

IN THE COURT OF APPEALS OF IOWA

No. 9-751 / 08-2012
Filed December 30, 2009

**JAMES A. TOOL and
M. CYNTHIA TOOL,**
Plaintiffs-Appellants/Cross-Appellees,

vs.

**ROBERT GENE NOLIN and
MARJORIE M. NOLIN,**
Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Jasper County, Gregory A. Hulse,
Judge.

James and Cynthia Tool appeal, and Robert and Marjorie Nolin cross-
appeal, from the district court ruling quieting title to certain real estate to the
Tools. **AFFIRMED.**

Bruce Nuzum of Matthias, Campbell, Tyler, Nuzum & Rickers, Newton, for
appellant.

James C. Ellefson of Moore, McKibben, Goodman, Lorenz & Ellefson,
L.L.P., Marshalltown, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

DANILSON, J.

James and Cynthia Tool appeal, and Robert and Marjorie Nolin cross-appeal, from the district court ruling that the Tools had proved title by adverse possession to a small piece of rural land, triangular in shape, amounting to less than 1/3 acre that was previously part of a railroad line (“the triangle”), with the exception of the south twenty feet of the triangle.

I. Background Facts and Proceedings.

In an earlier appeal on the instant case, this court remanded for a trial on the issues of adverse possession and boundary by acquiescence.¹ Our February 27, 2008 ruling contains a detailed factual background regarding the parties’ claims of ownership to the triangle, which we reiterate in part:

Nolins’ Claim. The Nolins trace their right to the land as follows. In 1877, a deed transferring the land to Iowa, Minnesota and N.P. R.R. Co. was recorded in the office of the Jasper County Recorder. That deed recited, in pertinent part,
that in case the said Railway Company does not construct a Railway through said tract of land or shall after construction permanently abandon the route through said lands the same shall revert to and become the property of the grantees herein, their heirs and assigns

In approximately 1927, the rails and ties remaining from the railroad were removed from this particular piece of land. Later, a decision by the Interstate Commerce Commission found that the

¹ This action is one of several between these parties (and their families) since 2004 with regard to a disputed section of real estate in rural Jasper county. In 2005 this court affirmed the district court’s conclusion that the Nolins did not have an easement to use the lane formerly known as “Flora’s Lane” on the south twenty feet of the Tools’ property. See *Nolin v. Tool*, No. 05-0741 (Iowa Ct. App. Nov. 23, 2005). Later, the district court granted an injunction filed by the Tools to enjoin the Nolins from the condemnation of a road through the real estate. See Jasper County Case No. EQCV113751. In the instant action, this court remanded for a trial on the issues of adverse possession and boundary by acquiescence. See *Tool v. Nolin*, No. 07-0813 (Iowa Ct. App. Feb. 27, 2008). Those issues were tried and considered by the district court, and are now the issues before this court on appeal.

entire portion of the railroad line running from Reasnor to Monroe had been formally abandoned.

In 1956, a tax sale regarding this property was held, and Jasper County bid on it, as was then required. On December 21, 1967, a tax deed was issued to Jasper County. The tax sales deed recites that that abandoned railroad property was acquired for taxes owed by the Chicago, Rock Island & Pacific Railroad Company for the years 1953, 1954, and 1955. In 1972, Jasper County held an auction and sold its interest in the property to Steve and Linda Hewitt by way of quitclaim deed. In 2006, Robert Nolin approached Steve Hewitt to purchase the land. Hewitt agreed to sell it for \$1000 and he provided Nolin with a quitclaim deed.

Tools' Claim. As noted above, the 1877 deed transferring the land to the railroad provided for the possibility of title reverting to the grantees or their assigns should the railroad company abandon it. The Tools assert they are the assigns of those grantees. In 1978, the Tools purchased a portion of the disputed land from the Van Wyngarden family. In 2002, they purchased a second plot of land from a cousin, Arthur Q. Tool, and his wife. Later that year, the Tools filed an affidavit of possession concerning the land.

The Lawsuit. On August 28, 2006, the Tools filed a petition in equity against the Nolins, asking that title to the disputed property be quieted in their names. Competing motions for summary judgment were filed by the parties. Following a hearing on the motions, the district court ruled in favor of the Tools and quieted title to the land in their name.

....

We first note that the Tools, who prevailed below, now concede that the legal ground upon which the district court ruled in their favor does not actually support its position.

....

The Tools also claimed a right to the land under alternative grounds. However, the district court did not address the issue of whether the Nolins' interest in the land was forfeited either under a theory of adverse possession or boundary by acquiescence. It appears factual issues may remain as to these claims, and a trial may be necessary on them. We therefore remand for further consideration of these theories.

Tool v. Nolin, No. 07-0813 (Iowa Ct. App. Feb. 27, 2008).

On remand, the district court determined the Tools had proven title by adverse possession to the triangle, except the south twenty feet of it.² The court dismissed the Tools' action for slander of title. The Tools filed a motion to enlarge or amend findings, which the court denied. This appeal followed.

II. Adverse Possession.

The Tools appeal, contending the court erred in finding they did not establish title by adverse possession to the south twenty feet of the triangle. The Nolins cross-appeal, arguing the court erred in finding that the Tools had established title by adverse possession to *any* part of the triangle. Our review of this issue is de novo. *Fencl v. City of Harper's Ferry*, 620 N.W.2d 808, 811 (Iowa 2000).

A party seeking to gain title by adverse possession “must establish hostile, actual, open, exclusive and continuous possession, under claim of right or color of title for at least ten years.” *C.H. Moore Trust Estate v. City of Storm Lake*, 423 N.W.2d 13, 15 (Iowa 1988). The doctrine of adverse possession is strictly construed because the law presumes possession is under regular title. *Id.* Proof of each of the elements must be “clear and positive.” *Id.*

In this case, the district court determined the Tools provided clear and positive proof of its claim of right or color of title to the triangle, except the south twenty feet. We agree with the court that the Tools established hostile, actual, open, exclusive, and continuous use of the triangle (except for the south twenty feet) for farming purposes since at least 1961. The record fully supports the

² The court issued no finding as to the owner of the south twenty feet. The court did not find that the Tools had proven title by acquiescence.

court's finding. To the court's analysis, we need only add that the Tools had no actual knowledge of anyone else claiming title to the triangle north of the south twenty feet until 2006. The Nolins had a valid tax deed, but the doctrine of adverse possession presupposes a defective title. *Creel v. Hammans*, 234 Iowa 532, 534-35, 13 N.W.2d 305, 307 (1944).

We now turn to whether the district court correctly determined that the Tools did not establish title by adverse possession to the south twenty feet of the triangle. Our analysis begins and ends with the exclusivity requirement. “[A] claimant’s possession need not be absolutely exclusive; it need only be of a type of possession which would characterize an owner’s use.” *Huebner v. Kuberski*, 387 N.W.2d 144, 146 (Iowa Ct. App.1986) (quoting 2 C.J.S. *Adverse Possession* § 54 (1972)). A “mere casual intrusion by others on property occupied by the adverse claimant does not deprive his possession of its exclusive character.” *Id.* (quoting 2 C.J.S. *Adverse Possession* § 56 (1972)).

We conclude the Tools’ possession of the south twenty feet was not exclusive. Up until 2002, the south twenty feet constituted a farm road (formerly known as Flora’s Lane) that was used by the Tools and other people, including the Nolins. For many years, the Tools allowed the Nolins to use the road to allow the Nolins access to their property north of Buck Creek. It was not until 2002 that the Tools plowed the road and began to use the south twenty feet for farming purposes. The following exchange of the court’s questioning of plaintiff James Tool illustrates the Tools’ lack of exclusive possession of the south twenty feet of the triangle:

Q. So you didn't farm the—you didn't physically put crops on or anything, the 20-foot strip until 2002 . . . ? A. Yeah.

Q. Is that correct? A. Yes. But I think, as I remember—

Q. Prior to that time, that 20-foot strip was used by other people? A. Used by myself to farm down there and other people drove it too.

Q. And that would include Mr. Robert Nolin, the defendant in this action? A. Yes.

The Tools' allowance of the public to access the farm road constituting the south twenty feet prior up until 2002 clearly shows that the Tools' possession of this area was not exclusive. *Compare Huebner*, 387 N.W.2d at 146 (finding possession exclusive when the only outside use of the property was when the neighbors' children climbed a fence to take berries from the property and the landowner yelled at them) *with Marksbury v. State*, 322 N.W.2d 281, 287 (Iowa 1982) (determining possession was not exclusive where the public entered the landowner's property to picnic and fish in the area).

Because the Tools could not prove exclusive possession of the south twenty feet, we agree with the district court that the Tools did not prove their claim of adverse possession with regard to that area. We find it unnecessary to address the remaining elements of adverse possession with regard to the south twenty feet of the triangle.

III. Boundary by Acquiescence.

The Tools also contend the court erred in finding they did not establish title by acquiescence to the south twenty feet of the triangle. We review this issue de novo. *Fencil*, 620 N.W.2d at 811 (action tried in equity is reviewed de novo).

The Nolins argue the theory of acquiescence is inapplicable in this case because the Tools and Nolins are not adjoining landowners. We agree with the

Nolins. Our supreme court has interpreted the theory of acquiescence under chapter 650 (2007) to include a requirement that the boundary line be established between “two adjoining landowners or their predecessors in title” *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 806 (Iowa 1994). Here, although the Nolins and Tools are adjoining landowners of property to the east of the disputed property, the Nolins do not own land immediately adjacent to the south twenty feet of the triangle. Nor do the Nolins own land adjacent to any part of the forty acres that has been subject to prior suits between these parties. We find no error in the district court’s conclusion that the Tools had not proved title by acquiescence to the south twenty feet.

IV. Remaining Claims.

The Tools raise further claims on appeal with regard to the statute of limitations, clean hands, and slander of title. We have thoroughly reviewed the record, the briefs of the parties, and the ruling of the district court and we find these issues to be without merit. We have already addressed the Nolins’ claim on cross appeal in our discussion above with regard to adverse possession.

V. Conclusion.

Having considered the issues raised on appeal and cross-appeal, we affirm.

AFFIRMED.