

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

Mark A. Frantz
M. Josh Petruniw
Downs Tandy & Petruniw, P.C.
Wabash, Indiana

ATTORNEY FOR APPELLEE

R.P. Fisher
Fisher & Ireland
Wabash, Indiana

IN THE COURT OF APPEALS OF INDIANA

Crossroads Bank,
Appellant,

v.

Mary Sparling,
Appellee.

February 9, 2022

Court of Appeals Case No.
21A-PL-1221

Appeal from the Wabash Circuit
Court

The Honorable Robert R.
McCallen, III, Judge

Trial Court Cause No.
85C01-1609-PL-593

Weissmann, Judge.

[1] Landowners seemingly have been debating property boundaries for as long as those boundaries have existed. The doctrine of adverse possession, which automatically transfers title by operation of law from the original owner to an adjacent property owner, is at least 4000 years old. *See Fraley v. Minger*, 829 N.E.2d 476, 483 (Ind. 2005). This common theory of transferred title—honed by courts in Indiana for two centuries—is at the heart of this case.

[2] When Heather France bought her Wabash home in 2012, it featured a pool deck, shed, and addition to the back of the home, all within a fenced area that she thought was part of her purchase. Mary Sparling, who bought the adjacent property four years later, believed otherwise. Sparling sought to have France remove the fence, shed, and pool deck because, in Sparling’s view, they rested on her property. The trial court ruled Sparling was right and that no adverse possession occurred. But the evidence leads to the opposite conclusion—the prior landowners acquired title to the disputed property via adverse possession and then properly conveyed that property to its subsequent buyers. We therefore reverse and remand for the trial court to enter judgment in favor of France.

Facts

[3] France bought her home from Duane and Lori Miller, who purchased it from Daniel Schul and his wife in 2010. Schul, who owned the property from 1987 to 2010, obtained a stake survey at the time of his purchase. By the time Schul erected a fence at what he believed was the back property line, the stakes no

longer were visible, either due to disintegration or Schul's removal. Schul relied on his memory of the stake locations in placing the fence. His intent was to place the fence on the back property line, but his memory of the stakes proved wrong. He built the fence well beyond the boundary noted in the 1987 survey.

[4] Schul added other improvements within the fenced area—a shed built flush with the fence, a home addition, an above-ground pool and surrounding deck, and a relocated septic system—without obtaining a new boundary survey. These improvements were maintained by the subsequent owners of Schul's home, namely the Millers and France.

[5] In May 2016, Sparling obtained a survey of her land, which abuts France's property. That survey, both in its original form and as later amended, showed that Schul's improvements sit on Sparling's land. The 1987 survey, which differs somewhat from the 2016 survey, also reflects Schul's lot boundaries are inside the area he later fenced.

[6] Armed with the 2016 survey, Sparling demanded that France remove the fence, shed, and the part of the pool deck allegedly encroaching on about one-fifth ($\frac{1}{5}$) of an acre of Sparling's land. France refused, prompting Sparling to file a complaint for trespass and injunctive relief. France counterclaimed, alleging she had acquired title to the disputed property through adverse possession.

[7] At a bench trial in 2017, Sparling, after presenting her case-in-chief, sought dismissal of France's adverse possession counterclaim. The trial court granted that motion and also entered judgment for Sparling on Sparling's claims.

France appealed, claiming, among other things, that she was improperly denied the opportunity to present evidence. We reversed and remanded for further proceedings to allow France to have her day in court and present her evidence. *France v. Sparling*, No. 85A02-1710-PL-2472, 2018 WL 3118386 (Ind. Ct. App. June 26, 2018). After remand, Crossroads Bank (Crossroads) intervened. Crossroads owned France’s mortgage on the property and had filed a separate foreclosure action because France was in default.

[8] The parties do not appear to dispute that at least some improvements constructed by Schul are outside the boundary of the property he bought in 1987. The central dispute is whether Schul obtained title to the disputed property through adverse possession and conveyed that title to the Millers, who then conveyed it to France. Because the evidence unerringly establishes all the elements of adverse possession, we reverse and remand.¹

Discussion and Decision

I. Standard of Review

[9] We will affirm a trial court’s determination of an adverse possession claim unless clearly erroneous—that is, where our review of the evidence leaves us with the firm conviction that a mistake has been made. *Morgan v. White*, 56

¹ Crossroads also claims the trial court improperly allowed Sparling to supplement its presentation of evidence on remand. Because we find in Crossroads’ favor, we need not address this issue.

N.E.3d 109, 114 (Ind. Ct. App. 2016). We review questions of law de novo and owe no deference to the trial court’s legal conclusions. *Id.*

II. Elements of Adverse Possession

[10] For more than a century, a person proved adverse possession in Indiana through evidence that the possession of another’s land was actual, visible, open and notorious, exclusive, under claim of ownership, hostile, and continuous for a statutory time period. *Fraley*, 829 N.E.2d at 484-85. In 2005, however, our Supreme Court synthesized those requirements, ruling that “the doctrine of adverse possession entitles a person without title to obtain ownership to a parcel of land upon clear and convincing proof of control, intent, notice, and duration.” *Id.* at 486. The four elements must be established by clear and convincing evidence, so inadequate proof on even one element defeats the adverse possession claim. *Id.* at 483. Along with proving these *Fraley* elements, an adverse possession claimant must make one additional showing, in accordance with Indiana Code § 32-21-7-1. *Id.* at 492-93. The claimant must establish that throughout the ten-year period, the claimant and/or her predecessors in interest paid all taxes due on the disputed real estate or that they reasonably believed they did. *Id.*

[11] The trial court did not specify which elements France failed to prove by clear and convincing evidence, aside from finding France did not reasonably believe she was paying taxes on the disputed property. Sparling does not dispute on appeal that France proved her control of the disputed property. The parties

disagree, however, as to the remaining requirements: intent, notice, duration, and tax payments.

A. Intent

- [12] An adverse possession claimant “must demonstrate intent to claim full ownership of the tract superior to the rights of all others, particularly the legal owner.” *Id.* at 486 (noting that this definition of intent “reflect[s] the former elements of ‘claim of right,’ ‘exclusive,’ ‘hostile,’ and ‘adverse’”). Crossroads argues that it proved intent through evidence showing that Schul and the Millers built and/or maintained the fence, pool, shed, and addition. Sparling contends the trial court’s order implies that France did not prove intent, but such an interpretation stretches the order beyond its reasonable boundaries.
- [13] In arguing the evidence of intent was lacking, Sparling focuses exclusively on Schul’s testimony that he never intended to acquire title to his neighbor’s property. Tr. Vol. II, p. 118. But Schul further testified that he believed he owned the disputed property from the start. *Id.* at 120. His intent to claim full ownership of the disputed tract is clear, as Crossroads argues. When Schul erected the fence in 1994, he placed it on what he believed was the property line, based on his recollection of the stakes from a boundary survey conducted at the time of his purchase of the property in 1987. *Id.* at 90, 92, 111, 114, 116. He first built the fence on the property and then added the other improvements within its boundaries, without anyone challenging his control over the property. Schul displayed the requisite intent.

B. Notice

- [14] Notice is proven where the claimant's actions as to the land are enough to give actual or constructive notice to the legal owner of the claimant's intent and exclusive control. *Fraleley*, 829 N.E.2d at 486 (noting that this definition of notice "reflect[s] the former 'visible,' 'open,' 'notorious,' and in some ways the 'hostile,' elements").
- [15] Building and maintaining improvements on disputed property may be sufficient notice of intent. *Herrell v. Casey*, 609 N.E.2d 1145, 1148 (Ind. Ct. App. 1993). In particular, the erection of a fence is considered adequate "to alert any reasonable title holder that his property is being adversely claimed." *Nodine v. McNerney*, 833 N.E.2d 57, 67 (Ind. Ct. App. 2005), *clarified on reh'g*, 835 N.E.2d 1041 (2005), *trans. denied*. Whether notice exists generally is a question of fact to be decided by the factfinder. *Garriott v. Peters*, 878 N.E.2d 431, 442 (Ind. Ct. App. 2007), *trans. denied*. But where the evidence is "particularly clear," constructive notice may be found as a matter of law. *Id.*
- [16] Citing *Nodine*, Crossroads contends Schul's erection of the fence on the disputed property alone was sufficient to prove notice of intent. In response, Sparling merely notes the lack of evidence that the prior owner of Sparling's land saw the fence. But Sparling fails to cite any authority requiring such proof to establish notice. As the fence was readily apparent from the section of Sparling's property adjoining France's from the time the fence was built in

1994, the evidence of constructive notice is “particularly clear” and thus the notice element was proven. *See id.*

C. Duration

- [17] The “duration” element is met for purposes of adverse possession when the claimant satisfies the control, intent, and notice requirements for the statutory period of ten years. *Fraley*, 829 N.E.2d at 486 (noting that this definition of duration “reflect[s] the former ‘continuous’ element”); *see also* Ind. Code § 34-11-2-11 (“An action . . . for the recovery of the possession of real estate, must be commenced within ten (10) years after the cause of action accrues.”).
- [18] Because France’s control of the disputed land was less than the required ten-year period, she could not have possessed the disputed property unless Schul or the Millers acquired it and the Millers transferred it to her. Successive periods of possession may be tacked together to meet the ten-year requirement. *Henry v. Liebner*, 32 N.E.3d 258, 268 (Ind. Ct. App. 2015), *trans. denied*. Once an adverse possession claimant has sustained her burden of establishing the requisite elements of adverse possession, fee simple title to the disputed land transfers to the possessor by operation of law and the original owner’s title is extinguished. *Id.* Once title vests in the adverse claimant at the end of the requisite ten-year period, the title may not be lost, abandoned, or forfeited. *Fraley*, 829 N.E.2d at 487.
- [19] Crossroads disputes the trial court’s ruling that the previous owners of France’s home did not adversely possess the disputed property, thereby prohibiting

France from meeting the ten-year duration requirement. App. Vol. II, p. 12. Crossroads notes that Schul controlled the disputed property beginning from the date he erected the fence in 1994 through the date of his sale of the property to the Millers in 2010. According to Crossroads, Schul acquired title to the disputed property before he sold his home to the Millers, meaning that he transferred title to the disputed property to the Millers, who then transferred it to France.

[20] Without acknowledging Schul's sixteen-year control of the disputed property, Sparling indicates that he did not meet the ten-year requirement for adverse possession. She then argues that the Millers' two years of control are also insufficient. We, however, agree with Crossroads that Schul's control alone satisfied the duration requirement as a matter of law.

D. Statutory Tax Requirements

[21] Crossroads' final argument is that the record establishes France reasonably believed she was paying taxes on the disputed property, as required for adverse possession by Indiana Code § 32-21-7-1. The trial court rejected that claim based on evidence that France's realtor showed her a photograph marking the boundaries of the property she was buying and excluding some or all of the disputed land. App. Vol. II, p. 11 (citing Pl.'s Exh. 15).



Plaintiff's Exhibit 15

[22] That photograph, showing France's purchase as the center property, contains boundary lines excluding the property now in dispute. The trial court found that France could not have reasonably believed that she was paying the taxes on the disputed parcel, given that she knew or should have known that she did not purchase the disputed land. *Id.*

[23] Crossroads argues that France's belief that she was paying the taxes on the disputed property is irrelevant. According to Crossroads, Schul had already acquired the property by adverse possession before France's purchase and transferred that interest to the Millers, who transferred it to France. Crossroads

is right that the trial court considered the wrong person. Schul—not France—should have been the focus of the tax determination.

[24] Schul owned and paid taxes on a half-acre parcel, which he believed included all the land located within the fence he erected. No one told him otherwise. There is no reason to question whether it was reasonable for Schul to believe he was paying taxes on the now disputed property.

[25] As Schul met all the requirements of adverse possession, title to the disputed property transferred to Schul who then transferred it to the Millers. *See Fraley*, 829 N.E.2d at 487. The Millers, in turn, transferred the property to France. *See id.* at 487 (ruling that once a party has acquired title through adverse possession, that party does not lose title based on acts committed or circumstances existing after title is established).

[26] We reverse the trial court’s judgment and remand for entry of judgment in favor of France.

Najam, J., and Vaidik, J., concur.