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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0492

Clifford Larry Collins

v.

Terry R. King

Appeal from Cullman Circuit Court
(CV-2020-900310)

MITCHELL, Justice.

This appeal involves a boundary-line dispute between neighbors in Cullman County. Clifford Larry Collins sued Terry R. King in the

Cullman Circuit Court, seeking to have the court establish the true boundary line between his property and King's. Collins alleged in the complaint that he had acquired legal title to a portion of King's property -- up to an old fence line -- because Collins's predecessors in interest had adversely possessed the disputed land some 50 years earlier. The trial court rejected Collins's claim and declared the true boundary to be the line identified in the survey King had commissioned. Collins appeals the judgment against him. We affirm.

Facts and Procedural History

In 1964, Hubert and Audie Buchanan were given property adjacent to property that Audie's brother, Henry Rodgers, owned. At that time, Rodgers was using his property as pastureland and had built several fences, including one that ran across his property and was perpendicular to the road. At its furthest, the fence was 20 feet from the boundary line between Rodgers's property and the Buchanans'. The Buchanans built a house parallel to the road, inches away from the true boundary line and about 20 feet from Rodgers's fence. Although Rodgers held title to the strip of land west of the fence and abutting the Buchanans' house, the

Buchanans and their grandson Blake West ("Blake") maintained that area, planting trees and flowers and mowing the grass up to the fence.

In the 1980s, Albert Warnke bought Rodgers's property and commissioned a survey. The survey showed that the true property line was not the fence, which had deteriorated, but a north-south line abutting the Buchanans' house. Warnke told the Buchanans and Blake about the survey results but still allowed them to continue using the disputed land. Warnke also mowed the grass on the disputed land with his tractor and eventually built a new fence that approximated the location of the old one.

Years later, Chad Burkes bought Warnke's property. Warnke told Burkes where the surveyed property line was but told him that "out of respect for Aunt Audie," he had not taken down the fence. Burkes took down the fence, but he gave permission to Blake's nephew Ross West ("Ross") -- who was now living on the Buchanans' property -- to mow the grass on the disputed land up to where the fence had been. When Burkes later sold his property to Terry King, he told King that he had permitted Ross to mow the grass on some of his property. King began maintaining

the disputed land and mowed over the flower bed Audie had planted decades before.

Sometime in the 1980s, after her husband Hubert had died, Audie deeded her property to Blake, reserving a life estate for herself. Audie passed away in 2012, and Blake owned the property until he deeded it to Collins in 2018.

At some point, King told Collins that he thought the boundary line between their properties was between two stakes that marked either end of the old fence that Warnke had built. But when King had his property surveyed, the results showed that the true boundary line ran north-south and abutted Collins's house, consistent with the results of the 1980s survey that Warnke had commissioned. When King told Collins about the survey results, Collins offered to pay him \$750 for the area of land between the survey line and the old fence line. King declined, then built a fence along the survey line.

Collins sued King, alleging that he owned the disputed land because, Collins said, the Buchanans had adversely possessed it approximately 50 years earlier. The trial court held a bench trial and heard evidence ore tenus. The trial court found that Collins had failed to

demonstrate that the Buchanans had adversely possessed the disputed land and declared the true boundary line to be where the survey had placed it. Collins appealed.

Standard of Review

"[A] judgment establishing a boundary line between coterminous landowners on evidence submitted ore tenus is presumed to be correct [T]he trial court's [judgment] will not be disturbed on appeal unless plainly erroneous or manifestly unjust." Tidwell v. Strickler, 457 So. 2d 365, 367 (Ala. 1984). "The presumption of correctness is particularly strong in boundary line disputes and adverse possession cases, because the evidence in such cases is difficult for an appellate court to review." Bearden v. Ellison, 560 So. 2d 1042, 1044 (Ala. 1990).

Analysis

Collins contends that the trial court erred in finding the boundary line to be the survey line. First, he says that the trial court applied the wrong standard for deciding an adverse-possession claim. Second, he argues that there was insufficient evidence to support the trial court's finding that the Buchanans' use of the disputed land was permissive. Finally, he contends that the trial court erred in finding that the

Buchanans' actions did not satisfy the elements of adverse possession by prescription. We address each argument in turn.

A. The Trial Court Correctly Applied the Law of Adverse Possession

Collins first argues that the trial court "misapplied the law" by applying "normal" adverse-possession law to a boundary-line dispute. Collins's brief at 17. But in doing so, Collins misapprehends the trial court's judgment and conflates a conclusion drawn from a factual finding with a legal error.

Ordinarily, a claimant may acquire title to land by adverse possession in one of two ways -- by prescription or by statute.¹ Kerlin v. Tensaw Land & Timber Co., 390 So. 2d 616, 618 (Ala. 1980). Boundary-line disputes, however, are "subject to a unique set of requirements that is a hybrid of the elements of adverse possession by prescription and statutory adverse possession." Robinson v. Hamilton, 496 So. 2d 8, 10

¹Prescriptive adverse possession requires actual, exclusive, open, notorious, and hostile possession under a claim of right for a period of 20 years. Kerlin v. Tensaw Land & Timber Co., 390 So. 2d 616, 618 (Ala. 1980). Statutory adverse possession requires the same elements -- but if a claimant holds the land under color of title, pays taxes on the land for 10 years, or derives his title by descent or devise from a possessor, he may obtain title to the disputed land after only 10 years. § 6-5-200, Ala. Code 1975.

(Ala. 1986). In those cases, coterminous landowners may alter the boundary line between their properties either "by agreement plus possession for ten years" or by adverse possession by prescription for a period of 10 -- rather than 20 -- years. Id.

The thrust of Collins's first argument is that the trial court only applied the law of adverse possession by prescription and failed to consider whether Collins satisfied adverse possession by agreement. But the trial court considered both of those avenues. In its judgment, the trial court found that Collins's predecessors' use of the disputed land was "by agreement and with permission" from King's predecessors. Implicit in that finding of permissive use is that there was not an express agreement between any of the prior coterminous land owners to alter the boundary line. In other words, the trial court considered -- and rejected -- Collins's theory of adverse possession by agreement. And because Collins failed to satisfy that type of adverse possession, the trial court necessarily considered whether Collins had proven the alternative of adverse possession by prescription. There was no error.

B. The Evidence at Trial Did Not Support a Finding of Adverse Possession by Agreement

Collins next argues that the trial court erred in finding that the Buchanans' use of the disputed land was permissive because, he says, there is "absolutely no evidence" that Rodgers -- the original owner of the King property -- gave permission to the Buchanans to use the disputed land. Collins's brief at 19. Instead, Collins implies, the trial court should have found that Rodgers and the Buchanans agreed to alter the boundary line between their properties. On that view, the Buchanans would have acquired title to the disputed land in 1974, 10 years after the "agreement." Consequently, Collins argues, the chain of title of the Buchanans' property, including the disputed land, passed to Blake and ultimately Collins.

The problem with this argument is that Collins confuses the burden of proof. Regardless of which version of adverse possession a claimant advances, he has the burden of proof on each element. Garringer v. Wingard, 585 So. 2d 898, 900 (Ala. 1991). The question, therefore, is not whether King put forth sufficient evidence of permissive use. Rather, it is whether Collins offered sufficient evidence that that there was "[a]n agreed line, by express agreement of adjoining owners, or by act of one

with the acquiescence of the other." Brantley v. Helton, 224 Ala. 93, 96, 139 So. 283, 285 (1932). The trial court found that he did not meet his evidentiary burden, and this Court gives that finding deference. See Guy v. Lancaster, 250 Ala. 226, 228, 34 So. 2d 10, 12 (1958) (stating that whether there was an agreement is a question for the fact-finder).

In light of that deference, it is clear that Collins has failed to demonstrate that the trial court erred in finding that there was no adverse possession by agreement. See Tidwell, 457 So.2d at 367. He first points to the Buchanans' decades-long maintenance of the disputed land as evidence of an agreement between the property owners to alter the boundary line. Although Rodgers owned the adjoining property, the Buchanans and their grandsons consistently mowed the grass on the disputed land up to the fence line, and Audie Buchanan planted flowers and bushes there. These actions, Collins maintains, were "obvious" signs of ownership and show that Rodgers "clearly assented" to altering the boundary line. Collins's brief at 14. But, as the trial court observed, this inference is speculative. It is equally plausible that Rodgers, while retaining ownership, permitted the Buchanans -- his sister and brother-in-law -- to make use of the disputed land when they moved to their

property in 1964. Without more evidence of each party's intentions, we simply cannot know what transpired between the two families 60 years ago. Collins therefore failed to meet his evidentiary burden.

In an effort to overcome this deficiency, Collins points to the fence located on what was originally Rodgers's property. The presence of the fence, he argues, suggests that the Buchanans had agreed with Rodgers to change the boundary between the properties from the survey line to the fence line. Collins attempts to ground his argument on Salter v. Cobb, 264 Ala. 609, 612, 88 So. 2d 845, 848 (1956), which says that adverse possession by agreement is established "when parties agree upon the location of a line fence" and one of the parties "proceeds to enclose his property and erects a fence intended as a line fence."

But Salter does not help Collins because he has not demonstrated that Rodgers and the Buchanans "agree[d] upon the location" of the fence; nor has he shown that either party "erecte[d] a fence intended as a line fence" at all. Id. at 848 In fact, the evidence suggests otherwise: Rodgers built the fence before the Buchanans even acquired their property, and he did so to keep his livestock from leaving certain areas of his property. Warnke, who bought the property from Rodgers in the 1980s, also kept

livestock and rebuilt the then-deteriorating fence to keep his cattle from roaming, and Warnke did this despite knowing that the true boundary line was beyond the fence.

The upshot is that Collins did not demonstrate that Rodgers and the Buchanans had an "intention to fix a [new] dividing line" between their properties, much less that the fence on Rodgers's property was that boundary line. Brantley, 224 Ala. at 96, 139 So. at 285. Because Collins cannot prove this "controlling fact," he has not "discharge[d] [his] burden of proof." Salter, 264 Ala. at 612, 88 So. 2d at 849.

Moreover, testimony concerning use of the disputed land after Warnke bought his property from Rodgers points to permissive use. Collins argues that Warnke told Hubert Buchanan about the survey results in the 1980s and that this demonstrates that the men agreed to fix the boundary line along the fence. Collins infers that because Hubert later told his grandson Blake to continue mowing the grass up to the fence line after conversing with Warnke, Warnke must have agreed to alter the boundary line.

But that argument suffers from the same flaws as his other arguments. For one, Collins cannot show that there was an express

agreement between the two men to change the boundary line. See Salter, 264 Ala. at 612, 88 So. 2d at 848. No one other than Warnke and Hubert took part in that conversation, and neither man revealed the nature of the conversation or testified at trial. And Collins's argument does not line up with the evidence. Every owner after Warnke testified that he knew that the true boundary line was the survey line -- not the fence. And despite that knowledge, each of Warnke's successors in interest testified that they had permitted the Buchanans and later owners of that property to use the disputed land. Consequently, it was not error for the trial court to find that the Buchanans' use of the disputed land was permissive.

C. The Evidence at Trial Did Not Support a Finding of Prescriptive Adverse Possession

As a last resort, Collins changes tack and argues that he is entitled to the disputed land by prescriptive adverse possession. Because the Buchanans "conducted 'normal acts'" of maintaining the disputed land up to the fence for more than 10 years, Collins says, they acquired title to the disputed land from Rodgers in 1974. Collins's brief at 16. In Collins's view, "[t]his is all the law requires for coterminous landowners." Id. at 18.

But our cases -- "the law" to which Collins refers -- do not say that adverse possession is ordinary use of the disputed land. As noted above, there are two possible avenues for adverse possession between coterminous landowners: agreement plus possession for 10 years or ordinary prescriptive adverse possession -- actual, exclusive, open, notorious, and hostile possession under a claim of right -- for 10 years. Robinson, 496 So. 2d at 10. The excerpts from Bearden v. Ellison, 560 So. 2d 1042 (Ala. 1990), and Sylvest v. Stowers, 276 Ala. 695, 166 So. 2d 423 (1964), that Collins quotes in his appellate brief explain what actions constitute "possession," but possession is just one element of prescriptive adverse possession. What Collins fails to notice is that, in those cases, the plaintiffs also proved the remaining elements of prescriptive adverse possession: open, notorious, hostile, exclusive possession, and under a claim of right for 10 years.

Collins has not met his burden here. There are too many gaps in the record for the period before Warnke owned the property to establish that the Buchanans adversely possessed the disputed land from Rodgers. Those gaps are Collins's to fill, and he cannot do so by speculating about what occurred or by attempting to shift that burden to King.

Conclusion

When there is credible evidence to support the trial court's judgment, we will not disturb the court's determination that the true boundary line is the survey line. See Pinson v. Veach, 388 So. 2d 964, 968 (Ala. 1980). We therefore affirm the judgment here.

AFFIRMED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.