

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

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JUDGMENT



This case came before the Court for trial on the 25th day of October, 2022. Present were Plaintiffs, Bennett Neville Bearden and Rene Bearden, and their counsel, William R. Justice. Also present were Defendants Joshua Hudson Dorough and Melissa Erin (Belflower) Dorough, appearing *pro se*. Based upon the testimony of the parties and witnesses, and the documents and exhibits admitted into evidence, the Court finds that the Bearden's are due to prevail on each of the counts in their complaint.

The complaint contains three counts: Count One and Count Three are ejectment claims, and Count Two alleges a boundary line dispute. All three claims rely upon adverse possession by the Beardens and their predecessors in title. Counts One and Two are based upon adverse possession along a boundary line for a period exceeding ten years; Count Three is based upon adverse possession exceeding the prescriptive period of twenty years.

The parties own adjoining tracts of land, the east boundary of the Bearden's tract being the west boundary of the Dorrough's tract. The parties stipulated that the land and the boundary in question are accurately depicted on a survey plat admitted into evidence as Plaintiffs' Exhibit 3. The parties also stipulated that the Dorroughs' hold record title to the disputed area and that the Bearden's claims are based upon adverse possession. The disputed area is depicted on the survey as a triangular-shaped area



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approximately 0.12 acre in size and lying to the east of the record common boundary line. The boundary claimed by the Beardens' is depicted on the survey as a dashed line running along the east side of the triangular-shaped area, running southeasterly along the top of a slope or bank from a found 1-inch pipe to a found ½-inch rebar on the north right-of-way line of Shelby County Highway 83. The undisputed testimony established that the Dorough's erected a fence along the record boundary line in 2019 and that the fence is within 5 to 7 feet of the Bearden's residence.

There are two types of adverse possession: statutory adverse possession and prescriptive adverse possession. The general rule is that, under either type, the party asserting adverse possession bears the burden of proving by clear and convincing evidence the following elements: actual, exclusive, open, notorious and hostile possession under claim of right continuing for the applicable period. For statutory adverse possession under Ala. Code § 6-5-200, the period is ten years if the claimant holds under color of title, payment of taxes, or inheritance; however, the requirements of statutory adverse possession do not apply to boundary cases. Ala. Code § 6-5-200(c). The period for prescriptive adverse possession is twenty years, except that for a boundary line dispute the period is reduced to ten years. Statutory adverse possession does not apply in this case, and the Bearden's must prove their case by twenty-year prescriptive adverse possession or the ten-year period applicable to boundary line cases.

Prescriptive adverse possession results from the operation of the common law twenty-year rule of repose. That rule presumes that after the passage of twenty years during which a party's possession remains unchallenged, an absolute presumption arises that precludes judicial inquiry in the title so acquired. In taking advantage of this rule of absolute repose, a party is aided in meeting the burden of proof by a presumption. As stated in Fudge v. County Board of Education, 133 So. 2d 38, 42 (Ala. 1961):

In this respect the elements on which the doctrine of prescription is applied differ from those of [statutory] adverse possession. In the first

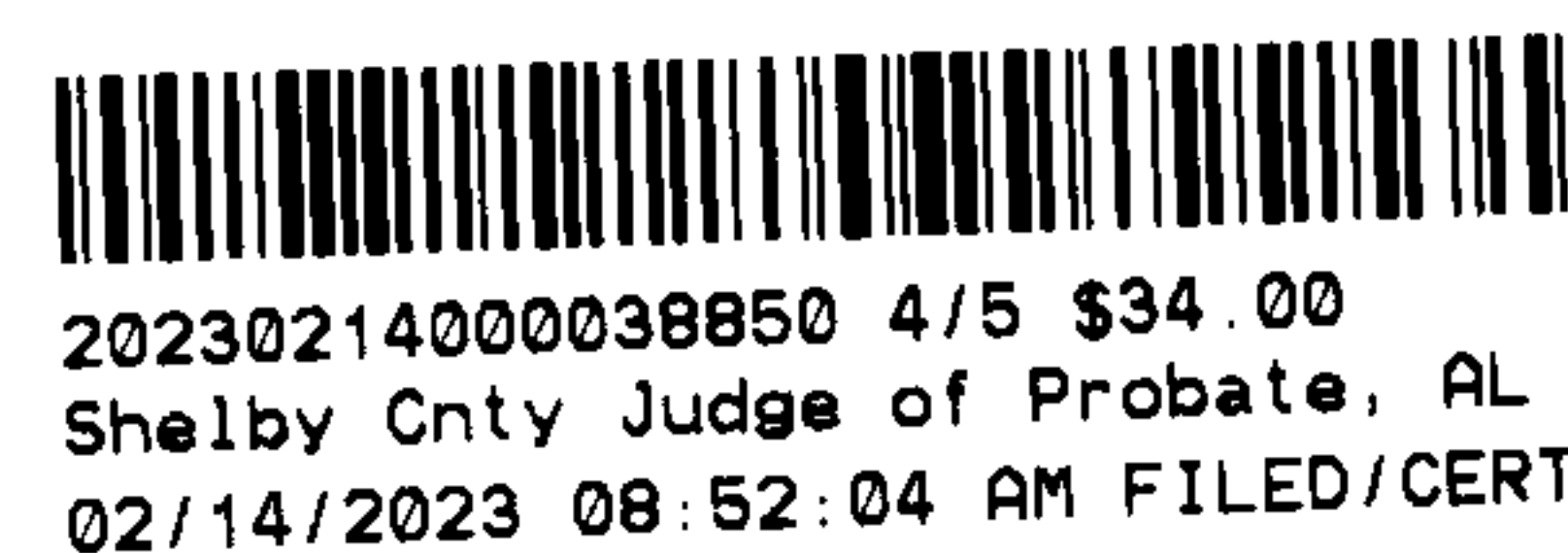


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there must be an individual, continuous possession of user, without the recognition of adverse rights, for a period of 20 years, and upon the establishment of such claim and user, the law presumes the existence of all the necessary elements of adverse possession of title without fuller proof, while under a mere claim of adverse possession through the period prescribed by the statute of limitations no such presumption prevails, and all elements must be established by him who asserts such possession or title.

This presumption is the accepted rule, as acknowledged in many other cases, including Stearnes v. Woodall, 117 So. 643 (Ala. 1928); State v. Broos, 60 So. 2d 843 (Ala. 1952); and Fitts v. Alexander, 170 So. 2d 808 (Ala. 1965). To satisfy their evidentiary burden for prescriptive adverse possession, the Bearden's needed to prove only that they or their predecessors in title individually possessed the disputed property for a continuous period of twenty years without recognition of adverse rights of others; all the other elements of adverse possession would then be presumptively proven.

Two other aspects of the proof required in this case must be considered, and they are closely related to each other. First, proof of adverse possession is equivalent to title obtained by a deed, and once such a title is acquired it can be divested only by conveying it to someone else or by someone else adversely possessing it. Once he has acquired title by adverse possession, the claimant need not continue to adversely possess the property. Absent a conveyance, the burden then shifts to the other party to prove the elements of adverse possession by himself by clear and convincing evidence. Second, title acquired by adverse possession may be conveyed to others, even though the deed does not include a description of the adversely possessed property, by placing the grantee in possession of the disputed property. Privity is thus established supporting transfer of the disputed strip unless there is evidence that the grantor did not intend to convey the disputed strip. "We perceive no logical or practical reason why the application of the privity of possession rule permitting tacking should be dependent upon whether the claimant's immediate grantor possessed the disputed property for more or less than the statutory period." Watson v. Price, 356 So. 2d 625, 627 (Ala.



1978).

In the present case, the evidence of the elements of adverse possession presented by the Bearden's is clear and convincing. By 1970 Mr. Bearden's parents had acquired title up to the disputed boundary by adverse possession for ten years, and by 1980 they had acquired title up to the disputed boundary by prescriptive adverse possession for twenty years. In 2002, they conveyed their residence property to the Bearden's, and although the deed description did not include the disputed strip, they put the Bearden's in possession of this strip and the Bearden's continued to use it as part of their yard.

The Bearden's having proven title to the disputed strip by adverse possession under both the ten-year period for boundary disputes and the twenty-year prescriptive period, the burden shifted to the Dorrough's to prove a conveyance or adverse possession of the disputed area themselves. There is no evidence that the Bearden's or Mr. Bearden's parents conveyed the disputed strip to anyone else. And the Dorrough's failed to prove by clear and convincing evidence that they or their predecessors in title had been in exclusive and continuous possession of the disputed strip for a period exceeding ten years. IT IS, THEREFORE, ADJUDGED AS FOLLOWS:

A. The Bearden's are the owners in fee simple of the following tract of land in Shelby County, Alabama (the "Property"):

Commence at the Northeast corner of Section 16, Township 19 South, Range 2 East, and run West along the North line of said section a distance of 261.4 feet to the point of beginning; thence turn left 89 deg. 58 min. 06 sec. and run South a distance of 219 feet, more or less, to the North R/W line of Shelby County Highway #83; then turn left 95 deg. 02 min. 06 sec. and run East a distance of 51.21 feet; thence turn left 99 deg. 05 min. 39 sec. and run Northwesterly a distance of 208.96 feet to the point of beginning, by virtue of adverse possession exceeding a period of twenty years.



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B. The Bearden's are awarded possession of the Property against the Dorrough's.

C. The true location of the eastern boundary of the Bearden's land adjoining and in common with the Dorrough's land is found to be the following:

Commence at the Northeast corner of Section 16, Township 19 South, Range 2 East, and run due West along the North line of said section a distance of 261.4 feet; thence turn left 89 deg. 58 min. 06 sec. and run South a distance of 219 feet, more or less, to the North R/W line of Shelby County Highway #83; then turn left 95 deg. 02 min. 06 sec. and run East a distance of 51.21 feet to an existing ½-inch rebar and the point of beginning of the common boundary line; thence turn left 99 deg. 05 min. 39 sec. and run Northwesterly and along the top of a bank or slope a distance of 208.96 feet to an existing 1-inch pipe and the point of ending of the common boundary line.

D. The Dorrough's are ordered to remove the fence they erected in 2019 along the common line of the legal descriptions contained in the respective deeds of the parties and to restore the ground once the fence is removed.

E. The Bearden's are not awarded mesne profits or damages for use and occupation. However, they may assert any right they have under Ala. Code § 6-6-293 for the rent of the premises which accrues after judgment and before the delivery of possession.

F. Costs of this action are taxed against the Dorrough's.

DONE this 28th day of November, 2022.

/s/ LARA M ALVIS
CIRCUIT JUDGE

2/14/23

Mary H. Harris