

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-1255

GLAYTON JOHNSON

APPELLANT

V.

JERRY BRASFIELD

APPELLEE

Opinion Delivered April 14, 2010

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[CV-2006-542-1-5]

HONORABLE JODI RAINES
DENNIS, JUDGE

REVERSED AND REMANDED

DAVID M. GLOVER, Judge

On December 28, 1976, appellant, Glayton Johnson, purchased “Lot 13” by warranty deed from the Estate of Roberta Hayes. Twenty-six years later, appellee, Jerry Brasfield, purchased “Lots 10, 11, and 12” by warranty deed from J.W. and Betty Wagnon on June 28, 2002, and later still purchased “Lots 14 and 15” by quitclaim deeds from the heirs of Pearlie Williams on June 18, 2004. All of these lots are located in Block 14 of the E.J. Waters Addition in Pine Bluff, Arkansas. On July 17, 2006, responsive to possessory actions by Brasfield, Johnson filed a petition to quiet title, claiming ownership by adverse possession of Lots 13, 14, 15, and the south twelve feet of Lot 12. He named Jerry Brasfield as the only defendant. A hearing was held on his petition. After Johnson had rested his case but before Brasfield had completed his case, the hearing was recessed for lunch. When the trial judge returned from lunch, she announced that she did not have jurisdiction to hear the case

“because the statutory required notice in the newspaper was not published or filed of record.” She cited as support for her conclusion, *Crain v. Burns*, 82 Ark. App. 88, 112 S.W.3d 371 (2003). The parties were allowed to submit post-hearing briefs, but the trial court was still not persuaded that it possessed subject-matter jurisdiction. By order entered on August 19, 2009, the trial court dismissed this case without prejudice, and this appeal followed. For his sole point of appeal, appellant contends that the trial court erred in concluding that it was without subject-matter jurisdiction. We agree, and, therefore, reverse and remand this case for further proceedings consistent with this opinion.

The case outcome turns on whether or not all interested parties are before the court. In *Koonce v. Mitchell*, 341 Ark. 716, 718–19, 19 S.W.3d 603, 605–06 (2000), our supreme court explained:

The proceedings in the case before us were *flawed because the record owner was not given notice of the petition to quiet title, and was not made a party*. Therefore, we must resolve the question whether the trial court had subject-matter jurisdiction to adjudicate the interest of that record owner in the strip. We must raise issues of subject-matter jurisdiction even when such questions are not raised below. *Vanderpool v. Fidelity & Casualty Ins. Co.*, 327 Ark. 407, 939 S.W.2d 280 (1997). In determining subject-matter jurisdiction, we note that a prima facie case to quiet title requires a showing that the plaintiff has legal title to the property and is in possession. *Gingles v. Rogers*, 206 Ark. 915, 175 S.W.2d 192 (1943). In an action to quiet title, the plaintiff has the burden of establishing his or her title to the land. *Bullock v. Duerson*, 95 Ark. 445, 129 S.W. 1083 (1910).

Arkansas Code Annotated sections 18-60-501-505 (1987) provide the statutory framework for actions to quiet title. Specifically, Ark. Code Ann. § 18-60-503 (1987) provides the procedure by which notification must be given to all persons who claim an interest in the disputed land. The statute reads in pertinent part:

(a) Upon the filing of the petition [to quiet title], the clerk of the court shall publish a notice of the filing of the petition on the same day of each week, for four (4) weeks in some newspaper published in the county. . . . The petition shall describe the land and call upon all persons who claim any interest in the land or lien thereon to appear in the court and show cause why the title of the petitioner should not be confirmed.

Id.

It is well established that, in order to constitute adverse possession, the possession must be actual, open, continuous, hostile, exclusive, and be accompanied by an intent to hold adversely and in derogation of, and not in conformity with, the right of the true owner. *Staggs v. Story*, 220 Ark. 823, 250 S.W.2d 125 (1952). Implicit in this rule is that the record owner must be a party to the proceedings, or be given notice of the petition to quiet title as provided by Ark. Code Ann. § 18-60-503.

Here, nothing in the record reflects compliance with Ark. Code Ann. § 18-60-503, and *because of the failure to give notice to the record owner*, neither appellant nor appellee were able to make a prima facie case to quiet title. Therefore, we hold that the trial court lacked subject-matter jurisdiction to adjudicate the rights to the land. When the trial court lacks subject-matter jurisdiction, the appellate court also lacks subject-matter jurisdiction. *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995).

In actions where the trial court lacked subject-matter jurisdiction, we have reversed and dismissed without prejudice. *Weiss v. Johnson*, 331 Ark. 409, 961 S.W.2d 28 (1998). Accordingly, we reverse and dismiss without prejudice in this case.

(Emphasis added.)

In *Koonce*, it was clear that the record owner had not been made a party to the action and that statutory notice had not been provided. Here, however, the only record owners of the property in question and the only persons claiming ownership of the property were parties to the quiet-title action, both of whom were before the court. Consequently, we conclude that the facts of the instant case are guided by the reasoning of our court in *Boyd v.*

Roberts, 98 Ark. App. 385, 392–93, 255 S.W.3d 895, 900 (2007), where *Koonce* was distinguished as follows:

In his second point, Winningham argues that the trial court erred in finding that the “gap” property was contiguous to the Robertses’ property because the trial court lacked subject-matter jurisdiction to quiet title in the “gap” property. Winningham relies on *Koonce v. Mitchell*, 341 Ark. 716, 19 S.W.3d 603 (2000), which held that, in the absence of compliance with the notice requirements of Ark. Code Ann. § 18-60-503 (1987), the plaintiff could not make a prima facie case to quiet title, and the trial court lacked subject-matter jurisdiction to adjudicate the rights of the parties to the land.

Winningham misinterprets the holding of *Koonce*. In *Koonce*, it was clear from the evidence, and acknowledged by the parties, that an interest in the disputed land was owned by unknown persons who were not parties to the litigation. Clearly, in cases involving the rights or claims of unknown persons and the rights of known persons who have not been served with process in the action, as in *Koonce*, the failure to comply with section 18-60-503(a) renders the trial court without subject-matter jurisdiction to adjudicate the parties’ rights. *Koonce* has no application where, as in the case at bar, the dispute involves the location of a single boundary between two parcels of land, one of which is undisputedly owned by the Robertses and one of which is undisputedly owned by Winningham. The Robertses and Winningham are the only individuals who could possibly claim an interest in the location of the disputed boundary, and all are parties to this action.

(Emphasis added.)

At trial, the plat of the E.J. Waters Addition and a surveyor’s report were introduced as exhibits, making the property in issue easily identified. The only persons claiming ownership of this property are parties in this quiet-title action. Therefore, the trial court possesses subject-matter jurisdiction to decide the case.

Reversed and remanded.

GLADWIN and KINARD, JJ., agree.