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**IN THE  
COURT OF APPEALS OF INDIANA**

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ROBERT WOODRUFF,  
Appellant-Plaintiff,

vs.

JOAN LUCAS,  
Appellee-Defendant.

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No. 77A05-0604-CV-221

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APPEAL FROM THE SULLIVAN SUPERIOR COURT  
The Honorable Thomas E. Johnson, Judge  
Cause No. 77D01-0601-SC-5

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**May 9, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

Robert Woodruff appeals from the trial court's judgment in favor of Joan Lucas on Woodruff's small claims complaint for ejectment and rent. The court originally entered judgment in favor of Woodruff but, after Lucas filed a motion to correct error, entered a Final Judgment Order granting Lucas' motion. Woodruff presents two issues for review, namely:

1. Whether Lucas proved the common law elements of adverse possession.
2. Whether Lucas proved substantial compliance with the adverse possession tax statute.

We reverse and remand with instructions.<sup>1</sup>

## FACTS AND PROCEDURAL HISTORY

In 1994, Lucas and her late husband purchased a parcel of real estate in Hymera. At the time of the purchase, one mobile home was on the parcel. Lucas subsequently placed two more mobile homes on the parcel, one abutting the southern boundary. Based on what neighbors told her when she purchased the parcel, Lucas believed that an old clothesline pole marked the parcel's southern boundary.

On December 7, 2001, Woodruff purchased the parcel abutting the southern boundary of Lucas' property. In 2002, a dispute arose regarding the location of the boundary between the respective parcels. On January 4, 2006, Woodruff filed suit in small claims court, seeking to have Lucas remove property allegedly on his parcel and

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<sup>1</sup> In appellee's brief, Lucas raises as an issue for review whether the trial court properly denied Woodruff's motion to correct error, which was filed after the trial court entered its Final Judgment Order. Because we determine that the record does not support the trial court's determination that Lucas substantially complied with the adverse possession tax statute, we need not address whether the trial court erred when it denied Woodruff's motion to correct error.

asking for back rent from January 1, 2002. The trial court held a hearing on January 17, 2006, at which Woodruff appeared pro se and Lucas was represented by counsel. On February 6, 2006, the court entered judgment in favor of Woodruff.

On February 8, 2006, Lucas filed a motion to correct error, arguing that she had proved ownership of the disputed tract by adverse possession. On February 14, 2006, the trial court entered its Final Judgment Order, in which it made special findings and “declare[d] the Defendant [Lucas] owner of the subject parcel of real estate by adverse possession[.]” Appellant’s App. at 91. The trial court vacated its judgment of February 6, 2006, and ordered that Woodruff “take nothing by way of his Complaint.” *Id.*

On March 14, 2006, Woodruff filed a motion to correct error, attaching as an exhibit a letter that had not been offered into evidence at the small claims hearing. Lucas filed an objection to Woodruff’s motion, arguing that the exhibit to Woodruff’s motion did not comply with Indiana Trial Rule 59(H). Woodruff filed a response to Lucas’s objection, and, thereafter, Lucas filed a response to Woodruff’s response. On March 31, 2006, the trial court denied Woodruff’s motion to correct error. Woodruff appeals.

## **DISCUSSION AND DECISION**

### **Standard of Review**

In the appellate review of claims tried to the bench without a jury, the reviewing court shall not set aside the judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. City of Dunkirk Water and Sewage Dep’t v. Hall, 657 N.E.2d 115, 116 (Ind. 1995) (stating standard of review in appeal from small claims court). In determining whether a

judgment is clearly erroneous, we will not reweigh the evidence or determine the credibility of witnesses but will consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. Id.

Small claims actions are “informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.” Ind. Small Claims Rule 8(A). Although the court here made special findings, the formal entry of special findings is “contrary to the policy announced in Small Claims Rules 8 and 11,” which provide that small claims trials are informal and require only that small claims judgments “shall be reduced to writing.” Bowman v. Kitchel, 644 N.E.2d 878, 879 (Ind. 1995) (quoting Ind. Small Claims Rule 11(A)). Thus, special findings do not guide our review.

Here, because Woodruff appeals from a judgment finding that Lucas had met her burden of proving adverse possession, he appeals from an adverse judgment. See Garling v. Ind. Dep’t of Natural Res., 766 N.E.2d 409, 411 (Ind. Ct. App. 2002) (holding that appeal from judgment based on findings in favor of party with burden of proof is an appeal from an adverse judgment), trans. denied. For reversal of the judgment, Woodruff must show that the judgment was clearly erroneous as defined by Indiana Trial Rule 52(A). Id. When the trial court enters findings in favor of the party bearing the burden of proof, we will hold the findings clearly erroneous if they are not supported by substantial evidence of probative value. Id. Even if the supporting evidence is substantial, we will reverse the judgment if we are left with a definite and firm conviction a mistake has been made. Id. When a question of law is dispositive, we owe no deference to the trial court. Kopetsky v. Crews, 838 N.E.2d 1118, 1123 (Ind. Ct. App. 2005).

## Common Law Adverse Possession

Woodruff contends that the trial court erred when it entered judgment against him. Specifically, he asserts that Lucas did not prove the common law elements of adverse possession. We cannot agree.

In Fraley v. Minger, 829 N.E.2d 476, 486 (Ind. 2005), our supreme court restated the adverse possession doctrine and its elements:

[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 – [T]he claimant must satisfy each of these elements continuously for the required period of time (reflecting the former “continuous” element).

The statutory period necessary to achieve adverse possession is ten years, Ind. Code § 34-11-2-11, and title by adverse possession passes to the claimant by law at the end of the possessory period, Fraley, 829 N.E.2d at 487 (citation omitted).

Here, Lucas presented evidence to the trial court that she had purchased her parcel in 1994. Based on reports from longtime neighbors of the parcel, Lucas believed that an old clothesline pole marked the southern boundary. As a result, in late 1994 she placed a mobile home just north of that pole, installed steps and an air conditioning unit on the south side of the mobile home, and placed a shed south of the mobile home. Lucas rented the mobile home and instructed her tenants to mow up to the clothesline pole. Evidence admitted at trial also showed that tenants parked vehicles and deposited trash for removal south of the mobile home. And when a culvert in the disputed parcel required repair in 2002, Lucas objected to the repairs, claiming the property belonged to her and not to Woodruff.<sup>2</sup>

The evidence shows that Lucas asserted control over the disputed parcel for the requisite ten-year period. Her intent to assert ownership was clear, based on her placement of fixtures in the disputed area and her instructions to tenants on the location of the southern boundary of the parcel. And the tenants' use of the parcel and Lucas' objection to the culvert repair demonstrated her open and clearly visible claim to the disputed tract, giving notice to others of Lucas' belief regarding the location of the southern boundary. Based on such evidence, we conclude that the trial court's determination that Lucas proved the common law elements of adverse possession is not clearly erroneous.

In support of his contention that Lucas did not prove ownership by adverse possession, Woodruff points to evidence that allegedly contradicts Lucas' claim of

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<sup>2</sup> The town of Hymera performed the repair work on the culvert. Because the town and Woodruff believed that Woodruff owned the tract where the culvert was, Woodruff paid for the materials.

ownership and open use of the property. In particular, the trial court admitted into evidence a letter from the former owner's adult grandson, who stated that Lucas had removed a fence that had marked the true southern boundary of Lucas' parcel. Woodruff's testimony contested Lucas' as to when a satellite dish was placed south of the mobile home at issue and whether her tenants mowed to the clothesline pole. Woodruff also contends that his payment for the culvert repair in 2002 interrupted the ten-year statutory period/ And he notes that Lucas "made no attempt to have the property surveyed, check the recorded surveys, and/or check the tax records, which she could have easily done" during her tenure as a township assessor, to "discover[] whether or not she was paying taxes on [the disputed] parcel of real estate[.]" Appellant's Brief at 17, 19.

Woodruff's arguments amount to a request that we reweigh the evidence, which we cannot do. See Hall, 657 N.E.2d at 116. And, again, because Woodruff is appealing from an adverse judgment, he must demonstrate that the findings are not supported by substantial evidence of probative value, leaving us with a definite and firm conviction a mistake has been made. Garling, 766 N.E.2d at 411. Woodruff has not met that burden. Because there is evidence in the record to support the trial court's determination that Lucas proved ownership of the parcel by adverse possession, we cannot say that the trial court's judgment that Lucas proved the common law elements of adverse possession is clearly erroneous.

## Adverse Possession Tax Statute

Woodruff also contends that Lucas did not prove substantial compliance with the adverse possession tax statute, Indiana Code Section 32-21-7-1. That statute provides:

In any suit to establish title to land or real estate, possession of the land or real estate is not adverse to the owner in a manner as to establish title or rights in and to the land or real estate unless the adverse possessor or claimant pays and discharges all taxes and special assessments that the adverse possessor or claimant reasonably believes in good faith to be due on the land or real estate during the period the adverse possessor or claimant claims to have possessed the land or real estate adversely. However, this section does not relieve any adverse possessor or claimant from proving all the elements of title by adverse possession required by law.

Ind. Code § 32-21-7-1 (emphasis added). Woodruff argues that the trial court's determination that Lucas substantially complied with the statute is clearly erroneous because the parties stipulated that Woodruff actually paid the taxes during a part of the statutory period. We agree that the trial court's determination is clearly erroneous, but we do not agree that the parties' "stipulation" is dispositive.

Woodruff's reliance on the "stipulation" is misplaced for two reasons. First, in the typical boundary line adverse possession case, both property owners have paid the taxes on their respective parcels adjacent to the boundary line. The fact that Woodruff paid his property taxes would not preclude Lucas from also having paid hers. More importantly, here, Woodruff cannot prevail merely on the "stipulation" because he is not the adverse claimant, and it was not his burden to show that he had paid all taxes assessed.<sup>3</sup>

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<sup>3</sup> The "stipulation" Woodruff refers to arises from the following colloquy at trial:

Woodruff: I have got my tax receipts and assessments here . . . if you would like to see them.  
Lucas' Counsel: I have no objection to those . . . Your Honor.

However, we agree with Woodruff that the record does not support the trial court’s conclusion that Lucas substantially complied with the adverse possession tax statute. In Piles v. Gosman, 851 N.E.2d 1009 (Ind. Ct. App. 2006), this court addressed whether a good faith belief regarding the payment of taxes for a disputed tract satisfies the statute.<sup>4</sup> There the parties disputed whether a fence marked the boundary between their respective parcels. The prior owner of the disputed tract testified that he “believed the fence was the property line and that he owned the property up to the fence. He testified that his taxes were always paid, but that he had never seen the [legal] description on the tax bill because his wife actually paid them.” Id. at 1016. Relying on that evidence, this court concluded that when the prior owner and his wife had paid taxes on their property, they had

a reasonable and good faith belief that they were paying the taxes on the property up to the fence—the disputed property. Considering the inferences reasonably drawn from the evidence, there is clear and convincing evidence from which a reasonable trier of fact could conclude that the [prior owners] complied with the tax statute.

Id. at 1017.

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Court: Okay. Would you admit that he has paid the taxes on this ground that he has got?  
Lucas’ Counsel: Yes we would stipulate to that Your Honor.

Transcript at 5 (emphasis added). Thus, even if the “stipulation” had fulfilled an evidentiary burden borne by Woodruff, it would not demonstrate whether he had paid taxes due on the disputed real estate.

<sup>4</sup> In Fraley, our supreme court observed that it permits “substantial compliance to satisfy the requirement of the adverse possession tax statute in boundary disputes where the adverse claimant has a reasonable and good faith belief that the claimant is paying the taxes during the period of adverse possession.” Fraley, 829 N.E.2d at 493 (reaffirming Echterling v. Kalvaitis, 235 Ind. 141, 126 N.E.2d 573 (1955)). But the trial court in Fraley made no finding that the adverse claimants had paid, intended to pay, or believed that they were paying taxes on the disputed tract. Thus, Fraley does not directly address the issue before us.

In the present case, the trial court originally ruled against Lucas, finding that “there was no testimony received from her that she had paid the taxes on the parcel of real estate in question or that [Woodruff] is paying taxes during the period of adverse possession.” Appellant’s App. at 85. Lucas then filed a motion to correct error, alleging that she

reasonably believed that she was paying the real estate taxes and assessments on the subject real estate because the subject mobile home and all of its accessories were installed on the subject real estate at the time of the 1994 reassessment and she had every reason to believe that her real estate taxes included taxes for the subject real estate.

Appellant’s App. at 87. This court may not reweigh the evidence on appeal, but here there is no evidence on the payment of taxes. Specifically, we have combed the record and cannot find any testimony or other evidence to support the contention implied in the motion to correct error that Lucas paid the real estate taxes during the relevant period. Instead, the record shows that Lucas testified only that she believed throughout the ten-year statutory period that she owned the disputed tract up to the clothesline pole.

Lucas offered into evidence three notices of reassessment for her parcel. These notices were issued in 1995. Each accounted for one of the three mobile homes on the parcel, and one also included the assessed value of the parcel. But reassessment notices are not evidence that taxes have been paid. Lucas did not testify or provide any other evidence that she had actually paid taxes on the property for the relevant ten-year period. This was a failure of proof. We cannot assume facts not in evidence.

Under the statute and Piles, a reasonable good faith belief requires more than a self-serving declaration. There must be a factual basis for the claimant’s reasonable good

faith belief, namely, evidence that the claimant paid the taxes assessed during the applicable period. In other words, the adverse possession tax statute has two requirements. First, the claimant must pay and discharge all taxes and special assessments during the relevant period and, second, the claimant must reasonably believe in good faith that such payment and discharge includes payment of all taxes and assessments on the disputed land or real estate during the relevant period.

We conclude that, without any evidence that Lucas actually paid the taxes, there is no evidence to support the conclusion that she had a reasonable good faith belief she had paid all taxes due on the disputed parcel of real estate during the statutory period. Lucas bore the burden of proof by clear and convincing evidence on all the elements of her adverse possession claim, including compliance with the adverse possession tax statute. See Piles, 851 N.E.2d at 1017. Because the record does not support the trial court's conclusion that Lucas satisfied the statute, as determined in the trial court's original judgment against Lucas, the court erred when it granted her motion to correct error and entered final judgment in favor of Lucas. Thus, we reverse and remand with instructions that the trial court reinstate its original judgment entered February 6, 2006, in favor of Woodruff.

Reversed and remanded with instructions.

RILEY, J., and BARNES, J., concur.