

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: November 25, 2024)

LILLIAN N. SIMPSON,  
*Plaintiff,*

v.

URIBIEL P. CASTRO and MARLEN R.  
KOMAREK,  
*Defendants.*

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

C.A. No. PC-2021-03235

**DECISION**

**CRUISE, J.** This matter is before the Court for decision following a non-jury trial in an adverse possession action regarding 478 square feet of property located along the property line between 355 and 349 Farmington Avenue in Cranston, Rhode Island (Disputed Area). (Am. Verified Compl. ¶¶ 1-8.) While Plaintiff Lillian N. Simpson (Ms. Simpson) seeks to establish title to the Disputed Area, Defendants Uribiel P. Castro and Marlen R. Komarek (Mr. Castro and Ms. Komarek) currently hold record title to it. *Id.*; *see also* Trial Ex. 2. Ms. Simpson asserts she has acquired title to the property through adverse possession. (Compl. ¶ 8.) Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

**I**

**Facts and Travel**

The facts, as determined from the evidence presented at trial, are as follows. Ms. Simpson purchased 349 Farmington Avenue on November 25, 2002 from Attilio and Mary Sperduti (the Sperdutis). (Trial Ex. 5.) Ms. Simpson moved into the home with her teenage son, Christopher Simpson (Mr. Simpson). Starting in the spring of 2003, Ms. Simpson began landscaping the

Disputed Area, including mowing and fertilizing the grass, planting and maintaining flowers, and raking leaves.

In 2002, the adjoining property at 355 Farmington Avenue was owned by the Sperdutis. (Trial Ex. 4.) The Sperdutis did not object to Ms. Simpson's use of the Disputed Area. In 2004, the Sperdutis sold 355 Farmington Avenue to Maria Brown (Ms. Brown). (Trial Ex. 4 at 2.) During Ms. Brown's ownership, she informed Ms. Simpson that some portion of the land was owned by Ms. Brown. Ms. Brown did not pursue legal action and Ms. Simpson continued using the Disputed Area. In 2007, 355 Farmington Avenue was purchased by HSBC Bank USA NA Trustee. *Id.* at 2. The bank did not object to Ms. Simpson's use of the Disputed Area. In July 2008, 355 Farmington Avenue was purchased by Patricia Realty, LLC. *Id.* This corporation did not object to Ms. Simpson's use of the Disputed Area. In October 2008, Doreen Harris (Ms. Harris) purchased 355 Farmington Avenue. *Id.* at 3. Ms. Harris did not object to Ms. Simpson's use of the property. In fact, Ms. Simpson erected a small fence to prevent Ms. Harris's sister's dog from defecating on the Disputed Area. In December 2020, Ms. Harris sold 355 Farmington Avenue to Mr. Castro and Ms. Komarek.

On May 7, 2021, Ms. Simpson filed a complaint to prevent Mr. Castro and Ms. Komarek from expanding their driveway into the Disputed Area. *See Compl.* A survey was conducted on July 16, 2021, which showed that the Disputed Area was within the property boundaries of 355 Farmington Avenue, owned by Mr. Castro and Ms. Komarek. (Trial Ex. 2.) Ms. Simpson amended her complaint on September 29, 2021 alleging adverse possession of the Disputed Area and requesting injunctive relief. (Am. Verified Compl. ¶¶ 7-11.)

## A

### **Witness Credibility**

Our Supreme Court has emphasized that when deciding non-jury trials, lower courts must articulate their assessment of witnesses' credibility. *See Notarantonio v. Notarantonio*, 941 A.2d 138, 144-45 (R.I. 2008). This Court finds each witness's testimony to be credible. Although each party was confident of his or her property rights, this Court notes that the witnesses were not in conflict with one another and were clear in their words and reasonable in their demeanor.

Ms. Simpson had three people testify: herself, Christopher Simpson, and Anthony Black. Ms. Simpson testified that she purchased 349 Farmington Avenue in 2002 from the Sperduti and believed that the Disputed Area was part of her property. She further testified that since she purchased the property, she has maintained the Disputed Area by cutting and fertilizing the grass, planting flowers, and raking leaves. Ms. Simpson also testified that the property at 355 Farmington Avenue had numerous owners over the years until December 2020 when Mr. Castro and Ms. Komarek purchased the property. Ms. Simpson stated that during this eighteen-year period, Ms. Brown told Ms. Simpson that some portion of Ms. Simpson's property belonged to Ms. Brown. Ms. Simpson said that she did not believe Ms. Brown's claim of ownership and Ms. Brown never followed up on this claim. As a result, Ms. Simpson continued using the disputed portion of land.

Mr. Simpson, Ms. Simpson's son, testified that when Ms. Simpson purchased the property, he was a teenager and his chores included cutting the grass and raking leaves on the property, including in the Disputed Area. Mr. Simpson stated that he was responsible for yardwork from the time they moved into the home until he moved out sometime in 2014. He testified that no one ever stopped him from working on the disputed portion or told him that the property did not belong to his mother.

Anthony Black (Mr. Black) was hired by Ms. Simpson in 2007 to perform landscaping services on her property, including the Disputed Area. Mr. Black testified that he mowed the lawn, raked leaves, planted, and maintained flowers in the Disputed Area from 2007 to 2021. He testified that no one ever told him to stop working on the Disputed Area or that Ms. Simpson did not own the disputed land.

Ms. Komarek and Mr. Castro testified. Ms. Komarek testified that she and her husband purchased 355 Farmington Avenue from Doreen Harris in December 2020 and moved into the property in early 2021. She testified that when she and her husband purchased the property, they believed the Disputed Area was part of the property. Ms. Komarek further testified that when they moved into their home, it was winter, and no one was doing landscaping for the Disputed Area. Ms. Komarek testified that in the spring she witnessed Ms. Simpson mowing the grass in the Disputed Area. Ms. Komarek testified that they want to use the land in the Disputed Area to expand their driveway to accommodate more cars.

Mr. Castro testified that he tried to mow the lawn in the Disputed Area, but Ms. Simpson told him to stop and that it was her responsibility. He testified that he spoke to Ms. Simpson and told her the Disputed Area was his property, but that Ms. Simpson disagreed. Soon after that interaction, he stated Ms. Simpson retained counsel and filed this lawsuit.

## II

### **Standard of Review**

Rule 52(a) of the Superior Court Rules of Civil Procedure requires that “[i]n all actions tried upon the facts without a jury. . . the court shall find the facts specially and state separately its conclusions of law thereon[.]” Super. R. Civ. P. 52(a). In a non-jury trial, “[t]he trial justice sits as a trier of fact as well as of law.” *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984).

“Consequently, he [or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.” *Id.*; *see also Rodriques v. Santos*, 466 A.2d 306, 312 (R.I. 1983) (noting that determining credibility is the purview of the fact finder). “The trial justice need not engage in extensive analysis to comply with this requirement” when rendering a decision in a non-jury trial. *White v. LeClerc*, 468 A.2d 289, 290 (R.I. 1983). “Even brief findings will suffice as long as they address and resolve the controlling factual and legal issues.” *Id.*

### III

#### Analysis

##### A

#### Adverse Possession

“A party may acquire land pursuant to the doctrine of adverse possession ‘when the elements identified in the General Assembly’s codification of this method of acquisition are met.’” *Union Cemetery Burial Society of North Smithfield v. Foisy*, 292 A.3d 1205, 1214 (R.I. 2023) (quoting *Clark v. Buttonwoods Beach Association*, 226 A.3d 683, 690 (R.I. 2020)). General Laws 1956 § 34-7-1 states:

“Where any person or persons, or others from whom he, she, or they derive their title, either by themselves, tenants or lessees, shall have been for the space of ten (10) years in the uninterrupted, quiet, peaceful and actual seisin and possession of any lands, tenements or hereditaments for and during that time, claiming the same as his, her or their proper, sole and rightful estate in fee simple, the actual seisin and possession shall be allowed to give and make a good and rightful title to the person or persons, their heirs and assigns forever; and any plaintiff suing for the recovery of any such lands may rely upon the possession as conclusive title thereto, and this chapter being pleaded in bar to any action that shall be brought for the lands, tenements or hereditaments, and the actual seisin and possession being duly proved, shall be allowed to be good, valid and effectual in law for barring the action.” G.L. 1956 § 34-7-1.

“In order to obtain title by adverse possession, ‘a claimant must prove actual, open, notorious, hostile, continuous, and exclusive use of the property under a claim of right for at least a period of ten years.’” *Union Cemetery Burial Society of North Smithfield*, 292 A.3d at 1214 (brackets omitted) (quoting *Clark*, 226 A.3d at 690). Further, “[t]he party asserting title by adverse possession ‘must establish the required elements by strict proof, that is, proof by clear and convincing evidence.’” *Id.* (quoting *Clark*, 226 A.3d at 690-91). “[U]pon ten years of uninterrupted, quiet, peaceful and actual seisin and possession of the land, good and rightful title vests immediately in the adverse claimant.” *Id.* at 1215 (quoting *Carnevale v. Dupee*, 783 A.2d 404, 412 (R.I. 2001)).

## 1

### **Actual**

“Actual” possession is used literally and is defined as “use and occupation of the property, or dominion over the property, or as possession in fact, effected by actual entry on, and actual occupancy of, the premises.” 3 Am. Jur. 2d *Adverse Possession* § 16 (2024). Actual possession is “successfully established when the claimant shows that ‘the use to which the land has been put is similar to that which would ordinarily be made of like land by the owners thereof.’” *Anthony v. Searle*, 681 A.2d 892, 897 (R.I. 1996) (quoting *Lee v. Raymond*, 456 A.2d 1179, 1183 (R.I. 1983)). In making this determination, the court must consider the “character and locality, and the uses and purposes” of the disputed land. *Sherman v. Goloskie*, 95 R.I. 457, 466, 188 A.2d 79, 84 (1963).

In the present case, Ms. Simpson testified that she purchased 349 Farmington Avenue in late November of 2002 and began landscaping her yard, including the Disputed Area, sometime in the spring of 2003. The landscaping included mowing the lawn, fertilizing the grass, raking leaves, planting, and maintaining flowers along the perimeter of the Disputed Area. The Disputed

Area is 478 square feet separating Ms. Simpson's house from the driveway of 355 Farmington Avenue. This Court finds Ms. Simpson has established actual possession beginning in early 2003. *See Gammons v. Caswell*, 447 A.2d 361, 368 (R.I. 1982) (recognizing that "[c]ultivating land, planting trees, and making other improvements in such a manner as is usual for comparable land [has] been successfully relied on as proof of the required possession") (citation omitted).

## 2

### **Open and Notorious**

An adverse claimant must also prove that their adverse possession is open and notorious. *Tavares v. Beck*, 814 A.2d 346, 352 (R.I. 2003) ("claimants must show that their use of the land was sufficiently open and notorious to put a reasonable property owner on notice of their hostile claim"). Our Supreme Court has held that "no particular act to establish an intention to claim ownership is required to give notice to the world of the claim,' and that '[i]t is sufficient for the claimant to go upon the disputed land and use it adversely to the true owner.'" *McGarry v. Coletti*, 33 A.3d 140, 145 (R.I. 2011) (quoting *Lee*, 456 A.2d at 1183). However, "the requisite act must 'put a reasonable property owner on notice' that his property is being claimed." *Id.* at 147 (quoting *Acampora v. Pearson*, 899 A.2d 459, 467 (R.I. 2006)). "Once the claimants go on to the land and use it openly and adversely to the owner of record title, the latter becomes chargeable with knowledge of what has been done openly on the land . . . whether or not it could be observed from the road or from the boundary of the property." *Tavares*, 814 A.2d at 352. Our Supreme Court has explained that for purposes of establishing open and notorious use, "[t]he proper inquiry [is] whether the party claiming ownership by adverse possession used the property in a manner consistent with how owners of similar property would use such land and whether these uses [are]

inclined to attract attention sufficient to place the world on constructive notice.” *Carnevale v. Dupee*, 853 A.2d 1197, 1201 (R.I. 2004).

This Court finds that Ms. Simpson’s outdoor improvements and maintenance of the Disputed Area were visible to the various owners of 355 Farmington Avenue. Although there was a preexisting retaining wall, the open and notorious elements of adverse possession are likewise met by Ms. Simpson. In *McGarry*, the defendant did not satisfy the open and notorious element of adverse possession because the defendant’s maintenance and improvements were “less-than-obvious” when it included laying crushed stone on the disputed parcel on two separate occasions over a thirty year period, planting trees that were similar to the ones already growing on the property, and clearing the area of debris. *McGarry*, 33 A.3d at 147. Unlike the defendant in *McGarry*, Ms. Simpson did more than just clear the area of debris, she fertilized the lawn, planted flowers, mowed the lawn, and even installed a fence to keep dogs from defecating on her flowers. Further, Ms. Simpson hired a landscaper to maintain her yard, including the Disputed Area. Importantly, at least two prior owners of 355 Farmington Avenue knew that Ms. Simpson took care of the Disputed Area. Ms. Simpson testified that sometime during Ms. Brown’s ownership of 355 Farmington Avenue between 2004 and 2007, Ms. Brown told Ms. Simpson that Ms. Brown actually owned the Disputed Area and objected to Ms. Simpson’s use of the Disputed Area. Thus, Ms. Brown was aware of Ms. Simpson’s use of the Disputed Area. Ms. Harris also knew of Ms. Simpson’s use of the property because Ms. Simpson spoke with Ms. Harris about Ms. Harris’s sister’s dog defecating on the Disputed Area and even put up a fence to prevent the dog from using the Disputed Area. Thus, Ms. Simpson’s obvious maintenance of the Disputed Area is enough to prove the open and notorious element of adverse possession.



**Hostile**

“A person is a hostile occupant of the land when he mistakes his boundary but continuously asserts dominion over the property for the statutory period.” *Lee*, 456 A.2d at 1183. Importantly, “the term ‘hostile’ does not connote a communicated emotion but, rather, action inconsistent with the claims of others.” *Id.* An adverse claimant’s use is hostile if it is “a use ‘inconsistent with the right of the owner, without permission asked or given, . . . such as would entitle the owner to a cause of action against the intruder [for trespass].” *DiPippo v. Sperling*, 63 A.3d 503, 508 (R.I. 2013) (quoting *Tavares*, 814 A.2d at 351).

Ms. Simpson’s use of the Disputed Area can only be described as hostile to the holder of legal title. Ms. Simpson never asked for and did not receive permission to maintain the Disputed Area’s landscaping. On more than one occasion she told the owner of 355 Farmington Avenue not to use the disputed parcel. Ms. Simpson told Ms. Harris that her sister’s dog was not welcome on the Disputed Area and even erected a small fence to prevent the dog from accessing the parcel. Ms. Simpson also told Mr. Castro to stop mowing the lawn when he first tried to in the spring of 2021. Therefore, Ms. Simpson’s actions, beginning in 2003, were hostile to the holder of legal title in the Disputed Area.

**Continuous**

The next element, continuous use of the adversely possessed land for the requisite ten-year period, requires that the use “‘be continuous only in the sense that the claimant exercised a claim of right without interference at such times as it was reasonable to make a proper use of the land.’” *Russo v. Stearns Farms Realty, Inc.*, 117 R.I. 387, 392, 367 A.2d 714, 717 (1977) (quoting

*LaFreniere v. Sprague*, 108 R.I. 43, 52-53, 271 A.2d 819, 824 (1970)). “Cultivating land, planting trees, and making other improvements in such a manner as is usual for comparable land have been successfully relied on as proof of the required possession.” *Gammons*, 447 A.2d at 368; *see also Acampora*, 899 A.2d at 467 (holding claimant’s mowing of grass, maintaining property, and holding outdoor activities was consistent with the actions of a true owner of a side yard). Importantly, year-round occupation of the disputed land is not required to prove continuous possession. *See Lee*, 456 A.2d at 1183 (holding that summer camping in Disputed Area was sufficiently continuous where such use was consistent with the use of neighboring owners with similar properties).

Testimony from Ms. Simpson, Mr. Simpson, and Mr. Black state that the landscaping for the Disputed Area occurred in the spring, summer, and fall. Ms. Simpson testified that she first began landscaping the Disputed Area sometime in the spring of 2003. Ms. Simpson, Mr. Simpson, and Mr. Black testified that no maintenance was required for the parcel during the winter months. Thus, the maintenance of the Disputed Area for nine out of twelve months of the year was sufficiently continuous for Ms. Simpson to establish continuous use of the Disputed Area over the past two decades.

## 5

### **Exclusive**

An adverse possessor’s use of the disputed land must be exclusive. *See Union Cemetery Burial Society of North Smithfield*, 292 A.3d at 1214. To establish exclusivity, there must be evidence to show that the adverse possessor “made improvements to the land or, at the very least, had used the land in a more significant fashion than merely walking across it.” *Gammons*, 447 A.2d at 368.

Ms. Simpson exclusively used the property and even prevented others (Ms. Harris's guests and Mr. Castro and Ms. Komarek) from accessing or using the property. Like the defendant in *Gammons*, who met the exclusivity element by "post[ing] a sign on [the street] to keep people out and verbally disputed any claim of a right of way," Ms. Simpson erected a small fence to prevent Ms. Harris's sister's dog from accessing the property and disputed claims of ownership made by both Ms. Brown and Mr. Castro and Ms. Komarek. *Gammons*, 447 A.2d at 368. Thus, Ms. Simpson has also established that her use of the Disputed Area was exclusive.

## 6

### **Interruption of Adverse Possession**

Our Supreme Court "recognize[s] three methods by which a record owner can interrupt a claimant's adverse possession: (1) filing of an action to quiet title, *Cumberland Farms, Inc. v. Mayo Corp.*, 694 A.2d 752, 753 (R.I. 1997) (mem.); (2) filing of 'notice of intent to dispute' adverse possession under [G.L. 1956] § 34-7-6; and (3) physical ouster of the claimant or a 'substantial interruption' of the claimant's possession by the record owner. *LaFreniere*, 108 R.I. 43, 52, 271 A.2d 819, 824 (1970) . . ." *Carnevale*, 783 A.2d at 409-10.

Ms. Simpson's adverse possession which began in 2003 was never interrupted. When Ms. Brown mentioned to Ms. Simpson that Ms. Brown believed that she owned the disputed property, Ms. Brown did not follow up on this statement and did not take any action to prevent Ms. Simpson from using the property. Thus, during the ten-year period from 2003 to 2013, Ms. Simpson's adverse possession was not interrupted, and she is now the rightful owner of the Disputed Area.

## **B**

### **Marketable Title**

Mr. Castro and Ms. Komarek argued that G.L. 1956 § 34-13.1-4 maintains that any interest contrary to marketable title is void. Specifically, because Ms. Harris conveyed marketable title in 355 Farmington Avenue to Mr. Castro and Mr. Komarek, Ms. Simpson could not assert that the Disputed Area was adversely possessed because the requisite period of adverse possession occurred prior to the sale of 355 Farmington Avenue to Mr. Castro and Ms. Komarek.

Section 34-13.1-4 states,

*“Subject to the matters stated in § 34-13.1-3 such marketable record title shall be held by its owner and such shall be taken by any person dealing with the land free and clear of all interests, claims or charges whatsoever, the existence of which depends upon any act, transaction, event or omission that occurred prior to the effective date of the root title. All such interests, claims or charges, however, denominated, whether legal or equitable, present or future, whether those interests, claims or charges are asserted by a person sui juris or under a disability, whether that person is within or without the state, whether that person is natural or corporate is private or governmental, are hereby declared to be null and void.”* Section 34-13.1-4 (emphasis added).

Importantly, § 34-13.1-3 limits the applicability of marketable record title. The statute states, “Such marketable record title is subject to: . . . (3) the rights of any person arising from a period of adverse possession or use, which was in whole or in part subsequent to the effective date of the root of title[.]” Section 34-13.1-3(3).

Mr. Castro and Ms. Komarek took record title in 355 Farmington Avenue subject to Ms. Simpson’s claim of right in adverse possession of the disputed land. Further, § 34-13.1-4 does not apply because the statute explicitly references § 34-13.1-3, which specifically prevents the applicability of marketable record title in cases of adverse possession.

## **IV**

### **Conclusion**

Based on the evidence before it, and after a careful review of the record, this Court finds that Ms. Simpson has established by clear and convincing evidence that she has occupied the Disputed Area under a claim of right and that she has done so in an actual, open, notorious, hostile, continuous, and exclusive manner. For the foregoing reasons, this Court grants the adverse possession claim. Counsel shall submit the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

---

**TITLE OF CASE:** Simpson v. Castro, et al.

**CASE NO:** PC-2021-03235

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** November 25, 2024

**JUSTICE/MAGISTRATE:** Cruise, J.

**ATTORNEYS:**

**For Plaintiff:** Richard P. Kelaghan, Esq.

**For Defendant:** Crystal Abreu, Esq.