

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-230

LARRY MULDREW AND PATRICIA
A. MULDREW
APPELLANTS

V.

JESSE DUCKETT
APPELLEE

Opinion Delivered May 8, 2013

APPEAL FROM THE HEMPSTEAD
COUNTY CIRCUIT COURT
[NO. CV-2001-207-1]

HONORABLE KIRK JOHNSON,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from an order dismissing appellants' claim for unlawful detainer and granting appellee's counterclaim for quiet title based on adverse possession of rural property used for agricultural purposes. Appellants, Larry and Patricia Muldrew, argue that the evidence is insufficient to support appellee's counterclaim for adverse possession and that the trial court erred in ruling that the counterclaim was not barred by the statute of nonclaim, Ark. Code Ann. § 28-50-101 (Repl. 2012). We affirm.

The record shows that appellee, Jesse Duckett, owned property contiguous to the property in question. Appellee leased the disputed property from Arthur Phillips in 1974. The lease was to expire by its terms on February 6, 1983. After Arthur Phillips died in October 1977, appellee simply stopped paying rent and has continuously remained in possession since that time, fencing the land with other land owned by him, cutting hay, grazing cattle, and treating the land as his own. His possession continued unchallenged until



1997, when appellants demanded that appellee vacate the land. Appellee did not comply, and appellants filed this lawsuit in 2001.

Record title to the property changed several times during the twenty-four-year period that appellee occupied the property adversely. After Arthur Phillips's death, record title passed to Howard Phillips by will in a 1979 probate proceeding. After Howard Phillips died in 1982, an estate was commenced in 1989, culminating in a 1992 probate order finding that the sole heir of Howard Phillips was Vernon Phillips. Although appellee filed a public declaration in October 1993 that he claimed the disputed land by adverse possession, no action was taken against him by Vernon Phillips. Vernon Phillips sold the property to appellants in 1997.

Appellants argue that appellee's adverse-possession claim is barred by the statute of nonclaim because no adverse-possession claim was presented in either probate proceeding. We find no merit in this argument because the statute of nonclaim does not bar adverse-possession claims: "The statute of non-claim does not refer to claims of title or for the recovery of property, as claims of such character are not claims against the estate of the deceased." *Moore v. Moore*, 21 Ark. App. 165, 171, 731 S.W.2d 215, 218 (1987) (citing *Morton v. Yell*, 239 Ark. 195, 388 S.W.2d 88 (1965)). The reasoning underlying this rule is that such claims cannot be claims against the estate because they are based on the fact that the property claimed does *not* belong to the estate. *Fred v. Asbury*, 105 Ark. 494, 152 S.W. 155 (1912). Therefore, we hold that appellee's adverse-possession claim was not barred by the statute of nonclaim.



Nor do we agree with appellants' argument that the evidence was insufficient to prove adverse possession. We review equity cases de novo on the record, but we will not reverse a finding of fact by the trial court unless it is clearly erroneous. *Horton v. Taylor*, 2012 Ark. App. 469, 422 S.W.3d 202. Resolution of conflicting evidence and determination of witness credibility are within the province of the fact-finder; in reviewing a trial court's findings, we give due deference to that court's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Id.*

Adverse possession is governed by both common law and statute. To prove the common-law elements of adverse possession, a claimant must show that he has been in possession of the property continuously for more than seven years and that his possession has been visible, notorious, distinct, exclusive, hostile, and with the intent to hold against the true owner. *Horton, supra*. Whether possession was adverse to the true owner is a question of fact. *Id.* Proof that the claimant's acts of ownership are of such a nature as one would exercise over his own property and would not exercise over the land of another is ordinarily sufficient proof of adverse possession. *Id.* In 1995, the General Assembly added, as a requirement for proof of adverse possession, that the claimant prove color of title and payment of taxes on either the subject property or contiguous property for seven years. See Ark. Code Ann. § 18-11-106 (Supp. 2011). However, if the claimant's rights to the disputed property vested before 1995, he need not comply with the 1995 statutory change. *Horton, supra*. Here, we think that the evidence of appellee's enclosure of the property, nonpayment of rent, activities on the property, and failure to vacate following the expiration of the lease in 1983 were sufficient to



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support the trial court's decision that appellant acquired title to the disputed property by adverse possession before the payment of *ad valorem* taxes became an element of adverse possession in 1995.

Affirmed.

GLADWIN, C.J., and VAUGHT, J., agree.

Bob Estes, for appellants.

James H. Pilkinton, Jr., for appellee.