

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (3d) 140001-U

Order filed December 15, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

FIRST MIDWEST BANK TRUST #489,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellee,)	Grundy County, Illinois,
)	
v.)	Appeal No. 3-14-0001
)	Circuit No. 12-CH-90
)	
TELIO and FLORENCE PALAZZINI TRUST,)	Honorable
)	Robert C. Marsaglia,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's finding that plaintiff had proven the elements of adverse possession was not contrary to the manifest weight of the evidence.

¶ 2 Plaintiff, First Midwest Bank Trust #489, filed a complaint to quiet title against defendant, the Telio and Florence Palazzini Trust. In the complaint, plaintiff argued that it had acquired title by adverse possession to a strip of land lying between plaintiff's and defendant's farms. Following trial, the court found in plaintiff's favor. On appeal, defendant contends that plaintiff failed to prove certain elements of a claim for adverse possession by clear and

convincing evidence, and that the trial court's ruling was against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

Plaintiff is a land trust holding title to 40 acres of farm ground in Section 27, Township 31, Range 8 East in Grundy County. Defendant is a family trust holding title to 120 acres in the same range. Plaintiff's property is bordered to the west and north by defendant's property.¹ Two posts lie on the east-west border between the properties, one on the southwest corner of plaintiff's property and on the northwest corner of plaintiff's property.

¶ 5

In 2011, the two posts were moved east. As a result, a significant amount of land that formerly lied to the east of the posts now lied to the west. Plaintiff subsequently filed a complaint to quiet title, alleging that it had acquired title to that land through adverse possession.

¶ 6

Rodney Grant, a beneficiary of plaintiff, testified² that in 2011 he noticed that the two posts dividing the property had been moved. The southern post was moved 10.72 feet east while the northern post was moved 17.2 feet east. Grant identified a photograph, taken within a week of the posts being moved, which showed an apparent use line between crops. That line was to the west of the new location of the posts. The photograph was admitted into evidence. Grant testified that the apparent use line appeared because of differing farming practices on each side of the posts. The posts created the dividing line between the two properties.

¹ The combined properties form a square, with plaintiff's plot constituting the southeastern quarter of that square.

² No transcript exists from the trial, as no court reporter was present, and the trial was not otherwise recorded. On appeal, the parties rely on the contents of a first amended bystander's report as a record of the trial.

¶ 7 Grant testified that he was unaware of the posts being moved any time prior to 2011. He lived in the area his whole life, and felt that he would have known if the posts had ever been moved. Grant's grandfather had farmed the property since 1967, and John Neece—Grant's uncle—had always been the farm tenant. Grant testified that for the farming year 2011, before the posts had been moved, there was no overlapping of crops between the two properties, and each farmer kept on his side of the apparent use line.

¶ 8 Don Halpin farmed the land belonging to defendant. Halpin testified that in the spring of 2011, he noticed that the posts dividing defendant's land from plaintiff's did not line up with the section line. Additionally, he noticed that crops between the two properties were overlapping. Halpin recommended that a survey be done. The survey was done by Carl Krause, and showed a discrepancy in favor of defendant.

¶ 9 Halpin testified that in 1992 he assisted Telio Palazzini in measuring the northeast 40 acres of the property. A cedar post was placed at the northwest point of plaintiff's property—at the center of the square formed by the parties' properties—at that time. At that time, the posts at issue in this case aligned with those separating the properties directly north of defendant's plot. Halpin testified that some time later he noticed that the cedar post had been replaced by a hedge post. Aaron Halpin also testified that he noticed the cedar post had been replaced with a hedge post.

¶ 10 Krause testified that through his survey he discovered that the posts in question were west of the actual property line—10.73 feet west on the south, and 17.28 feet west on the north. Krause also testified that he had previously completed a survey on one of the plots directly to the north of defendant's property.

¶ 11 James Hibler owned the property directly north of defendant's property. His property

also lies directly north of plaintiff's property, though the two are separated by defendant's plot. Hibler testified that a post in the southwest corner of his property lies north of the property line in dispute. In 2005, Krause conducted a survey of Hibler's land. As a result of this survey, Hibler moved his southwest post (the Hibler stake) 15 feet to the east. Prior to this move, the southwest post had been in the same location for 25 years.

¶ 12 Michael Ferrel testified that he worked for Chamlin & Associates. He also completed a survey of the land. Ferrel testified that prior to the moving of the Hibler stake, the actual use line of the stakes between defendant's and plaintiff's properties lined up with the Hibler stake, creating a straight line. After the Hibler stake was moved east, but before the posts in question were moved east, the line separating defendant's and plaintiff's plots would not have lined up with the line separating Hibler's property from the property directly west of Hibler's. After the posts in question were moved in 2011, the property lines again lined up. Ferrel testified to the legal description of the area between the old posts and new posts. That description was admitted into evidence.

¶ 13 Neece testified that he had farmed plaintiff's land since his father purchased it in 1967. The ground was purchased as 40 acres, fence row to fence row. He did not remember the fence posts ever being moved. Because the posts were large and heavy, he would have noticed if they had been moved. Neece testified that he farmed the property up to the fence posts until they were moved in 2011. No one other than Neece's family and farmhands had farmed the property up to the posts since 1967.

¶ 14 The trial court found that plaintiff had met its burden by demonstrating adverse possession through clear and convincing evidence. The court found that there was no evidence of the stakes being moved prior to 2011 and that plaintiff had been farming the disputed land

since 1967. Defendant appeals, arguing that the decision of the trial court was contrary to the manifest weight of the evidence. Specifically, defendant contends that plaintiff failed to prove (1) that the land in question was in plaintiff's continuous use for the required 20 years; and (2) the exact boundaries of the property claimed by adverse possession.

¶ 15

ANALYSIS

¶ 16

To establish title by adverse possession, a claimant must demonstrate possession of the property for the statutory period of 20 years. See 735 ILCS 5/13-101 (West 2010). The claimant must also show that such possession was "(1) continuous; (2) hostile or adverse; (3) actual; (4) open, notorious, and exclusive; and (5) under claim of title inconsistent with that of the true owner." *Gacki v. Bartels*, 369 Ill. App. 3d 284, 292 (2006). In addition to these five elements, "the claimant must also prove 'by clear and convincing evidence the exact location of the boundary line to which they claim[]'." *Brandhorst v. Johnson*, 2014 IL App (4th) 130923, ¶ 37 (quoting *Schwartz v. Piper*, 4 Ill. 2d 488, 494 (1954)). Defendant challenges only two of these six requirements.

¶ 17

In adverse possession cases, "[a]ll presumptions are in favor of the title owner, and the party claiming title by adverse possession must prove each element by clear and unequivocal evidence." *Knauf v. Ryan*, 338 Ill. App. 3d 265, 269 (2003). "Because the supreme court has not explained the meaning of 'clear and unequivocal evidence,' courts have applied the clear and convincing burden of proof in adverse possession cases." *Brandhorst*, 2014 IL App (4th) 130923, ¶ 38 (quoting *Dotson v. Former Shareholders of Abraham Lincoln Land & Cattle Co.*, 332 Ill. App. 3d 846, 855 (2002)). An appellate court will not disturb the findings of the trial court unless those findings are contrary to the manifest weight of the evidence. *Brandhorst*, 2014 IL App (4th) 130923, ¶ 38. " 'A judgment is against the manifest weight of the evidence

only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence.' " *Id.* (quoting *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70).

¶ 18

I. Continuous Possession

¶ 19

Defendant first argues that plaintiff failed to carry its burden in proving the property in question had been in plaintiff's continuous use for 20 years. Defendant claims that the trial court failed to consider the Halpins' testimony that the center post of the quarter section (the northern post of the two at issue in this case) had changed some time after 1992.

¶ 20

Importantly, it was the testimony of Don and Aaron Halpin that the center post had been *replaced* by a hedge post. Neither testified that they noticed any change in the post's location. Additionally, Grant and Neece testified that they never noticed a change in the placement of the posts prior to 2011. By all accounts, the line between the posts—whether they were cedar posts or hedge posts—remained the same from 1967 through 2011. Neece also testified that he had farmed up to the fence posts since he first began farming the land—a period of well over 20 years. This testimony was uncontroverted.

¶ 21

Further, Hibler testified that the post on the southwest corner of his property had not been moved for 25 years prior to 2005. Ferrel testified that the two posts separating plaintiff and defendant, lined up with the Hibler stake in that time period. The court's finding that plaintiff satisfied the continuous use element clearly and convincingly was not contrary to the manifest weight of the evidence.

¶ 22

II. Exact Boundaries

¶ 23

Beyond the five traditional elements required for a showing of adverse possession, a claimant must also demonstrate "a visible and ascertainable boundary line." *Harbeck v. Holland*,

81 Ill. App. 3d 250, 255 (1980). This must also be shown by clear and convincing evidence. *Stankewitz v. Boho*, 287 Ill. App. 3d 515 (1997).

¶ 24 Defendant contends that the locations of the original fence posts are merely "two points along an alleged boundary line," and that connecting those two points with a straight line requires an improper presumption. In support, defendant cites to our decision in *Harbeck*, 81 Ill. App. 3d 250, in which we refused to assume that a boundary line ran straight in one direction.

¶ 25 *Harbeck*, however, is wholly inapplicable to the case at hand. In that case, the Harbecks' property lay to the north of the Hollands' property, and the Hollands claimed adverse possession of a 20-foot strip of land between the two properties. The Hollands asserted that the strip of land ran from a gate on the west end of the property to "a clump of willow trees" 2,400 feet to the east. *Id.* at 255. The clump of trees extended well to the south. The Hollands claimed that this strip was once bounded to the north and south by rows of hedges, and that the northern row of hedges, no longer present, established the northern boundary of the area adversely possessed. The trial court dismissed the Hollands' claim at the close of proofs.

¶ 26 On appeal, we affirmed the trial court. We found that evidence of a once-present row of hedges did not constitute a visible and ascertainable boundary.

"[T]he court cannot assume, and the record does not establish with reasonable certainty, that the hedges ran due east from the gate. *** [W]e cannot assert that because the boundaries were once certain, they are certain enough now for the court to find for the party claiming by adverse possession." *Id.* at 256.

Without the row of hedges still in place, there was no reason for this court to assume that the hedges formed a perfectly eastward line. Nor did the clump of trees extending well to the south provide any discernible point at which a line could be connected.

¶ 27 In the case at hand, unlike in *Harbeck*, the two fence posts in question represent known, definitive points. Discerning the former locations of the fence posts required no presumptions on the part of the trial court, as Ferrel testified to the precise legal location of both of the original fence posts. Neece testified that his father had purchased the land fence row to fence row, and that Neece had farmed up to those posts since he began farming the land in 1967. The trial court's finding—that the precise boundaries and the land being adversely possessed was proven by clear and convincing evidence—was not contrary to the manifest weight of the evidence.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Grundy County is affirmed.

¶ 30 Affirmed.