ATTORNEY FOR APPELLANT

James E. Ayers
Wernle, Ristine, & Ayers
Crawfordsville, Indiana

# IN THE
# COURT OF APPEALS OF INDIANA

B & B Farm Enterprises, LLC,
*Appellant,*

v.

Curtis K. Hudson and Cindy L. Hudson Revocable Living Trust: Curtis Hudson,
*Appellee.*

May 23, 2022

Court of Appeals Case No. 21A-PL-2354

Appeal from the Montgomery Superior Court

The Honorable Heather Barajas, Judge

Trial Court Cause No. 54D01-1806-PL-633

**Bailey, Judge.**

# Case Summary

[1] B & B Farm Enterprises, LLC ("Farm") sued Curtis Hudson and the Curtis K. Hudson and Cindy L. Hudson Revocable Living Trust (individually and collectively "Neighbor") alleging that Neighbor "trespassed" on Farm's property (the "Farmland") and "without authority or right" modified a private drain, "imped[ing] the proper flow by addition [*sic*] flow" and "falsely claim[ing]" the drain was a mutual drain. App. Vol. 2 at 33-34. Farm alleged that it was "entitled to the full service of the unmodified drain" and it sought an order requiring the disconnection and removal of Neighbor's drain. *Id.* at 34.

[2] Neighbor moved for summary judgment, arguing that (1) the complaint stated only a tort claim of either trespass or injury to property other than personal property and (2) in either case, the claim was time-barred because the complaint was filed outside the applicable six-year statute of limitations. The trial court granted summary judgment in favor of Neighbor. Farm now appeals. On appeal, Neighbor has declined to file a brief in support of summary judgment.

[3] Concluding that, at bottom, the complaint seeks to quiet title and determine whether Neighbor may use the drainage line—an action not subject to a six-year statute of limitations—we reverse and remand for further proceedings.

# Facts and Procedural History

[4] In June 2018, Farm filed this action against Neighbor.[1] It later amended the complaint. In the action, Farm alleged that Neighbor "trespassed" on the Farmland, "damage[ed] and modif[ied]" Farm's private drain, and impeded drain flow. *Id.* at 33-34. At one point, Farm alleged that the conduct "constituted a malicious trespass[.]" *Id.* at 34. Farm also alleged it was "entitled to the full service of the unmodified drain[.]" *Id.* Farm sought an order that Neighbor's "drain be and remain disconnected and removed at [Neighbor's] expense and for such other damages that may be just." *Id.*

[5] Neighbor moved for summary judgment. In its supporting memorandum, Neighbor focused on designated evidence indicating that Farm acquired the Farmland in 2012. Neighbor pointed to designated evidence that, with the consent of Farm's predecessor in interest, certain drainage tile had been installed on the Farmland prior to December 5, 2011. Neighbor asserted that Farm's claim was either for (1) trespass or (2) injury to property other than personal property and that, in either case, a six-year statute of limitations applied that expired by the time Farm filed suit in 2018—"expir[ing], at the latest, in 2017." *Id.* at 68. Neighbor argued that "no matter how [Farm] attempts to frame its claim" against Neighbor, the claim "is time barred and summary judgment should be entered in favor of" Neighbor. *Id.* at 69. Neighbor also designated evidence indicating that Farm at some point severed

[1] Farm also sued other defendants who were either dismissed from the action or granted summary judgment.

or blocked the drainage from Neighbor's property, leading Neighbor to file a Petition to Remove Obstruction with the Montgomery County Drainage Board, which was "deferr[ing] [a] ruling . . . until this matter is resolved." *Id.* at 50.

[6] In response, Farm designated evidence that its predecessor in interest gave Neighbor permission to connect a 6" line to drain a small pond from Neighbor's property but Neighbor instead connected 12" and 8" lines, draining not only the small pond but also "bringing in water from another watershed[.]" *Id.* at 87. In a supporting memorandum, Farm argued that the asserted six-year statute of limitations did not apply because the crux of the matter was whether Neighbor had acquired a "right of way easement for water," a matter "not subject to any of the statute of limitations cited" by Neighbor. App. Vol. 2 at 81. Farm also asserted that, to the extent a six-year statute of limitations applies, the nature of the alleged offending conduct—excess discharge causing damages—had been intermittent. According to Farm, each improper discharge was associated with a new statutory period to recover for damages associated with that discharge.

[7] The trial court held a hearing on the motion for summary judgment. At the hearing, the trial court granted summary judgment to Neighbor "on the grounds of statute of limitations," providing the following explanation:

> The allegation here isn't that the water is coming from [Neighbor's] property on to [Farm], and so there's a continuing trespass. That's not the allegation. The allegation is that there was one trespass, and that as a result of that trespass, [Farm] has had to deal with ongoing flooding issues. But it's not a

> continuing trespass from [Neighbor's] property to [Farm's] property. That's not the allegation.

Tr. Vol. 2 at 17.

[8] Farm now appeals.

# Discussion and Decision

[9] At the outset, we note that the Appellees did not file a brief. Generally, under such circumstances, we need not develop an argument on their behalf and may instead "reverse the trial court's judgment if the appellant's brief presents a case of prima facie error." *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). In this context, prima facie error means "at first sight, on first appearance, or on the face of it." *Id.* (quoting *Front Row*, 5 N.E.3d at 758).

[10] We also observe that Indiana adheres to principles of notice pleading. *See generally* Indiana Trial Rule 8; *see also Miller by Miller v. Mem'l Hosp. of S. Bend, Inc.*, 679 N.E.2d 1329, 1332 (1997). Indeed, Trial Rule 8(F) directs that "[a]ll pleadings shall be so construed as to do substantial justice, lead to disposition on the merits, and avoid litigation of procedural points." Along these lines, "[o]ur notice pleading rules do not require that the complaint state all the elements of a cause of action." *Miller by Miller*, 679 N.E.2d at 1332. Rather, "[a] plaintiff 'essentially need only plead the operative facts involved in the litigation.'" *Id.* (quoting *State v. Rankin*, 294 N.E.2d 604, 606 (Ind. 1973)).

[11] "When reviewing a summary judgment decision, our well-settled standard is the same as it is for the trial court[.]" *Stafford v. Szymanowski*, 31 N.E.3d 959, 961 (Ind. 2015). That is, summary judgment is appropriate only if "the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." T.R. 56(C). "We construe all evidence in favor of and resolve all doubts as to the existence of a material issue in favor of the non-moving party." *Stafford*, 31 N.E.3d at 961. Moreover, we review questions of law *de novo* and "will reverse if the law has been incorrectly applied to the facts." *Markey v. Est. of Markey*, 38 N.E.3d 1003, 1006 (Ind. 2015) (quoting *Woodruff v. Ind. Fam. & Soc. Servs. Admin.*, 964 N.E.2d 784, 790 (Ind. 2012)). "Otherwise, we will affirm a grant of summary judgment upon any theory supported by evidence in the record." *Woodruff*, 964 N.E.2d at 790.

[12] Here, Neighbor's motion for summary judgment was predicated on there being a six-year statute of limitations applicable to all claims. Neighbor narrowly construed the complaint as seeking to recover for a single alleged "trespass"—the entry on land to install the drainage tile. Neighbor focused on designated evidence that the drainage work was completed before December 5, 2011, arguing that the 2018 complaint was filed outside the six-year statutory period.

[13] The trial court agreed with Neighbor, determining that—despite designated evidence that Neighbor had been authorized to install only a 6" tile instead of an 8" or 12" tile and despite the contention that Farm experienced intermittent damages from the drainage work and consequent waterflow—the complaint

alleged only a single trespass and the designated evidence showed that a complaint for trespass was untimely due to a six-year statute of limitations.

[14] Although the complaint uses the term "trespass," it is well-settled that our notice pleading rules do not require the specification of legal theories. *See, e.g.*, *Noblesville Redev. Comm'n v. Noblesville Assocs. Ltd. P'ship*, 674 N.E.2d 558, 564 (Ind. 1996). Indeed, "[w]hereas theory pleading required the complaint to delineate a specific legal theory to which the plaintiff would adhere throughout the trial, notice pleading 'merely requires pleading the operative facts so as to place the defendant on notice as to the evidence to be presented at trial.'" *Id.* (quoting *Palacios v. Kline*, 566 N.E.2d 573, 576 (Ind. Ct. App. 1991)).

[15] In the complaint, Farm alleged that Neighbor "without authority or right" "damag[ed] and modif[ied]" Farm's private drain, "imped[ing] the proper flow by addition [*sic*] flow." App. Vol. 2 at 33-34. Farm alleged that it "is entitled to the full service of the unmodified drain." *Id.* at 34. Farm sought an order of permanent disconnection as well as "other damages that may be just." *Id.* At bottom, then, Farm claimed Neighbor had made improper use of its drain. Although tort law—with its associated statutes of limitations—may provide a path for relief, the complaint fairly presents a classic real property claim, *i.e.*, a claim seeking to quiet title to the Farmland and its drainage system. Put differently, the essence of the dispute as developed through summary judgment proceedings is whether Neighbor has an easement to use the drainage system on the Farmland and, if so, whether Neighbor's use of the drainage system exceeds the scope of the easement. *See, e.g.*, I.C. ch. 32-30-2 (setting forth a

cause of action to quiet title to real property). This sort of claim is not subject to a six-year statute of limitations. *See, e.g.*, *Wilfong v. Cessna Corp.*, 838 N.E.2d 403, 405 (Ind. 2005) (noting that a party may obtain a prescriptive easement only after—among other things—uninterrupted adverse use for twenty years).

[16] All in all, we conclude that the complaint is not limited to a claim of either trespass or injury to property other than personal property.[2] And with no brief supporting the entry of summary judgment in part or in whole, we conclude that Farm has established prima facie error in the order granting summary judgment on grounds that all claims were subject to a six-year statute of limitations. We ultimately reverse and remand for further proceedings.

[17] Reversed and remanded.

Najam, J., and Bradford, C.J., concur.

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[2] To the extent a defendant is unclear about the scope of claims set forth in the complaint, Indiana Trial Rule 12(E) permits the filing of motion for a more definite statement to "clarify the theory and basis for the cause of action." *Rankin*, 294 N.E.2d at 606. Neighbor did not pursue a 12(E) motion in this case.