

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1566

September Term, 2016

LINDA WINTER

v.

RENE GONZALEZ, ET AL.

Wright,
Shaw Geter,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: September 20, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

This appeal arises from an order of the Circuit Court for Montgomery County vesting title of a portion of a fenced-in tract of land that was once vacant (“the vacant land”) to appellees, Rene Gonzales and Sandra Gonzales (“the Gonzalezes”), by adverse possession against appellant, Linda Winter (“Winter”). On March 23, 2016, trial commenced. The Gonzalezes claimed that they obtained title by adverse possession after satisfying all the elements of adverse possession for the statutory twenty-year period. Winter challenged the Gonzalezes’ claim that they acquired title through adverse possession. Winter further asserted that she was the owner of the vacant land adjacent to her property, arguing that the land had been included in the deed through her predecessors, and that the deed she created proved her ownership interest in the vacant land.

On appeal, Winter asks this Court to consider whether the circuit court erred in determining that she lacked the ownership interest in the property at issue when the court entered a judgment quieting title in favor of the Gonzalezes.¹ We answer in the negative and affirm the court’s decision for the reasons explained below.

FACTS

Background of the Adverse Possession Claim

¹ Winter presented her question as follows:

Whether the Circuit Court erred in determining that Appellant lacked an ownership interest in the property at issue, and thus entered a judgment quieting title in favor of Appellees, when the Circuit Court ignored or misconstrued competent evidence that Appellant’s predecessor-in-title had obtained the property through adverse possession and subsequently conveyed that interest to Appellant.

On October 6, 1983, the Gonzalezes purchased a home located on Lot 12 in Block R. in the “Homewood” subdivision. Immediately behind their lot was a strip of land that was thirty feet wide that appeared to be vacant. In early 1994, the Gonzalezes cleaned up a portion of the vacant land and fenced in that portion of the vacant land for the express purpose of seeking to acquire title through adverse possession. For the next twenty years, the Gonzalezes treated the fenced-in vacant land as their own.

The last recorded owner of the property was Charles S. Muir. Muir acquired the vacant land from Maggie Burgdorff by a deed dated November 12, 1919, and recorded November 15, 1919. Neither Muir, nor any subsequent purchaser, conveyed the vacant land through conveyance or deed of record.

On October 2, 1998, approximately four years after the Gonzalezes fenced in a portion of the vacant land, Winter purchased her home on Lot 15 in Block 2. Winter’s deed identified the lot and block, but did not reference the vacant land. During the closing on the purchase, Winter reviewed a house location survey, which showed the Gonzalezes’ fence beyond the rear lot line.

Sometime after moving into her home, Winter complained to the county about the location of a shed that the Gonzalezes constructed on a portion of the vacant land. The county ordered the Gonzalezes to remove the shed. Winter also pulled down a portion of the fence constructed by the Gonzalezes. The Gonzalezes filed suit against Winter for

damaging their fence in Civil No. 265573 (“the First Suit”).² In the First Suit, the Gonzalezes limited their claims to monetary damages and injunctive relief for Winter’s damages to the fence. In that First Suit, the circuit court only awarded nominal damages to the Gonzalezes due to Winter’s damage of the fence. The court also expressly ruled that it “makes no rulings or findings as to the owner of the Vacancy [the vacant land]”

After the circuit court hearing on July 31, 2007, Winter obtained a notarized confirmatory deed executed by Dr. Milton W. Anderson purportedly conveying to Winter his interest in the property including the vacant land. Then on March 28, 1994, Winter reopened the estate of another predecessor in title, Hazel Brining. Despite Winter having no connection with the Brining family, she acted as a successor personal representative to the Hazel Brining estate and executed a quitclaim deed from Brining to Dr. Anderson, purporting to convey the estate’s interest in the vacant land.

After both the new quitclaim and confirmation deed were recorded, Winter advised the Gonzalezes that her deeds transferred ownership of the vacant land to her. The Gonzalezes continued to use the fenced-in portion of the vacant land. They also filed suit to have Winter’s deeds declared null and void in Civil No. 296713V (“the Second Suit”).

² Winter also tore down a portion of the fence belonging to Margret Proctor, contiguous neighbor of Winter and the Gonzalezes. This prompted Ms. Proctor, the Gonzalezes, and another neighbor to file suit against Winter.

On appeal, we ruled, in *Rene Gonzalez, et al., v. Linda Winter*, Case No. 2460, September Term 2008, filed April 6, 2010, that the Gonzalezes did not have standing to challenge Winter's deeds. At that time, this Court found that the Gonzalezes did not have an interest that was sufficient to be heard since they neither owned the property nor made a claim based on adverse possession.

The Present Lawsuit

On May 7, 2015, the Gonzalezes filed a suit in the circuit court seeking to quiet title to a fenced-in land located beyond the rear lot line of their property. Winter filed a motion and counter-claim to quiet title to the vacant land.

During the trial, a surveyor identified the land Winter claimed, and Mr. Gonzales testified describing his and his family's various uses of the land within the vacant land since it was fenced. Winter did not challenge this testimony, rather, she testified that she obtained title to the vacant land by tacking.³ She also testified that the Gonzalezes' possession was not continuous because she pulled down the Gonzalezes' fence and paid real estate taxes on the vacant land. At the conclusion of the trial, the circuit court ruled that the Gonzalezes met their burden of proof to establish adverse possession.

Additional facts will be included as they become relevant to our discussion, below.

DISCUSSION

³ When no single adverse possessor has held the property in question for the statutory period, the court must consider whether successive periods of adverse possession may be tacked together to meet the requisite duration. *Gore v. Hall*, 206 Md. 485, 491 (1955). Tacking will only be permitted when there is a privity of estate between the successive adverse possessor. *Id.* (citations omitted). This issue has not been raised on appeal.

“Because the trial below was a non-jury trial, our standard of review is governed by Maryland Rule 8-131.” *L.W. Wolfe Enters., Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (citing *Boyd v. State*, 22 Md. App. 539 (1974)). Specifically:

this Court “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *Yivo Institute For Jewish Research v. Zaleski*, 386 Md. 654, 653, 874 A.2d 411 (2005).

Moreover, “[u]nder the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case.” *Lemley v. Lemley*, 109 Md. App. 620, 628, 675 A.2d 596 (1996). Our task is limited to deciding whether the circuit court’s factual findings were supported by substantial evidence in the record: “The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court’s determination, it is not clearly erroneous and cannot be disturbed.” *GMC v. Schmitz*, 362 Md. 229, 234, 764 A.2d 838 (2001) (quoting *Ryan v. Thurston*, 276 Md. 390, 392, 347 A.2d 834 (1975)).

Although the factual determinations of the circuit court are afforded significant deference on review, its legal determinations are not. “[T]he clearly erroneous standard for appellate review is [Md. Rule 8-131] section (c). . . does not apply to the trial court’s determination of legal conclusions of law based on findings of fact.” *Ins. Co. of N. Am. V. Miller*, 362 Md. 361, 372, 765 A.2d 587 (2001) Instead, “. . . where the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusion are ‘legally correct’ under a *de novo* standard of review.” *Walter v. Gunter*, 386, 392, 788 A.2d 609 (2002).

Id. at 343-44.

In Maryland, adverse possession allows a claimant to obtain a valid title to property based on continuous, uninterrupted possessory acts for twenty years. *USA*

Cartage Leasing, LLC v. Baer, 202 Md. App. 138, 200 (2011), *aff'd*, 429 Md. 199 (2012). The adverse claimant must prove that their possession of the land has been “actual, open, notorious, exclusive, hostile, under claim of title of ownership, and continuous or uninterrupted” for the required twenty-year period. *Senez v. Collins*, 182 Md. App. 300, 323-24 (2008) (citing *White v. Pines Cmty. Improvement Ass’n., Inc.*, 403 Md. 13, 36 (2008)). The Court analyzes these categories based on the adverse claimant’s “objective manifestation” of adverse use rather than his or her subjective intent to claim the land. *Id.* at 324 (citation omitted).

Winter avers that the circuit court erred in not determining over whom the Gonzalezes were asserting adverse possession. Winter contends that the court erroneously concluded that her confirmatory and quitclaim deeds were not evidence of her predecessor’s interest in conveying her interest in the vacant land. Finally, Winter argues that the circuit court erred when it disregarded evidence she presented as to Maryland State tax assessments.

I. Actual, Open and Notorious

The terms actual, open, notorious, and exclusive collapse into a requirement of actual use. *Senez*, 182 Md. App. at 323-24. An act that makes possession actual often makes it visible and notorious. *Bishop v. Stackus*, 206 Md. 493, 498 (1955). The open and notorious elements ensure that the title owner has constructive notice that his or her property may be adversely possessed. *Senez*, 182 Md. App. at 325.

The possessory acts sufficient to show “actual” use are dependent on the type, character, and location of the land. *Blickenstaff v. Bromley*, 243 Md. 164, 171 (1966).

Consequently, the Court must engage in a fact-intensive inquiry to determine actual use. *Senez*, 182 Md. App. at 325. The standard to be applied to any tract of land is whether the possession comports with ordinary management of similar lands by their owners. *Mauck v. Bailey*, 247 Md. 434, 441 (1967) (citation omitted). “It is sufficient if the acts of ownership are of such a character as to openly and publicly indicate an assumed control or use such as is consistent with the character of the premises in question.” *Id.* (citation omitted). In particular, “dominion over land may be sufficient to charge the record owner with knowledge that the land is adversely possessed.” *Senez*, 182 Md. App. at 325 (citation omitted).

During the trial, the Gonzalezes established their actual, open, and notorious use of the vacant land. The Gonzalezes’ actual use of the property predates Winter’s purchase of her property. The Gonzalezes cleaned up and fenced in the vacant land to address the accumulation of trash, weeds, and other materials in the vacant land. The Gonzalezes treated the fenced-in portion of the vacant land as their own and as their entire backyard. Enclosing the property with a fence demonstrated the Gonzalezes’ intent to exercise dominion over the property, and the fence put the world on notice of the Gonzalezes’ intent to exercise dominion over the property.

Winter was well aware of the fence when she purchased the property, and she admitted during trial that a surveyor informed her of the fence. Winter purchased the property before attempting to resolve any potential adverse possession claims. Winter further conceded at trial that nothing she saw in her settlement documents suggested that she was purchasing the land beyond the fence. It was only after Winter purchased and

moved into the property, four years after the Gonzalezes erected their fence, that she started making claims that she owned the fenced-in portion of the vacant land. Although in October 2014, Winter damaged the Gonzalezes' fence, they never abandoned the property and continued to exercise exclusive control over the fenced-in portion of the vacant land.

Winter asks this Court to reverse the circuit court's ruling as to the vacant land because the trial court failed to accept her counterclaim, which she characterizes as a threshold inquiry to determine against whom the Gonzalezes were asserting their adverse possession claim. Winter relies on *Jenkins v. City of College Park*, 379 Md. 142 (2003), arguing that there must be a threshold inquiry of what, if any, interest Winter has in the vacant land. Her reliance is misplaced. In *Jenkins*, the plaintiff seeking to quiet title did not include the City of College Park ("City") as a defendant, even though the City had recorded a quitclaim deed to the disputed land. Whereas in *Jenkins*, it was necessary to determine whether a pre-suit title examination would have disclosed the City's interest, which would justify a motion to consolidate the two cases, here, Winter was named as a defendant from the outset of the litigation.

In fact, the trial court expressly stated:

[d]efendant does not have an ownership interest in the vacant land. The Residential Contract of Sale and Deed conveying the property from Dr. Andrews to the Defendant, and all other recorded deeds on the property since Mr. Muir's recorded ownership, described the property as Lot 15 Lot 15 does not include the vacant land that the Plaintiffs fenced-in in 1994.

Because Winter has no property interest in the vacant land, the Gonzalezes were not required to list Winter as a named defendant.

II. Exclusive

Exclusive possession means that the claimant possessed the land as his or her own. *Orfanos Contractors, Inc. v. Schaefer*, 85 Md. App. 123, 130 (1990). The exclusivity element requires the adverse claimant to behave as if the land was his or hers and not another's. *Senex*, 182 Md. App. at 325. The adverse possessor “must show an exclusive dominion over the land and an appropriation of it” to his or her own use and benefit. *Blickenstaff*, 243 Md. at 173 (citation omitted). The adverse claimant's permitting use by another does not defeat his or her ability to satisfy the element of exclusivity. *Bratton v. Hitchens*, 43 Md. App. 348, 358 (1979). Possessory acts consistent with ownership of the land are sufficient to satisfy the notice and exclusivity elements. *Peters v. Staubitz*, 64 Md. App. 639, 645 (1985).

The Gonzalezes behaved as if the vacant land was their own and not Winter's or any former owner of the property. Since the Gonzalezes fenced in the property in 1994, they have exercised exclusive dominion over the vacant land for their own use and benefit. At trial, the Gonzalezes testified to utilizing the property to the exclusion of all other neighbors, and in a manner inconsistent with another party having superior ownership rights in the vacant land.

Winter avers that she repeatedly attempted to interrupt the Gonzalezes' occupation of the vacant land for the purposes of adverse possession by removing part of the fence and sending the Gonzalezes a demand letter to vacate. Neither Winter's demand letter, nor her periodic trespasses, disrupted the Gonzalezes' exclusive use of the property.

The mere act of going upon the land is not enough. *The owner must assert his claim to the land or perform some act that would reinstate him in possession, before he can regain what he has lost.* The conduct claimed by an owner to work an interruption of adverse possession must be such as would put an ordinary prudent person on notice that he actually has been ousted. Not every act by the owner on the land interrupts actual adverse possession.

Senez, 182 Md. App. at 335 (emphasis added and citation omitted).

It is only the true owner of a property who can oust a person in adverse possession of property. At trial, the circuit court found that Winter was not the true owner of the vacant land, regardless of her attempts to file a fraudulent deed. The factual finding was not clearly erroneous and the court’s legal conclusion was legally correct. Therefore, since Winter never established that she was the true owner of the property, her acts to disrupt the Gonzalezes’ exclusive domain of the vacant land did not disrupt their adverse possession.

III. Hostile

The adverse claimant must show that the property was occupied “adversely” or in a hostile way. *Senez*, 182 Md. App. at 339. The claimant can prove this element either by claiming adverse possession under “color of title” or under “claim of right.” Md. Code (1974, 2010 Repl. Vol.), Real Property Article § 14-108(a). The hostility required to make occupancy adverse “does not necessarily import enmity or ill will.” *Hungerford v. Hungerford*, 234 Md. 338, 340 (1964) (citation omitted). Rather, the term “hostile” with respect to adverse possession means “without license or permission” and “unaccompanied by any recognition of . . . the real owner’s right to the land.” *Senez*, 182 Md. App. at 339-40 (citation omitted). The type of recognition of rights that destroys

hostility is not mere acknowledgement or awareness that another claim to the title exists, but rather acceptance that another has a valid right to the property, and that the occupant possesses subordinately to that right. *Blickenstaff*, 243 Md. at 174. When sufficient acts of possession are showing actual, open, notorious, and exclusive use, then hostility is presumed. *Banks v. Pusey*, 393 Md. 688, 699 (2006). Where, however, the adverse claimant recognizes another's right to the land, hostility is negated, and the claimant "possesses subordinately to that right." *Yourik v. Mallonee*, 174 Md. App. 415, 429 (2007) (citation and emphasis omitted).

The Gonzalezes acted under "claim of right" to the fenced-in portion of the vacant land. Their occupancy relied solely on their intention to hold the land as owners to the exclusion of everyone else. The circuit court concluded that the Gonzalezes held the land "adversely" by removing the debris, maintaining the land, erecting a fence, building a shed, and posting a "no trespassing sign." We see no error in this finding. The Gonzalezes asked no one for permission to maintain exclusive possession of the vacant land, as it appeared as if no one owned the property. Even when Winter destroyed a portion of the Gonzalezes' fence and took down the "no trespassing" sign the Gonzalezes affixed to the fence, they never subordinated their right to possess the property to Winter.

Further, the Gonzalezes never recognized anyone else as having superior title to the property to the vacant land, including Winter. The long litigation history between the two parties supports the circuit court's ruling. In the First Suit, the Gonzalezes sued Winter for damaging a fence and sought a declaratory judgment stating that they had a legally cognizable interest in the vacant land. In the Second Suit, again, the Gonzalezes

asked the court for a declaratory judgement. In both lawsuits, the court declined to vest interest in the property to the Gonzalezes, because they had not maintained control over the property for the twenty years the statute requires for adverse possession. Both rulings confirm that the Gonzalezes held the property in hostility to the true owner (whoever that may be, if anyone) and were claiming the property under a “claim of right.”

During the trial, Winter alleged that she had superior title to the vacant land. Her claim relied on a quitclaim deed from Dr. Anderson, the previous owner and grantor of the property, signed on July 31, 2007, stating that he had conveyed his interest in the property to Winter. On March 28, 2008, Winter acted as a successor personal representative of the Hazel Brining estate and executed a confirmatory deed stating that the vacant land was conveyed along with the rest of the Brining’s real property to Dr. Anderson on March 28, 1994.

The circuit court noted that the recorded deeds from Brining to Dr. Anderson and from Dr. Anderson to Winter make no mention of the vacant land. Further, we find no error in the court’s ruling that Winter cannot use a quitclaim deed to assert superior title to the vacant land, because the land was not a part of the deed obtained from Dr. Anderson, or any other person since it was conveyed from Muir.

Winter avers that the circuit court erred in not allowing her to use her quitclaim and confirmatory deeds against the Gonzalezes. Winter claims that the court incorrectly relied on *Wanex v. Hurst*, 188 Md. 520, 523 (1947). In *Wanex*, the Court of Appeals noted that “[r]ecitals are evidence against the parties to the deed and their privies, but not against strangers . . . recitals in a deed are mere hearsay and inadmissible in evidence as

against a third person who claims by a paramount title.” 188 Md. at 523-24 (citations omitted). Winter argues that her quitclaim and confirmatory deeds were not being used as evidence against outside parties as hearsay evidence, but as direct evidence of the conveyance from the Brining estate to Dr. Anderson, and from Dr. Anderson to Winter. If the deeds are not being used to prove the truth of the matter asserted, which in this case is the transfer of ownership interest, then it is unclear what relevance, if any, the deeds have in determining ownership of the land.

Winter seeks to rely on a retroactively manipulated transfer of ownership chain that was self-created to take possession of the vacant land. The two deeds alone are insufficient. During trial, Winter elected not to present any witnesses to testify about her predecessor’s purported use of the land. In addition, the original deeds made no mention of the vacant land. Consequently, the circuit court did not err when it failed to credit her testimony about both the quitclaim deed and the confirmation deed.

IV. Continuous

Sufficient acts of possession are established once the claimant establishes that those acts continued, uninterrupted for the statutory twenty-year period. *Hillsmere Shores Improvement Ass’n, Inc. v. Singleton*, 182 Md. App. 667, 691 (2008). Continuity is destroyed if any of the elements are interrupted before the twenty-year period has been completed. *See Blickenstaff*, 243 Md. at 174. Continuity is based on the character, locality, and use of the land. *See Bratton*, 43 Md. App. at 361.

We find no clear error in the circuit court’s conclusion that continuity over the statutory period was satisfied in 2014. The twenty-year period commenced when the

Gonzalezes fenced in the property in 1994. As discussed above, the Gonzalezes were in actual, open, notorious, exclusive, and hostile possession of the property without interruption for the next twenty years. In both the First Suit and the Second Suit, ownership of the vacant land was not determined, and therefore, did not disrupt the required twenty-year period.

Continuity of the required elements were not broken by Winter's destruction of the fence or removal of the "no trespassing" sign. Winter's interferences amounted to mere trespassing and destruction of property. There was nothing erected on the land nor did Winter attempt to take care of the land. We find no error in ruling that Winter's futile attempts to disrupt the Gonzalezes' physical control of the vacant was not adequate to break the continuity of the Gonzalezes' possession and dominion over the vacant land.

Winter avers that the circuit court erred in not considering, or mentioning, that she was accessed and paid taxes on the vacant land. This fact alone does not disprove the Gonzalezes' contention that they have been in adverse possession of the vacant land for the statutorily required twenty continuous years. "Neither a record claim of title nor payment of taxes, without open, visible acts of possession, will suffice to support title by adverse possession." *E. Washington Ry. Co. v. Brooke*, 244 Md. 287, 295 (1966) (citation omitted). At trial, Winter claimed that she was paying the taxes on the vacant land because of her tax assessment notice. Even if true, this does not negate the

Gonzalezes’ claim that they were in adverse possession of the property, or prove that Winter owned the property.⁴

The circuit court did not err in failing to comment upon what was essentially equivocal evidence.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY COUTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**

⁴At trial, it was unresolved if Winter was truly paying the taxes on the vacant land. The circuit court asked, “Now how do I know this doesn’t apply to the property in dispute?” and “How do I know this covers the disputed—I’m calling it disputed or vacancy.” Ultimately, the judge agreed to allow Winter to submit evidence she believed supported her claim, and the court agreed to review the evidence.