ATTORNEYS FOR APPELLANTS

Michael E. DiRienzo
Ryan M. Schulz
Kahn, Dees, Donovan & Kahn, LLP
Evansville, Indiana

ATTORNEYS FOR APPELLEES

James D. Johnson
Mark T. Abell
Jackson Kelly PLLC
Evansville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Julie Card and Bruce Card,
Appellant-Defendants,

v.

Alan Sprinkle and Lynne A. Sprinkle,
Appellee-Plaintiffs.

August 17, 2022

Court of Appeals Case No. 21A-PL-2491

Appeal from the Warrick Circuit Court

The Honorable Greg A. Granger, Judge

Trial Court Cause No. 87C01-1904-PL-598

Mathias, Judge.

[1] Julie and Bruce Card appeal the Warrick Circuit Court's judgment denying their counterclaim to quiet title to property deeded to Alan and Lynne Sprinkle. On appeal, the Cards claim that they proved that their predecessor in interest obtained title to the disputed property, and the trial court erred when it concluded that they failed to prove each element of their adverse possession claim. Specifically, the trial court found that the Cards failed to prove the

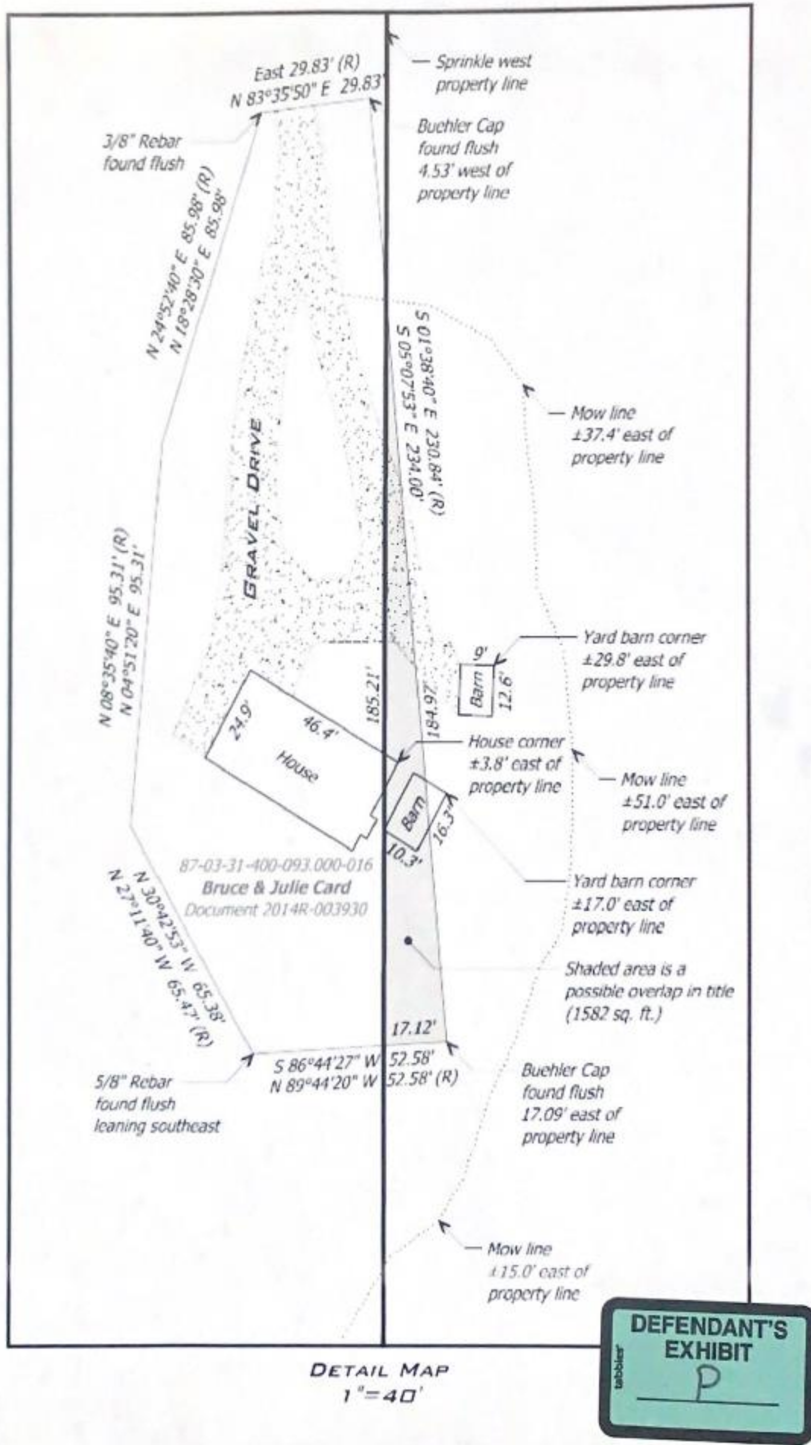
"notice" element. The Cards also appeal the trial court's award of attorney fees to the Sprinkles.

[2] Concluding that the Cards proved that their predecessor in interest obtained title to the disputed property via adverse possession, we reverse and remand for proceedings consistent with this opinion.

Facts and Procedural History

[3] The Sprinkles have owned approximately forty acres of undeveloped real estate in Dale, Indiana since 1970. Lot 83 in the Yellowbanks Recreational development is adjacent and situated to the east of the Sprinkle property. A house was built on Lot 83 in 1980 and four sheds were constructed on the property in 1990.

[4] The deeds for the Sprinkle property and Lot 83 overlap. Specifically, Lot 83's deed overlaps with the Sprinkle acreage by a length of 184.97 feet and a width of 17.12 feet, which forms a right triangle on the edge of the Sprinkle property. The sheds and a corner of the house on Lot 83 encroach on the Sprinkle property. The red shed is located entirely on the Sprinkle acreage and the brown shed is almost entirely located on the Sprinkle property. A corner of the Card residence is 3.8 feet over the Sprinkle property line and is almost entirely located on Lot 83. The specific overlaps are shown below:



Ex. Vol. Defendant's Ex. P p. 87.

[5] In 2009, the Sprinkles had their forty-acre parcel classified as Forest and Wildland pursuant to Indiana Code chapter 6-1.1-6 which provides property tax incentives. Because a classified forest cannot contain any structures, the house and sheds are a possible threat to the classification of the Sprinkle acreage.

[6] When Kevin Kern, the Cards' predecessor-in-interest, purchased Lot 83 in 2003, there were still four sheds on the property. Kern believed he was purchasing the house, the four sheds, and the land surrounding them. The seller requested to take one of the sheds with him and Kern agreed. Shortly after purchasing Lot 83, Kern tore down one of the remaining three sheds. In 2004, Kern discovered that his property did not include the area where the red shed was located and that the brown shed was not entirely located on his lot. Kern stopped using the red shed for storage after he discovered that no part of the shed was situated on his lot.

[7] Kern believed that Pat Marshall, who was the owner of the Yellowbanks Recreational development, owned the property east of Lot 83. Kern asked Marshall if he could purchase the land east of Lot 83. Marshall told Kern that she did not own the property located to the east of Lot 83. Kern made no other attempts to discover who owned the property. Kern continued to maintain the property by clearing brush, leaves and small trees from around the brown and red sheds, he used the brown shed for storage, and he continually mowed the area while he owned Lot 83. The mow line extends fifty-one feet to the east of the property line.

[8] The Cards purchased Lot 83 from Kern in 2014. Prior to the purchase, Kern gave the Cards a surveyor's report completed in 1999. The house is shown as resting entirely within the boundaries of Lot 83. The sheds were not depicted in the survey. Based on Kern's representations, the Cards believed that the residence and brown shed were located within the boundaries of Lot 83, but the Cards knew they were not purchasing the land surrounding the red shed. Appellant's App. Vol 2 p. 7.

[9] The valuation of Lot 83 for property tax purposes included the residence and four sheds until 2011. Two utility sheds were removed from the valuation in 2011. All taxes were paid by Kern and the Cards from 2003 through 2019.

[10] In 2018, the DNR reinspected the Sprinkle property as required by statute to maintain the Forest and Wildland classification. When the inspector and Sprinkle walked his western property line with a GIS-enabled tablet, they discovered that the Cards' house and sheds were encroaching on the Sprinkles' property. When the property was initially inspected in 2009 by Sprinkle and the DNR, they noted the house and sheds, but the inspector did not indicate that he believed that the structures encroached on the Sprinkles' property line. Sprinkle ordered a survey of his property which confirmed that a corner of the house is located on his property and the red and brown sheds are located on his property.

[11] Sprinkle demanded that the Cards remove the sheds and their house from his property. The Cards declined and maintained that Kern had satisfied the

elements of adverse possession, and therefore, had obtained title of the disputed property, which transferred to the Cards when they purchased Lot 83.

[12] On April 10, 2019, the Sprinkles filed a complaint against the Cards for civil and criminal trespass. The Cards filed counterclaims claiming ownership of the disputed property via adverse possession and seeking to quiet title to the property. A bench trial was held on April 20 and 21, 2021.

[13] The trial court issued findings of fact and conclusions of law on July 19, 2021. The court concluded that the Cards proved all but the notice element of their adverse possession claim. But the court found that the evidence established that Kern only intended "to claim the land upon which the brown shed and residence were located." Appellant's App. Vol. 2 p. 13. Therefore, the Cards only proved that Kern intended to control and exclude others from the property the residence and brown shed rest upon.

[14] Concerning the notice element, the court found and concluded that:

> 73. For the Counterclaim Plaintiffs to prevail in this suit of adverse possession, it was necessary that they prove Kevin Kern established all the elements of adverse possession during his time as owner of lot 83 because the Counterclaim Plaintiffs cannot meet the requisite 10 year period themselves.
>
> 74. If the findings show that Kern has established all elements of adverse possession by clear and convincing proof, then title to the disputed parcel would have passed from the Sprinkles to Kern, and because of Kern's sale of lot 83 in 2014, the title to the disputed parcel would have been transferred to the Cards.
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> ***

87. Next, the Defendants argued during trial that the element of notice has been met because the Sprinkles had constructive notice from the deeds to lot 83 starting in 1998 and ending in 2014, and the Defendants pointed out that Mr. Biven's Surveyor Location Report (Exhibit "C") contained the same legal description as the deeds.

88. Defendants argued further at trial that actual notice had been given to Mr. Sprinkle when he toured his undeveloped land back in 2009 and had noticed buildings near the west property line.

89. In addition, the Defendants argue that the aerial photo located on Mr. Sprinkle's 2009 Stewardship Report (Exhibit "N") in conjunction with the Department of Nature Resources ("DNR") shows the encroachment onto [the] Sprinkle property, therefore actual notice has been given to the Sprinkles.

90. The Court does not believe the Defendants met the heightened standard of clear and convincing proof as to the element of notice.

91. Case law does not support the argument that land deeds can provide constructive notice to a true title owner of an adverse possessor's claim.

92. Furthermore, when Mr. Sprinkle toured his property with the DNR back in 2009, the agent touring the property with Mr. Sprinkle did not alert him to any possible encroaching structures, even though they saw structures during the tour.

93. Additionally, the DNR would not have allowed Mr. Sprinkle to enroll his 40 acres as a classified forest land if there were any structures on it, which further proves that Mr. Sprinkle was unaware of the encroachment in 2009.

94. Also, because Mr. Sprinkle and the DNR agent in 2009 did not notice any encroachments on the Sprinkle property, it cannot follow that a low zoom aerial photo of 40 acres of forest land

could possibly provide notice to a reasonable landowner of forest land.

95. The Sprinkles had their first possible notice during the reinspection tour of [the] Sprinkle property by the DNR in 2018 when Gretchen Herbaugh told Mr. Sprinkle that some structures were possibly encroaching on his land.

96. Mr. Sprinkle did not have actual notice of the Defendant's encroachment until 2018 when Jason Fuchs provided his land surveying services, which clearly informed Mr. Sprinkle of the deed overlap and encroachment of two sheds and a residence on his property.

97. The Court recognizes that character of the land must be taken into consideration when it comes to adverse possession as in *Snowball*, and the Court finds that this favors the Plaintiffs when it comes to the element of notice.

98. The Plaintiffs' land is approximately 39 acres of undeveloped forest land and a reasonable landowner of undeveloped forest land that spans nearly 40 acres likely would not have notice of an adverse possessor's claim from any of the facts listed herein.

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101. Mr. Sprinkle likely would have been charged with notice if the structures were in existence on his property at the time he took ownership, however, the structures were built years after he obtained title of the undeveloped land.

Appellant's App. pp. 18-19, 21-23.

[15] The trial court denied the Cards' counterclaims and entered judgment in favor of the Sprinkles on their trespass claim. The court ordered the Cards to remove the portion of their house situated on the Sprinkles' property and all personal

property and sheds located on the Sprinkles' property. The Cards were also ordered to pay the Sprinkles' attorney fees in the amount of $16,680.

[16] The Cards now appeal.

Standard of Review

[17] In reviewing the findings of fact and conclusions of law thereon made pursuant to Indiana Trial Rule 52, we first determine whether the evidence supports the findings and then whether the findings support the judgment. *Litton v. Baugh*, 122 N.E.3d 1034, 1039 (Ind. Ct. App. 2019) (citing *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453, 457 (Ind. 2009)). On appeal, we will not set aside the findings or the judgment unless they are clearly erroneous. *Id.* (citing Ind. Trial Rule 52(A)). "A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it." *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). We neither reweigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence and reasonable inferences drawn therefrom that support the findings. *Id.* A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment. *Litton*, 122 N.E.3d at 1034 (citing *K.I.*, 903 N.E.2d at 457). A judgment is also clearly erroneous when the trial court applies the wrong legal standard to properly found facts. *Id.* In addition, we review the trial court's legal conclusions de novo. *Id.*

Discussion and Decision

[18] In *Fraley v. Minger*, 829 N.E.2d 476 (Ind. 2005) our supreme court summarized and restated the common law doctrine of adverse possession:

> [T]he 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, as follows:
>
> (1) Control—The claimant must exercise a degree of use and control over the parcel that is normal and customary considering the characteristics of the land (reflecting the former elements of "actual," and in some ways "exclusive," possession);
>
> (2) Intent—The claimant must demonstrate intent to claim full ownership of the tract superior to the rights of all others, particularly the legal owner (reflecting the former elements of "claim of right," "exclusive," "hostile," and "adverse");
>
> (3) Notice—The claimant's actions with respect to the land must be sufficient to give actual or constructive notice to the legal owner of the claimant's intent and exclusive control (reflecting the former "visible," "open," "notorious," and in some ways the "hostile," elements); and,
>
> (4) Duration—the claimant must satisfy each of these elements continuously for the required period of time (reflecting the former "continuous" element).

829 N.E.2d 476, 486 (Ind. 2005).

[19] Also, the claimant must adversely possess the parcel of land for ten years. *Id*. at 487; *see* Ind. Code § 34–11–2–11. 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 the claimant has sustained his or 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.

[20] Finally, the adverse possessor must pay "all taxes and special assessments that the adverse possessor reasonably believes in good faith to be due on the real property during the period the adverse possessor claims to have adversely possessed the real property." Ind. Code § 32–21–7–1.1 "Substantial compliance satisfies this statutory tax payment requirement 'where the adverse claimant has a reasonable and good faith belief that the claimant is paying the taxes during the period of adverse possession.'" *Celebration Worship Center, Inc. v. Tucker*, 35 N.E.3d 251, 254 (Ind. 2015) (quoting *Fraley*, 829 N.E.2d at 493).

[21] First, the trial court concluded that Kern "controlled" the residence, brown and red sheds, and the land where they are located. However, the court concluded that Kern only intended to claim ownership of the house and brown shed and the land those structures sit on. Kern held that land "as his own to the exclusion

of all others for the entire 11 years he owned lot 83." Appellant's App. Vol. 2, p. 21. The Cards do not challenge this conclusion of law on appeal.[1]

[22] The Cards argue that the trial court's factual findings do not support its conclusion that the Sprinkles lacked notice of Kern's intent and exclusive control over the disputed property.[2] Because the Cards do not challenge the trial court's findings and conclusions with regard to the intent element, we limit our review to whether the Sprinkles had actual or constructive notice of Kern's intent to claim and control over the house, brown shed, and the land those structures are situated upon.

[23] In support of their argument, the Cards analogize the facts of this case to those in *Herrell v. Casey*, 609 N.E.2d 1145 (Ind. 1993). In *Herrell*, the Caseys bought the property adjoining the Herrells' property in 1972, and at that time, a fence ran along the edge of the Herrells' property. The Caseys believed that the fence marked the property line between their property and the Herrells' property. The Caseys landscaped and maintained the property up to the fence continuously from 1973 to 1988. They planted trees along the fence line, and stored wood

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[1] The Cards attempt to challenge this finding in their Reply Brief. *See* Appellants' Reply Br. at 17-19. An appellant may not raise new arguments in her reply brief. *See Moriarty v. Moriarty*, 150 N.E.3d 616, 631 n.10 (Ind. Ct. App. 2020), *trans. denied*; Ind. Appellate Rule 46(C).

[2] The trial court observed that "[c]ase law does not support the argument that land deeds can provide constructive notice to a true title owner of an adverse possessor's claim." Appellant's App; Vol. 2. P. 21. However, the Sprinkles obtained their deed years before Kern purchased and obtained his deed to Lot 83; therefore, Kern had notice of the Sprinkles' claim of title to the disputed property. *See Garriott v. Peters*, 878 N.E.2d 431, 442-43 (Ind. Ct. App. 2007). However, Kern's later recording of his deed would not have provided actual or constructive notice to the Sprinkles.

and large gas drums in the disputed property area. In 1975, they built a storage shed on a concrete pad approximately six feet from the fence where it remained until the Caseys replaced the shed with a garage. The shed was moved to a new location near the fence. In 1987, the Herrells removed the fence and had their property surveyed. The survey established that the Herrells' property line extended beyond the fence and the Caseys' garage encroached .5 feet onto the Herrells' property and the shed encroached 4.3 feet onto the Herrells' property. *Id*. at 1146.

[24] The Herrells filed an action to quiet title to the disputed parcel. In response, the Caseys argued, and the trial court found, that they adversely possessed the property. *Id*. at 1145. We affirmed the trial court's judgment on appeal and stated:

> the encroaching shed was built in 1975 and was replaced in 1984 by a garage which encroached in the same location and continued to encroach at the time the Herrells filed suit in 1990. In addition, between 1973 and 1990, the Caseys added dirt to and leveled the property, planted and continuously maintained grass, trees and a garden, and stored firewood and gasoline drums in the disputed area. Thus, the evidence is sufficient to conclude that the Caseys' possession of the property was sufficiently "notorious" to put a reasonable owner on notice of their adverse claim.

Id. at 1148.

[25] Our courts have generally held that "'maintenance activities in a residential area are a factor in a property dispute, [but] standing alone, they are not

sufficient to support a divesture of property based upon adverse possession.'" *Moseley v. Trustees of Larkin Baptist Church*, 155 N.E.3d 1221, 1226 (Ind. Ct. App. 2020) (quoting *McCarty v. Sheets*, 423 N.E.2d 297, 300-01 (Ind. 1981)), *trans. denied*. But in this case, as in *Herrell*, Kern used and maintained structures that encroached on the disputed property. And the character of Lot 83 was both residential and recreational, while the adjacent Sprinkle property was wooded acreage. Only Kern and the Cards mowed the area around the house and the brown shed, and cleared brush, small trees, and leaves from the area, which clearly delineated the wooded and residential areas. Tellingly, when the DNR inspector walked in the disputed area in 2018, she felt as if she was walking on someone else's property. Tr. Vol. 2, p. 44. *Cf. Celebration Worship Center,* 35 N.E.3d at 256 (holding that the homeowner proved her adverse possession claim establishing ownership of a gravel driveway next to her property line with evidence that she purchased gravel and maintained the gravel driveway for over thirty years); *Wetherald v. Jackson*, 855 N.E.2d 624, 640 (Ind. Ct. App. 2006), (concluding that the Jacksons' maintenance and construction of a dock, deck, boat lift, and retaining wall in the transfer area were sufficient to give actual or constructive notice to Wetherald of their intent to control the transfer area), *trans. denied*; *see also* *Williams v. Rogier*, 611 N.E.2d 189, 197 (Ind.Ct.App.1993) (noting that "for residential land, the presence of permanent improvements such as border fences or buildings which are in place during the entire statutory period can be sufficient to establish adverse possession"), *disapproved of on other grounds by* *Fraley*, 829 N.E.2d at 476.

[26] Kern owned, maintained, and utilized the house and brown storage shed for over ten years. It is hard to imagine a more open and notorious use of property than using and maintaining a home or storage building constructed on that property. At any time while Kern owned Lot 83, the Sprinkles could have observed the house and brown shed on their deeded property, and Sprinkle did so in 2009 when his forty-acre property was first classified as a Forest and Wildland by the DNR. The fact that the Sprinkles did not realize that a corner of the house and the brown shed rested on their deeded property does not negate Kern's adverse possession of the Sprinkles' deeded property. Moreover, Kern paid taxes on the home and the brown shed for the eleven years that he owned Lot 83, and the Cards have continued to pay taxes on those structures.

[27] For all of these reasons, we conclude that the Cards proved by clear and convincing evidence that title to the property that the house and the brown shed sit upon transferred to Kern because he adversely possessed the property for the requisite ten-year period. Kern's title transferred to the Cards when they purchased Lot 83 in 2014. Therefore, the trial court erred when it denied their counterclaims for adverse possession and to quiet title to the property that the house and brown shed are situated upon.

[28] Finally, the trial court granted the Sprinkles' trespass claim and awarded attorney fees to the Sprinkles presumably under Indiana Code section 34-24-3-1 which authorizes trial courts to award treble damages and attorney's fees where

a party suffers a pecuniary loss as the result of criminal trespass.[3] *See Frazee v. Skees*, 30 N.E.3d 22, 40 (Ind. Ct. App. 2015). Our court has observed that

> A person who "knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent" commits criminal trespass, a Class A misdemeanor. Ind. Code § 35–43–2–2(b)(4). "It has long been the law in this state, as well as of many other states, that the penal statute relating to criminal trespass was not designed to try disputed rights in real estate, but such law was intended to punish those who willfully and without a bona fide claim of right commit acts of trespass on the lands of others." *Myers v. State*, 190 Ind. 269, 130 N.E. 116, 117 (1921); *see also, Hughes v. State*, 103 Ind. 344, 2 N.E. 956, 958 (1885) ("the machinery of the criminal law cannot be properly invoked for the redress of merely private grievances").

Jones v. Von Hollow Association, Inc., 103 N.E.3d 667, 674 (Ind. Ct. App. 2018).

[29] This case simply involves a real estate dispute between parties with overlapping deeds. The Cards have a bona fide claim to the disputed property and have proven that they purchased a portion of the disputed property from Kern, who obtained his title via adverse possession. For these reasons, we reverse, and on remand, we direct the trial court to vacate its judgment awarding attorney fees to the Sprinkles.

[30] Reversed and remanded for proceedings consistent with this opinion.

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[3] The court references the statute in its order when describing the Sprinkles' claims for relief but the court did not issue any findings of fact to support its award of attorney fees except to state that the Sprinkles' cause of action for trespass "is GRANTED." Appellant's App. Vol 2 p. 16.

Brown, J., and Molter, J., concur.