DOCKET NO: CV-20-6101816-S : SUPERIOR COURT

JEFFREY BLANK, ET AL. JUDICIAL DISTRICT OF BRIDGEPORT

V. :

TERESA SCATURCHIO, ET AL. MAY 24, 2024

MEMORANDUM OF DECISION

STATEMENT OF THE CASE

The plaintiffs in this case are Jeffrey Blank and Patricia Blank. The defendants are Teresa Scaturchio, Anthony Scaturchio, Caterina Pellini, Frank Scaturchio, Robert Scaturchio, Joseph Scaturchio, Maria Jablon, Antonetta Polito and Antonio Scaturchio. The plaintiffs' two count complaint against the defendants claims adverse possession and a prescriptive easement over a strip of land to which the defendants hold legal title. The defendants' answer to the complaint denies the plaintiffs' claims.

A two day bench trial of this action was held in November, 2023. After the trial, the parties filed posttrial briefs. The plaintiffs' reply brief was the last brief filed on February 2, 2024. As explained below, the court concludes that the plaintiffs have failed to meet their burden of proof and issues a judgment in favor of the defendants.

DISCUSSION

I

The plaintiffs have owned the property located at 5 Fuller Road in Trumbull since August, 1985. In or about 1985, Domingos Pereira bought the abutting parcel at 4987 Madison Avenue in Trumbull and constructed a home on this parcel. As addressed further below, during

the years before his death, the plaintiffs developed a close, neighborly relationship with Pereira. Pereria died in 2018.

In March, 2019, the defendants, as tenants in common, acquired title to 4987 Madison Avenue. The property at 4987 Madison Avenue includes a rectangular offshoot that runs along the western border of 5 Fuller Road that extends to Fuller Road. This strip of land is 0.1313 acres (5720 square feet). This strip of land is the area in dispute between the parties.

The plaintiffs maintain that when they purchased 5 Fuller Road, they mistakenly believed that their property line extended to within approximately 15 feet of the stone wall running along the western boundary of the disputed area, but when they obtained a survey of their property in 2020, they purportedly learned that this entire disputed area (including this 15 feet) was within the legal property description of 4987 Madison Avenue.

According to the plaintiffs, their evidence indicates that since their purchase of 5 Fuller Road, they used the disputed area as their own, treated it as part of their entire parcel and did so in a visible, open manner to the exclusion of Pereira, without his consent or approval. The plaintiffs endeavored to support this claim through evidence showing their extensive use of the disputed area during this time period, including their recreation in the disputed area, maintenance of the disputed area (for example, by plowing, mowing, fertilizing, seeding and removing downed trees or limbs), erecting a dog kennel fence, planting shrubs and trees and installing a visible drain pipe.

The defendants presented evidence that in or about March, 2019, soon after they had purchased 4987 Madison Avenue, Teresa Scaturchio, Anthony Scaturchio and their son, Antonio, had a conversation with the plaintiffs, during which Teresa Scaturchio asked the plaintiffs about

the property line in back of the property. The Scaturchios testified that Patricia Blank stated that she did not know exactly where the property line was, but that she and her husband had offered to buy the disputed area from the "old man" several times, but he "wouldn't budge." November 9, 2023 tr., p. 38, lines 19-20. Teresa Scaturchio also testified that Jeffrey Blank said that he mowed the lawn in the disputed area because Pereira was "good to him—he was good to me, and I was good to him." November 9, 2023 tr., p. 65, lines 13-14. In their testimony, the plaintiffs deny that this conversation occurred, contending in their posttrial brief that it was "clearly contrived" by the defendants. Plaintiffs' posttrial brief, p. 22. In evaluating the credibility of the witnesses, the court rejects the plaintiffs' position. The court finds that the defendants' evidence about this conversation is credible and that this exchange between the parties took place.

Soon after the defendants acquired title to 4987 Madison Avenue, they began to maintain the disputed area. Notably, the evidence indicates that the plaintiffs did not inform the defendants that the plaintiffs owned the disputed area, rather, Jeffrey Blank inquired about whether the defendants wanted him to continue to maintain the disputed area. The defendants declined this request. As previously stated, the plaintiffs acquired a survey of their property in 2020, and thereafter, instituted this action in November, 2020.

II

"[T]o establish title by adverse possession, the claimant must oust an owner of possession and keep such owner out without interruption for fifteen years by an open, visible and exclusive possession under a claim of right with the intent to use the property as his [or her] own and without the consent of the owner." (Internal quotation marks omitted.) *Eberhardt* v. *Imperial Construction Services, LLC*, 101 Conn. App. 762, 763, 923 A.2d 785, cert. denied, 284 Conn.

904, 931 A.2d 263 (2007). "[A] claim of right does not necessarily mean that the adverse possessor claims that it is the proper titleholder, but that it has the intent to disregard the true owner's right to possession." (Internal quotation marks omitted.) Id., 768. Further, the "possession of one who recognizes or admits title in another, either by declaration or conduct, is not adverse to the title of such other." (Internal quotation marks omitted.) *Lazoff* v. *Padgett*, 2 Conn. App. 246, 250, 477 A.2d 155, cert. denied, 194 Conn. 806, 482 A.2d 711 (1984).

"The element of hostility is a related, although broader element than claim of right. See, e.g., 3 Am. Jur. 2d 183, Adverse Possession § 118 (2002) (the term claim of right means no more than the term hostile; and if possession is hostile, it is under a claim of right)." (Internal quotation marks omitted.) *Schlichting* v. *Cotter*, 109 Conn. App. 361, 366 n.5, 952 A.2d 73, cert. denied, 289 Conn. 944, 959 A.2d 1009 (2008). "The word hostile, as employed in the law of adverse possession, is a term of art; it does not . . . imply animosity, ill will or bad faith. Nor is the claimant required to make express declarations of adverse intent during the possessory period. Conversely, in order to obtain title by adverse possession one need not be under a good faith mistake that he or she had legal title to the land. . . . Hostile possession can be understood as possession that is opposed and antagonistic to all other claims, and that conveys the clear message that the possessor intends to possess the land as his or her own." (Citation omitted; internal quotation marks omitted.) *Mulle* v. *McCauley*, 102 Conn. App. 803, 814, 927 A.2d 921, cert. denied, 284 Conn. 907, 931 A.2d 265 (2007).

"[A] finding of [a]dverse possession is not to be made out by inference, but by clear and positive proof. . . . [C]lear and convincing proof denotes a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action

and the belief that is required to find guilt in a criminal prosecution. . . . [The burden] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist. . . . The burden of proof is on the party claiming adverse possession." (Internal quotation marks omitted.) *Schlichting* v. *Cotter*, supra, 109 Conn. App. 365.

Thus, intent is an essential element of an adverse possession claim because the claimaints must prove that they engaged in the conduct necessary to prove adverse possession with the intent to use the disputed area as their own without the owner's consent. See *Dowling* v. *Heirs of Bond*, 345 Conn. 119, 153, 282 A.3d 1201 (2022) (in an adverse possession case, "the intent of the possessor to use the property as his own must be shown. This issue involves an inquiry into his mental condition" [internal quotation marks omitted]).[1] Determining a person's intent or state of mind may be a difficult, often elusive task that requires an evaluation of the totality of the evidence and the reasonable inferences which may be drawn from the proven facts.

The court has carefully reviewed and considered the nature and extent of the plaintiffs' use and maintenance of the disputed area, and despite the extensiveness of this use, the court does not credit the plaintiffs' evidence as being sufficient to show that they used the disputed

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[1] As explained by the Supreme Court in *Dowling* v. *Heirs of Bond*, supra, 345 Conn. 154-55, the requisite intent in an adverse possession action does not require the claimant to establish a claim of ownership accompanied by knowledge that the claim is contrary to the rights of the actual owner because the claimant's "guilt or innocence" is irrelevant in this regard. "The very nature of the act is an assertion of [the claimant's] own title, and the denial of the title to all others. It matters not . . . that the possessor was mistaken, and had [the claimant] been better informed, would not have entered on the land. This bears on another subject—the moral nature of the action; but it does not point to the [i]nquiry of adverse possession." (Internal quotation marks omitted.) Id., 155.

area with the purpose and intent to dispossess Pereira from his ownership interest in the disputed area. In evaluating the plaintiffs' intent in this regard, the plaintiffs' relationship with Pereira is both important and significant. Stated differently, the plaintiffs' intent may be informed or affected by their relationship with Pereira. Cf. *Woodhouse* v. *McKee*, 90 Conn. App. 662, 673, 879 A.2d 486 (2005) ("In determining what amounts to hostility, the relation that the adverse possessor occupies with reference to the owner is *important*" [emphasis added; internal quotation marks omitted]).

The evidence is undisputed that the plaintiffs developed more than just a neighborly relationship with Pereira. The evidence established that over the years, the plaintiffs and Pereira developed an extremely close, special relationship characterized by mutual trust and cooperation, and on the basis of these particular facts, the court cannot conclude that the plaintiffs acted with purposeful intent to exercise exclusive possession and control over the disputed area in order to permanently oust Pereira of his ownership of this disputed area.

Although not dispositive, a relevant consideration is that the plaintiffs concede that they did not believe that they owned the disputed area in its entirety. Additionally, the court has found that at some point prior to his death, the plaintiffs offered to purchase the disputed area and this offer was rejected by Pereira. See generally *Allen* v. *Johnson*, 79 Conn. App. 740, 746-47, 831 A.2d 282, cert. denied, 266 Conn. 929, 837 A.2d 802 (2003) ("[a]n offer to purchase as legal title . . . as distinguished from a mere outstanding claim or interest, is a recognition of that title. Although efforts to obtain deeds from other claimants to the property do not disprove the hostile character of a possession, efforts to buy the property from the record owner constitute an acknowledgment of the record owner's superior title, and thus disprove the adverse holding,

because there has been no claim of right" [internal quotation marks omitted]); see also *Bowen* v. *Serksnas*, 121 Conn. App. 503, 511-12, 997 A.2d 573 (2010) (adverse possession claimant's attempt to purchase legal title to disputed area evidenced recognition of title, negating claimant's alleged adversity); *Lazoff* v. *Padgett*, supra, 2 Conn. App. 250 ("the possession of one who recognizes or admits title in another, either by declaration or conduct, is not adverse to the title of such other" [internal quotation marks omitted]).

Another relevant but not controlling consideration is that the plaintiffs concede that they never told Pereira that they were taking such a significant portion of his property away from him or that they ever made any claim against him to this effect. Because the plaintiffs' adverse possession claim was made only after Pereira's death, aspects of their evidence must be weighed from what may be their own self-serving viewpoints. Indeed, the court questions whether the plaintiffs' possession claims would have been asserted against Pereira before his death.

In short, the court agrees with the defendants that the evidence supports the conclusion that the plaintiffs' use of the disputed area involved a mutual accommodation between neighbors based on implied consent or permission of the lawful owner, rather than on any adverse or hostile exclusiveness as claimed by the plaintiffs. See generally *Dowling* v. *Heirs of Bond*, supra, 345 Conn. 146 ("prior permission may undermine the existence of a claim of right; use of the land by the express or implied permission by the true owner is not adverse and, therefore, cannot ripen into adverse possession" [internal quotation marks omitted]).

III

The law regarding prescriptive easements is well established. "[A] prescriptive easement is established by proving an open, visible, continuous and uninterrupted use for fifteen years

made under a claim of right. . . . To establish an easement by prescription it is absolutely essential that the use be adverse. It must be such as to give a right of action in favor of the party against whom it has been exercised. . . . The use must occur without license or permission and must be unaccompanied by any recognition of [the right of the owner of the servient tenement] to stop such use. . . . Use by express or implied permission or license cannot ripen into an easement by prescription." (Citations omitted; internal quotation marks omitted.) *Boccanfuso* v. *Green*, 91 Conn. App. 296, 309, 880 A.2d 889 (2005).

"The requirement that the [use] must be exercised under a claim of right does not necessitate proof of a claim actually made and brought to the attention of the owner . . . . It means nothing more than a [use] as of right, that is, without recognition of the right of the landowner, and that phraseology more accurately describes it than to say that it must be under a claim of right. . . . [When] there is no proof of an express permission from the owner of the servient estate, on the one hand, or of an express claim of right by the person or persons using the way, on the other, the character of the [use], whether adverse or permissive, can be determined as an inference from the circumstances of the parties and the nature of the [use]." (Internal quotation marks omitted). *Slack* v. *Greene*, 294 Conn. 418, 428, 984 A.2d 734 (2009). "Whether a right of way by prescription has been acquired presents primarily a question of fact for the trier after the nature and character of the use and the surrounding circumstances have been considered." *Klein* v. *DeRosa*, 137 Conn. 586, 589, 79 A.2d 773 (1951).

"The legal criteria for adverse possession and prescriptive easements are not interchangeable. Prescriptive easements, unlike title gained by adverse possession, do not require exclusive use by the claimant . . . and the burden of proof is by preponderance of the evidence

rather than by clear and convincing evidence required by adverse possession." (Internal quotation marks omitted.) *Boccanfuso* v. *Green*, supra, 91 Conn. App. 310. "The reason for the disparate levels of proof in two causes of action having virtually identical elements, is that title in the former becomes absolute in the adverse user while in the latter, the adverse user acquires only the right to pass and repass over the prescriptive easement, a much less onerous burden on the property." (Footnote omitted.) *Schulz* v. *Syvertsen*, 219 Conn. 81, 92, 591 A.2d 804 (1991).

Although governed by different levels of proof, a claimant's showing that it used a disputed area under a claim of right is an element for both adverse possession and prescriptive easement. Consequently the court's discussion of this element made as part of its consideration of adverse possession is applicable to the present discussion about prescriptive easement. Specifically, for the reasons previously discussed, the court finds that the facts are insufficient to prove by a preponderance of the evidence that the plaintiffs' use of the disputed area was done under a claim of right.

As previously discussed, the plaintiffs have presented extensive evidence about their use of the disputed area. Nevertheless, this evidence must be weighed against Patricia Blank's statement that at some time prior to Pereira's death, the plaintiffs approached him about purchasing the disputed area and he rejected their offer. This admission evidences a recognition of Pereira's ownership rights. The court must also consider the evidence about the very close, personal relationship that developed between the plaintiffs and Pereira during their long period as neighbors. In weighing this evidence, the court finds that the plaintiffs' use of the disputed area was a permissive accommodation between close neighbors, rather than a use of the disputed area exercised under a claim of right sufficient to establish a prescriptive easement.

CONCLUSION

For these reasons, the court finds for the defendants and enters judgment in favor of the defendants and against the plaintiffs on the claims of the complaint.

Dated this day of May 24, 2024.

HONORABLE BARRY STEVENS
JUDGE TRIAL REFEREE