hedge post on the north. The trial court held for the plaintiffs. Affirming, the appellate court concluded that, although the fence itself no longer existed, the evidence established its location with reasonable certainty. *Id.* at 242. Here, the evidence is at least as strong as in *Bakutis*: there was not merely testimony about a previous fence line, but physical evidence of the fence line itself, and, indeed, substantial portions of the original fence. The ends of the line were established as the point where the north-south fence turned southwest and the point where the fence line intersected the west bank of Buffalo Creek.

¶ 36 Plaintiff makes a number of attacks on this evidence. He first asserts that the only fence that existed was the one that Burkholder erected after he filed his complaint. As we have explained, this assertion is formalistic at best: the "new" fence was in essence the old fence, running along the same line as the old one. Plaintiff next asserts that the Brandau survey did not depict a fence line on the property. Plaintiff does not explain why the trial court had to accept this fact as conclusive of any

issue, given that Fuller and Burkholder testified that a fence had been there for several decades and that several witnesses testified to the existence of a fence line. That Brandau's survey did not depict a fence line merely set up a conflict in the evidence, at most: indeed, the trial court could have agreed with Fidis that the omission proved that the survey was defective.

¶ 37 Plaintiff concedes that Fidis's exhibits defined the fence line with specificity, but he argues that these exhibits were unworthy of credit. We have noted already that Fidis walked the property and observed old fence posts from which he could infer the course of the fence line. Plaintiff does not address these facts but emphasizes that Fidis's exhibits were not surveys and were not drawn by Fidis himself. These defects—if they were such—may have affected the weight to be given the exhibits, but they did not require the trial court to discredit them entirely. The exhibits did not need to be surveys to be probative. That Fidis did not draw them himself was not crucial; he oversaw their drafting and testified that they accurately represented what he had seen when he walked the property.

¶ 38 We conclude that the trial court did not err in finding that Burkholder established with reasonable certainty the boundaries of the property he claimed. We turn to plaintiff's second contention: that Burkholder failed to prove that his (and his predecessors') possession of the disputed property was open and notorious, because the evidence did not show that the Burkholders did enough to put their neighbors on notice of their claim to the exclusive use of the property. We disagree.

¶ 39 Possession is open and notorious if the claimant engages in acts on the land of another that are sufficient to alert the owner of a claim to his land that may ripen into title under adverse possession, or, put differently, if the community in the vicinity is or could be apprised of the claimant's possession and exclusive use and enjoyment. *Beverly Trust Co. v. Dekowski*, 216 Ill. App. 3d 732, 739 (1991). Plaintiff contends that, before Burkholder cut down the walnut trees, the

only thing that he or his predecessors did to put the community on notice was to harvest oak trees on the property at some unknown point. This contention is incorrect. There was evidence that Burkholder's parents (1) long ago erected a fence that proclaimed the boundary between the property they claimed and what is now plaintiff's property; (2) pastured cattle on the property; (3) ran horses and operated a stable on the property; (4) harvested the oak trees; and (5) gave the Fullers permission to race horses on the property and fish from the ledge that projected from the rock wall on the west bank of the creek. Also, Burkholder maintained the fence and paid the taxes on the disputed property. The preceding evidence was sufficient to support the trial court's finding of open and notorious possession for more than 20 years.

¶ 40 *Dekowski* is instructive. There, the defendants claimed title by adverse possession to part of the property that the plaintiff purchased in 1987. The evidence showed that the defendants had erected a fence in 1961 and, since then, had continuously used the enclosed area for their pool. The appellate court held that the defendants had provided the required notice to the community by fencing in the property and using it without interruption for more than 20 years. *Id.* at 739. The evidence here is surely no weaker; the Burkholders fenced in the disputed property sometime before 1945 and used it openly for a wide variety of purposes. Therefore, the trial court's finding that Burkholder proved open and notorious possession is not against the manifest weight of the evidence.

¶ 41 We turn to plaintiff's third contention on appeal: that the court erred in finding that Burkholder's (and his predecessors') possession of the property had been exclusive. Plaintiff appears to rely partly on the presumption that the use of vacant or undeveloped land is permissive (see *Dobrinsky v. Waddell*, 233 Ill. App. 3d 443, 447 (1992)) and partly on the alleged lack of

evidence that Burkholder or his parents had used the property to the exclusion of others. We hold that, insofar as the presumption applied, the evidence was sufficient to overcome it.

¶ 42 “Exclusivity” means that the claimant’s rights do not depend on the rights of others and that the claimant has deprived the rightful owner of all possession. *Davidson v. Perry*, 386 Ill. App. 3d 821, 825 (2008). Here, there was no evidence that the Burkholders’ right to use and occupy the disputed property depended on anyone else’s rights. Also, Fuller testified that, while he lived on what later became plaintiff’s property, the Burkholders had the exclusive use of the area; Fuller’s family never entered the area or made any use of it without permission from the Burkholders; and nobody ever questioned that the Burkholders owned the property. Moreover, the evidence allowed the trial court to find that, since the first half of the previous century, the Burkholders had maintained a boundary fence, obviously a means of denying possession to others. Although the Burkholders’ neighbors sometimes entered the property with permission, there was no evidence that anyone other than the Burkholders possessed the property.

¶ 43 Plaintiff says nothing about this evidence, relying on the presumption of permissive use and noting only that Burkholder “never testified that the use by [his parents] of the disputed area was exclusive.” (Plaintiff does not note that Fuller did so testify.) However, there was no need for Burkholder to use the magic word “exclusive” (arguably a conclusion of law anyway) as long as the trial court could find facts that sufficed to support a finding of exclusivity. To the extent that the presumption plaintiff speaks of applied, the trial court had ample evidence from which to conclude that Burkholder overcame it.

¶ 44 Plaintiff cites and discusses a number of opinions at length. Suffice it to say that these opinions are distinguishable and that the facts of this particular case support the judgment.

¶ 45 The judgment of the circuit court of Ogle County is affirmed.

¶ 46 Affirmed.