

Franklin County Legal Journal  
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Marville v. Reihart

ESTATE OF DEBORA L. MARVILLE, BY ASHLEE M. MARVILLE, EXECUTOR, Plaintiff,  
v. JULIE A. REIHART, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action — Law, No. 2009–3266

*Boundaries; Evidence, Ascertainment and Establishment; Recognition and Acquiescence. Adverse Possession; Nature and Requisites; Extension of Possession to Boundaries; Actual Possession.*

1. Under the doctrine of consentable boundaries, the existence of a property line may be established in two (2) ways: by dispute and compromise, or by recognition and acquiescence.
2. Under the first method a boundary may be established by showing the property line has been agreed to following a dispute and subsequent compromise in satisfaction thereof.
3. A boundary may also be proven by acquiescence, a doctrine with roots in adverse possession theory, distinguishable only in that possession is the result of a mistake regarding the location of boundary lines.
4. To find a consentable line by acquiescence the Court must determine each party has laid claim to the land on his side of the line and that the claimant's occupation of land on their respective side has been continuous for a period of twenty-one (21) years.
5. Acquiescence involves passive conduct on the part of a landowner consisting of failure on his part to assert his paramount rights or interests against the hostile claims of the adverse user.
6. The elements of adverse possession must be present to prove a boundary by acquiescence: actual, visible, notorious, distinct and hostile possession of the land, continuous for the statutory period.
7. Generally, actual possession means dominion over the property.
8. Exclusive and distinct possession is shown by use of the land exclusively by the claimant for themselves, not absolute exclusivity, but rather the type of possession that characterizes an owner's use accompanied by the intent to hold the property for oneself.
9. No evidence of a dispute regarding the boundary line between the parties was adduced, nor any evidence of a compromise in satisfaction. Additionally, the sole act of mowing the grass up to an ever-changing tree line, coupled with the placement of a pool pump and drainage pipe mere inches over the record boundary, did not sufficiently demonstrate possession.

Appearances:

Donald L. Kornfield, Esq., *Counsel for Plaintiff*

Karl E. Rominger, Esq., *Counsel for Defendant*

OPINION

Herman, P.J., July 12, 2011

## Introduction

Two neighbors with property in Antrim Township, Franklin County, have become embroiled in a dispute regarding the proper boundary between their parcels which began after a telephone call from Julie A. Reihart (hereinafter Reihart) to Debra L. Marville (hereinafter Marville or Decedent) regarding trees situated within the record boundary of the latter. Following a bench trial, the Court determined first that no consentable boundary had been established and further that no boundary had been set by acquiescence. Given the long-standing, visible encroachment of the Defendant's home on the record property of the Plaintiff the Court granted a prescriptive easement for the portion of the roof and gutter of Defendant's residence overhanging the Plaintiff's land for so long as the home remains unaltered in its current position.

At trial and in her Post-Trial Motion the Defendant takes issue with the Court's determination a line of trees between the two properties did not create a "consent-able" boundary. Requesting the Court reconsider, the Defendant asks the Court to find the doctrine of consentable boundaries applies and allow her gutter pipe and pool pump to remain, granting her land currently within the record title of the Plaintiff.

## Statement of the Case

The adjoining Marville and Reihart properties are situated along Statler Road in Greencastle, Pennsylvania. The Marville property is described as Lot 11 and Lot 12 in a Deed dated July 23, 1974 from Wayne R. Marville to Wayne R. Marville and Debora L. Marville recorded in Franklin County Deed Book Volume 702, Page 1039. Following her husband's death in December of 2006, Debora Marville became sole owner of the property. Following Debora Marville's death during the pendency of the above captioned matter, her daughter, Ashlee Marville, became substitute Plaintiff as Executor of the estate. Notice of death and substitution of successor was filed June 22, 2010. The home is currently occupied by Shane Marville, the Decedent's son.

The Reihart property is described as Lot 10 in a Boundary Line Survey Plat completed April 7, 2009, by Fredrick Seibert & Associates, Inc., Lands of Debora L. Marville. Prior to Reihart the property was owned by James Wise from 1985 until Defendant and her husband purchased the parcel in 1990. In the area of the boundary between Reihart and Marville stand several trees, the lawn of the Reihart residence extending toward the trees, thinning until it disappears near their trunks. During their tenancy on the property both Wise and Reihart mowed the lawn of their residence to the point it fades near the base of the trees.

In January of 2009 a telephone call from Reihart to Marville impelled each woman to seek the assistance of counsel. Reihart testified the call was regarding the trees, the Plaintiff asserting the Defendant stated they would be cut down. The survey followed in April the results of which were forwarded to the Defendant by counsel for the Plaintiff with a request Reihart refrain from removing the vegetation from the Marville property. Plaintiff's counsel further requested the removal of a pool pump and a drainage pipe. Reihart's counsel responded in late June 2009 by asserting the tree line as an agreed upon boundary. The Complaint was filed July 28, 2009 asking the Court to quiet title in the Plaintiff as per the Seibert & Associates Boundary Line Survey Plat, and requesting ejectment of the drainage pipe and the pool pump.

Following disposition of preliminary objections, filing of an Answer and New Matter, the reply thereto, and the customary discovery process, a bench trial was held on February 15, 2011. The Court, after taking a recess, explicated the basis of its disposition from the bench and subsequently entered a Preliminary Decree February 22, 2011. On March 2, 2011 the Defendant filed a Post-Trial Motion submitting a brief thereupon on March 28, 2011.<sup>[1]</sup> Plaintiff responded to the motion and filed a brief in opposition on April 7, 2011. The Motion raises a single objection: that the Court erred in determining the doctrine of consentable boundaries does not instantly apply. Claiming the doctrine is satisfied under the facts the Defendant asks the Court to find the trees which dot the border of the Reihart-Marville lands, but sit within the record boundary of Marville, create a consentable boundary. If indeed the trees form the dividing line between the property of Plaintiff and Defendant then the gutter pipe and pool pump may remain in their current location. Plaintiff replies that the Court did not err and that the Defendants failed to satisfy their burden to show a boundary was created under any form of the consentable boundaries doctrine. The Court having reviewed its notes of testimony, the filings, and the applicable law, is now prepared to dispose of the Defendant's Post-Trial Motion with this Opinion and Final Decree.

## Discussion

Under the doctrine of consentable boundaries, the existence of a property line may be established in two (2) ways: by dispute and compromise, or by recognition and acquiescence. See Moore v. Moore, 921 A.2d 1, 4-5 (Pa. Super. Ct. 2007). Under the first method a boundary may be established by a showing the property line has been agreed to following a dispute and subsequent compromise in satisfaction thereof. See Niles v. Fall Creek Hunting Club, Inc., 545 A.2d 926 (Pa. Super. Ct. 1988) (*en banc*). Instantly, there was no evidence of a dispute regarding the boundary between

the property of Reihart and Marville. The predecessor in title to Reihart, James Wise, similarly did not testify to any dispute with the Marvilles regarding the boundary, and further, did not assert any compromise was reached in satisfaction of a dispute. Rather Wise testified to recognizing the boundary markers provided by Plaintiff's surveyor and to being unsure how those markers corresponded to the tree line. Wise simply testified to mowing the lawn as far toward the trees as the grass reached, a line which has changed over the years, without ever discussing the practice with the Marvilles. The evidence simply did not satisfy the first method of proving a consentable line.

As Defendant points out, there is a second method by which a boundary may be proven which has long been loosely described by Pennsylvania courts as involving "consent." See Zeglin v. Gahagen, 812 A.2d 558, 561 n.2 (Pa. 2002). As explained in Zeglin, a boundary may also be proven by acquiescence, a doctrine with roots in adverse possession theory. See id. Indeed, this paradigm of "consentable boundaries" is often distinguishable from adverse possession only in that possession is the result of a mistake regarding the location of boundary lines. See id. at 562. To find a consentable line by acquiescence the Court must determine each party has laid claim to the land on his side of the line and that the claimant's occupation of land on their respective side has been continuous for a period of twenty-one (21) years. See Moore, 921 A.2d at 5. The "acquiescence" involves "passive conduct" on the part of a landowner "consisting of failure on his part to assert his paramount rights or interests against the hostile claims of the adverse user." Zeglin, 812 A.2d at 562 n.5. If a consentable line is thusly established the land behind the line "becomes the property of each neighbor regardless of what the deed specifies" so that "in essence each neighbor gains marketable title to that land behind the line." Id.

Finding of a consentable line by acquiescence is permissible only where it is shown a party has laid claim to the land of their side of an imagined property line. See id. at 562. Thus, the elements<sup>[2]</sup> of adverse possession must be present : actual, visible, notorious, distinct and hostile possession of the land, continuous for the statutory period. See id. 562 n.5. That a landowner acquiesced in their neighbor's claim based upon mistake or that the neighbor's hostile possession was based on honest error is irrelevant. See id. As most jurisdictions Pennsylvania deems the animus of the possessor irrelevant, hostility being shown by use or occupancy of land which is against the interests of the title owner. See id. at n.5, 6.

Instantly, the Court determined that hostile, notorious, actual possession of the land to the asserted line was simply not present during either the ownership of Wise or Reihart. The Court did consider the actions of Wise, as in a determination regarding adverse possession, or boundary by acquiescence, a current claimant may utilize the tenancy of his predecessor to demonstrate the requisite twenty-one (21) year period through "tacking."<sup>[3]</sup> See Brennan v. Manchester Crossings Inc., 708 A.2d 815, 818-19 (Pa. Super. Ct. 1998). Clearly, if the actions of Wise and Reihart were sufficient to satisfy the elements of adverse possession, such acts would have been done for the requisite period of twenty-one (21) years.

The Court found the mowing of the grass as far toward the trees as it grew was indeed continuous<sup>[4]</sup> during the ownership of Wise and Reihart as both testified they cut the lawn and further that this mowing was visible. The mowing was an action that could be viewed by their neighbor. What was not proven was that the sole act of mowing the lawn of the property as far toward the trees as it extended sufficiently demonstrated actual and hostile possession of the land. Nor was the act of laying the drainage pipe mere inches onto the Plaintiff's land, or the placement of the pool pump extending seven inches onto the property, sufficiently notorious to provide notice of the Defendant's claim to the lands up to the trees.

Actual possession is a fact-specific determination related to the character of the land being claimed. See Recreation Land Corp. v. Hartzfeld, 947 A.2d 771, 774 (Pa. Super. Ct. 2008). Generally, "actual" possession means "dominion over the property." Id. Exclusive and distinct possession is shown by use of the land exclusively by the claimant for themselves, not absolute exclusivity, but rather the type of possession that characterizes an owner's use accompanied by the intent to hold the property for oneself. See id. at 775; Brennan v. Manchester Crossings Inc., 708 A.2d 815, 818 (Pa. Super. Ct. 1998). The possession must be such that it alerts the record owner of the adverse possessor's ownership claim to the land:

An alleged adverse possessor always claims in derogation of the right of the true owner, admitting that the legal title is in another ... An adverse possessor must intend to hold the land for himself, and that intention must be made manifest by his act ... He must keep his flag flying and present a hostile front to all adverse pretensions.

Flannery v. Stump, 786 A.2d 255, 259 (Pa. Super. Ct. 2001). Notorious possession requires the "claim of ownership ... be evidenced by conduct sufficient to place a reasonable person on notice that his or her land is being held by the claimant as his own." Brennan, 708 A.2d at 818.

The Court's reading of the decisional law in this Commonwealth led to the conclusion that the sole act of mowing the grass up to an ever changing line, coupled with the placement of the pump and pipe did not sufficiently demonstrate possession. For instance, in Klos, the claimants placed top-soil and planted grass on a thirty (30) inch strip of land actually belonging to the adjacent land-owners which they maintained continuously until the inception of the boundary dispute with their neighbors. See Klos v. Molenda, 513 A.2d 490, 491 (Pa. Super. Ct. 1986). The Superior Court found the "use of land for lawn purposes and the continuous maintenance thereof in connection with a residence" was sufficiently notorious to "present a hostile front to any person ... intending to make a conflicting pretension of ownership." See id. at 492. Here, neither Wise nor Reihart planted the lawn but merely mowed it as far as its growth happened to extend to the trees. Nor did Defendant or her predecessor testify to any attempts to maintain the line of the lawn in the same place but merely mowed where grass grew until such vegetation stopped in an ever receding and winding line near the trees. Indeed, the Defendant has admitted the tree line actually has moved toward her property during her tenure of ownership as the grass gave way to bare earth over time. Neither she nor her predecessor took any steps to hold the line, for example, by cutting back the trees.

In Reed, maintenance of "various flowering and non-flowering shrubs" upon an adjacent lot and use of the land for recreational purposes including placing into concrete a pole with a birdhouse attached was dubbed sufficient. Reed v. Wolyniec, 471 A.2d 80, 83 (Pa. Super. Ct. 1983). Instantly, nothing was planted by either Defendant or her predecessor in title. Nor was there an obvious, notorious structure placed upon the Plaintiff's land. The Court simply does not believe that laying a drainage pipe that extends mere inches onto the Plaintiff's land qualifies as an act of dominion over the parcel sufficient to notify Marville her land was being held and claimed by Reihart. Similarly, the placement of the pool pump, again mere inches over the record boundary, was not an act of dominion and possession of the land to the tree line.

#### Conclusion

The Defendant having failed to demonstrate actual possession of the land to the tree line that is within the record title of the Plaintiff, the Court cannot but find that Plaintiff has proven her entitlement to have title to the lands quieted in her favor. As the land sits within the record boundary of the Plaintiff and no boundary by acquiescence or consentable line has been proven, the Defendant has no right, title or interest whatever in the lands other than the easement related to her roof and gutter.

#### FINAL DECREE

July 12, 2011, upon consideration of the Defendant's Post-Trial Motions and Plaintiff's Answer thereto as well as written argument, the Preliminary Decree dated February 22, 2011, is hereby confirmed, and the Court enters the Final Decree as follows:

1. Judgment is entered in favor of the Plaintiff and against the Defendant.
2. The title of Plaintiff and her successors and assigns in real estate of the Plaintiff described in Franklin County Deed Book Volume 702, Page 1039 is quieted in her favor, and Defendant has no right, title or interest whatsoever, except as set forth in paragraph 2 hereof, in the said real estate.
3. Defendant and her successors and assigns shall own a permanent easement for that portion of the roof and gutter of the residence of Defendant on real estate described in a deed recorded in Franklin County Deed Book Volume 3413, Page 73, which overhangs the real estate of Plaintiff, said overhang being shown on the survey plan of Frederick Seibert & Associates attached hereto, and which easement shall be extinguished in the event the residence is altered in such a manner that the roof and gutter no longer overhang the real estate of Plaintiff.
4. The existing gutter pipe and pool pump of Defendant are hereby ordered ejected from the real estate of Plaintiff and shall be removed within thirty (30) days of receipt of this Order.
5. Each party shall bear their own costs.

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[1] The Court notes with disapproval that Defendant was required by Order dated March 8, 2011, to file a brief in support of her Post-Trial Motion on or before March 27, 2011.

[2] In Schimpt v. Allaman, the Superior Court stated that the doctrine of consentable line, and a claim of the land on each side of a recognized line, does not require exclusive possession. See Schimpt v. Allaman, 659 A.2d 1032, 1034 (Pa. Super.

Ct. 1995). Rather, the doctrine focuses on "dominion over the land." See id.

[3] Privity of possession, but not privity of estate, is a necessary prerequisite to enjoy the benefits of the temporal period of possession enjoyed by a predecessor in interest. Thus, tacking is permitted "upon sufficient and credible proof of delivery of possession of land not within (but contiguous to) property described by deed of conveyance, which was previously claimed and occupied by the grantor and is taken by the grantee as successor in such interest." Zeglin, 812 A.2d at 566.

[4] Continuous does not require a person remain continuously on a parcel of land, but rather allows for interruptions which are not unreasonable in duration. See Brennan, 708 A.2d at 818-19.