JAMES M. LANDIS and DONETTA M. LANDIS v. LUTHER H. WILT, deceased, His Successors, Heirs, and Assigns v. ORCHARD GLEN CONDOMINIUM ASSOC. INC., *Intervenor*

Action to Quiet Title – Adverse Possession - Abandonment

1. This matter involved a portion of a strip of land running behind the back yard of and adjoining the land of Plaintiffs as set forth on a subdivision plan in East Manchester Township.
2. After trial, the Court found that Plaintiffs' title reverts to the center of the street including the portion of land in dispute pursuant to the doctrine of abandonment.
3. The Court therefore found in favor of the Plaintiffs and granted the requested relief.

IN THE COURT OF COMMON PLEAS YORK COUNTY PENNSYLVANIA

JAMES M. LANDIS and	:
DONETTA M. LANDIS, husband and wife	: 2016-SU-002182-93
Plaintiffs	:
	:
v.	: CIVIL DIVISION
	:
LUTHER H. WILT, deceased,	:
His Successors, Heirs, and Assigns,	:
Defendants	:
	:
v.	:

	:
ORCHARD GLEN CONDOMINIUM ASSOC. INC.,	:
Intervenor	:

Appearances:

For Plaintiffs:	John C. Porter, Esquire
For Defendants:	(No Appearances)
For Intervenors:	Christopher A. Naylor, Esquire

DECISION GRANTING PLAINTIFFS' REQUEST TO QUIET TITLE

AND NOW, this 19th day of April, 2018, the Court has this matter before it on a complaint to quite title to a portion of a strip of land running behind the back yard of and adjoining the land of Plaintiffs as set forth on a subdivision plan in East Manchester Township. We will GRANT the relief requested.

Factual and Procedural History

Plaintiffs are James M. Landis and Donetta M. Landis, husband and wife, who currently reside at 55 Lincoln Place, East Manchester Township, York County, Pennsylvania, 17345. Defendant is Luther H. Wilt, who after a good faith investigation, the Plaintiffs believe to be deceased, and his successors, heirs, and assigns. Intervenor is Orchard Glen Condominium Association, Inc., a

Pennsylvania non-profit corporation with its principal place of business at 3528 Concord Road, York, PA 17402.

Plaintiffs acquired title to their property by virtue of a deed from Helen A. Stonesifer dated November 26, 2012 and recorded December 4, 2012 in the Recorder of Deeds Office in and for York County in Record Book 2204, Page 4201. (Joint Statement of Stipulations #1). Helen A. Stonesifer (along with her husband, both now deceased) acquired title to her property by virtue of a deed from Defendant Luther H. Wilt and Helen Wilt dated October 14, 1966 and recorded October 22, 1966. (Plaintiffs' Exhibit G). However, the Stonesifers acquired the land abutting the disputed strip in a separate deed dated August 6, 1976. (Plaintiffs' Exhibit H). That fact is not particularly significant, but as we will see, what is significant is that the description mentions Orchard View Drive (the unadopted disputed strip) as a boundary of that lot.

Defendant Wilt, on or about July 7, 1967, submitted revised plans to East Manchester Township for a development to be known as Smith Gardens Development, which was approved that day. (Joint Statement of Stipulations # 6) In that plan, Wilt proposed to extend Orchard View Drive, then and now an existing dedicated road, along the southern boundary of what was to become Plaintiffs' property. Defendant reserved a strip of land 50 feet in width running

parallel to the rear of Plaintiffs' back yard on the strip's northern border. (Joint Statement of Stipulations # 8) The Stonesifers, predecessors in title to Plaintiffs, were the parents of Plaintiff Donetta Landis.

The plans for Smith Gardens were not fully developed, but there is no dispute that Defendant did not open Orchard View Drive as proposed on the submitted plans and also did not dedicate the reserved strip to any federal, state, or municipal agency for use as a street or road. (Joint Statement of Stipulations # 9)

For a period longer than twenty-one years, Helen A. Stonesifer and subsequently the Plaintiffs are alleged to have had continuous, exclusive, visible, notorious, distinct, hostile, and uninterrupted possession of a portion of the strip reserved for Orchard View Drive. Plaintiffs allege that they have maintained, kept, and landscaped this disputed land, planted shrubs, and posted no trespassing signs.

On August 18, 2016, Plaintiffs filed a complaint in an action to quiet title asking the Court for a decree terminating the rights of the Defendant in the property in question and declaring that the title to the property (from the center line of the disputed strip to the Plaintiffs' property line) belongs to Plaintiffs.

On December 13, 2016, Intervenor, a condominium association whose property borders the disputed strip to the south, filed a petition to intervene

in the action to quiet title, which was granted. Intervenor alleged that all or a portion of the property that Plaintiffs sought to quiet title has been used and maintained by Intervenor.

On February 5, 2018, Intervenor filed an answer and new matter to Plaintiff's complaint. On February 7, 2018, we presided over the trial that took place in this matter where we heard testimony and accepted exhibits.

Issues:

Plaintiffs advance two theories upon which they base their request for relief:

1. Adverse possession – Plaintiffs claim the disputed strip of land by adverse possession by "tacking" their ownership onto that of Plaintiff Donetta Landis's parents' ownership;
2. Abandonment of street or road – Plaintiffs claim title at least to the center of the strip based on the fact that the disputed strip of land was never dedicated as a public road or street.

Discussion and Findings of Fact:

Adverse Possession:

Plaintiffs claim the disputed strip of land by adverse possession. An action to quiet title is an appropriate means to claim land by adverse possession. Pa.R.Civ.P. 1061(b)(2). Adverse possession is

> … an extraordinary doctrine which permits one to achieve ownership of another's property by operation of law. Accordingly, the grant of this extraordinary privilege should be based upon clear evidence. *Edmondson v. Dolinich,* 307 Pa.Super. 335, 453 A.2d 611, 614 (1982) ("It is a serious matter indeed to take away another's property. That is why the law imposes such strict requirements of proof on one who claims title by adverse possession."); *Stevenson v. Stein,* 412 Pa. 478, 195 A.2d 268, 270 (1963) (citing cases; "Of course, the burden of proving adverse possession was upon plaintiff by credible, clear and definitive proof.")
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> One who claims title by adverse possession must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land for twenty-one years. *See Baylor v. Soska,* 540 Pa. 435, 658 A.2d 743, 744 (1995); *Beck v. Beck,* 436 Pa.Super. 516, 648 A.2d 341, 343 (1994). Each of these elements must exist; otherwise, the possession will not confer title.

Flannery v. Stump, 786 A.2d 255, 258 (Pa. Super. 2001).

Broadly speaking, "actual possession" of land is dominion over the land, it is not equivalent to occupancy. *Reed v. Wolyniec,* 471 A.2d 80 (Pa.Super. 1983). What constitutes adverse possession depends on the facts of each case, and to a large extent on the character of the premises.

In the present case, there is one additional factor to consider. Plaintiffs' lots, as well as the disputed strip of land, were laid out in an approved subdivision plan. In 2009, we issued a decision in *Brown v.*

Eckman, 2007-SU-2175-Y08, 123 York 39 (2009) which involved the doctrine of "consentable boundaries". We noted that

> [t]he doctrine of "consentable boundaries" is a legal principle long recognized by court decision. While it grew from the same roots as the doctrine of adverse possession, it is a distinct and separate legal principle. Distilled to its original formulation, it stood for the proposition that where there was a dispute regarding a boundary line, and "each side by a party or two parties for more than 21 years, each party claiming the land on his side as his own, gives to each an incontestable right up to the fence, and equally, whether the fence is precisely on the right line or not," the courts would recognize the fence as the common boundary. *Miles v. Pa. Coal Company*, 245 Pa. 94, 91 A. 211 (1914).

We held in that case that the doctrine of "consentable boundaries" could not be applied to a planned residential subdivision because

> Our research, … has not uncovered any Pennsylvania appellate case which applied the doctrine of consentable boundaries in a case in which there was a recorded subdivision plan. In these modern days, subdivision plans are presented to municipalities for approval of such things as minimum lot sizes, minimum road frontage, setback lines, and the like through the authority of the Municipalities Planning Code and local planning and subdivision ordinances.

Id.

While the present case involves adverse possession, as we noted, the two doctrines are close relatives. We hold that the doctrine of

adverse possession is not applicable to properties subject to an approved planned residential subdivision for the same reasons we declined to apply the doctrine of consentable boundaries. Municipal planners, subsequent purchasers, neighbors, and others have a right to rely on the subdivision plans which have gone through the approval process, which have been filed of record, and upon which buyers and sellers and prospective buyers rely to determine lot sizes, boundaries, open spaces, lot coverage, setback lines, storm water management, and all of the other matters municipal planners require and with which developers and property owners must comply. All of that planning would be upset if courts were to begin redrawing subdivision plans because one person or another mowed someone else's lawn or planted shrubs in a common area.

We decline to do so.

Even if the doctrine of adverse possession was applicable in this case, Plaintiffs have not proven the required elements of actual continuous and exclusive possession of the land for the required time, by clear and convincing evidence. Since Plaintiffs acquired the land in 2012 (Joint Statement of Stipulations #1) they must rely on their predecessors in

title to accumulate the required twenty-one years to acquire by adverse possession.

Assuming Plaintiffs can "tack" their possession to their predecessors in title, which is by no means certain,[1] Plaintiffs' claim for adverse possession fails. First, the conspicuous absence of any mention of any portion of the disputed strip of land in the deed into Plaintiffs by their predecessors is evidence that the Stonesifers did not view that land as theirs to give. Further, testimony offered by Plaintiffs themselves indicate that the Stonesifers did not consider their "possession" of the disputed strip as "exclusive".

While Mrs. Landis testified that her father, and later her husband, mowed the grass and maintained upkeep on the disputed land, the father refrained from extending a vegetable garden into the disputed strip. Her parents took no steps to exclude anyone from the disputed strip of land. Plaintiffs themselves erected a fence on the northern border of the disputed land but not in the disputed area, indicating that Plaintiffs themselves did not believe they had "exclusive" possession of any part of the strip. Finally,

[1] See, for instance, *Wolfe v. Porter*, 592 A.2d 716 (Pa.Super. 1991): "Our court has held that acceptance of a deed describing boundary lines confined the premises to the areas within the boundaries, and that such deed did not convey inchoate rights acquired by incomplete adverse possession."

Plaintiffs testified that others regularly used the disputed strip, much to their consternation.

Accordingly, Plaintiffs are unable to produce the "clear evidence" required to take land by adverse possession.

Abandoned Street or Road:

Plaintiffs advance another theory for asserting title over the disputed strip, based upon 36 P.S. §1961. That statute states as follows:

> Any street, lane or alley, laid out by any person or persons in any village or town plot or plan of lots, on lands owned by such person or persons in case the same has not been opened to, or used by, the public for twenty-one years next after the laying out of the same, shall be and have no force and effect and shall not be opened, without the consent of the owner or owners of the land on which the same has been, or shall be, laid out.

That statute has been interpreted as creating a statute of limitations for the acceptance of streets laid out in a plan. "The Act fixed a time limit within which an acceptance by the public must take place. If the offer was not so accepted within twenty-one years after the dedication, the public's right to accept was foreclosed." *Rahn v. Hess*, 378 Pa. 264, 268, 106 A.2d 461, 463 (1954).

Rahn, being the seminal case on this subject, further held that: "It is settled law in Pennsylvania that where the side of a street is called for as a boundary in a deed, the grantee takes title in fee to the center of it, if the grantor

had title to that extent, and did not expressly or by clear implication reserve it:" [Citations omitted.] *Rahn*, Id. at 106 A.2d 464.[2] In this case, Plaintiffs' deed, and more importantly, that of their predecessors, calls the unopened Orchard View Drive (the disputed strip) as a boundary to the property conveyed by deed.

> Since there was no reservation or restriction by the subdivider in the present case, the fee to the center of the street formed an integral part of the estates acquired by his grantees and their successors in title, unless some modification was brought about by the Act of 1889. Statutes are never presumed to make any innovation in the rules and principles of the common law or prior existing law beyond what is expressly declared in their provisions: [Citations omitted.] Neither the title nor the body of the Act in question reveals any intention by the Legislature to change the substantive law in this regard.

Rahn v. Hess, 378 Pa. 264, 270–71, 106 A.2d 461, 464 (1954).

Since twenty-one years has expired since the street was laid out and submitted to the plan, and since the street has not been accepted by the municipality, Plaintiffs' title reverts to the center of the street.

Both the *Rahn* and the *Czarkowski* cases discuss whether there may be *private* interests of adjoining landowners, specifically an implied easement to

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[2] See the thorough legal discussion of the various appellate authorities by the Honorable Terrance Nealon in *Czarkowski v. Jennings*, 34 Pa. D & C. 5th 303; 2013 WL 10571414 (CP Lackawanna County, 2013). While instructive, it is not controlling in this instance since that case discussed the ramifications of an abandoned alley.

their benefit, which would survive an abandonment of a street laid out in a plan. As that issue is not presently before us, we need not decide that issue at this time.

Conclusion:

Having found that Plaintiffs take title to the center of the abandoned Orchard View Drive, we render a decision in their favor. An appropriate Order will follow.

By the Court,

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Richard K. Renn, Judge