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ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-22-532

WILLIAM N. GILLISON REVOCABLE
TRUST

APPELLANT

V.

WILLIAM W. BUNKER AND CLAUDIA
M. BUNKER JOINT REVOCABLE
TRUST

APPELLEE

Opinion Delivered February 28, 2024

APPEAL FROM THE CHICOT
COUNTY CIRCUIT COURT
[NO. 09CV-21-37]

HONORABLE ROBERT B. GIBSON III,
JUDGE

AFFIRMED; REMANDED WITH
INSTRUCTIONS TO AMEND THE
JUDGMENT

BART F. VIRDEN, Judge

Appellant William N. Gillison Revocable Trust and appellee William W. Bunker and Claudia M. Bunker Joint Revocable Trust are adjoining landowners of Lots 21 and 22, respectively, on the Chanticleer Plantation Plat in Lake Village. The Gillison Trust appeals from the Chicot County Circuit Court’s judgment finding that the Bunker Trust proved that it acquired a 1.3890-acre tract situated in Lot 21 by both adverse possession and boundary by acquiescence. The Gillison Trust argues that the trial court erred in finding that the Bunker Trust had adversely possessed the entire tract of land and in finding that the Bunker Trust proved boundary by acquiescence. We affirm and remand with instructions

for the trial court to amend its judgment to include a legal description of the 1.3890-acre tract acquired by the Bunker Trust.

I. *Background*

This summary of the background has been gathered from the pleadings, exhibits, and testimony. Members of the Bunker family have owned Lot 22, consisting of 2.5297 acres, since the 1920s. Lot 22 is a triangular-shaped lot situated adjacent to Highway 65 in Lake Village. Delta Spindle, a cotton-picker repair shop, has leased Lot 22 from the Bunker family since the 1950s, and Delta Spindle erected a large metal building on the leased property in 1952. In 2018, the Bunker family placed the land into what is now the Bunker Trust.

In early 2021, Delta Spindle sought to purchase the leased property from the Bunker Trust. A survey revealed that the Delta Spindle building and improvements are partially located on Lot 21. In fact, the northern boundary of Lot 22 runs directly through the middle of the Delta Spindle building. Lot 21 has been owned by the Gillison family and, subsequently, the Gillison Trust for at least fifty or sixty years.

Lot 21 is essentially two tracts of land sitting side by side on the northern boundary of Lot 22. The eastern tract of Lot 21 consists of a crop field and turnrow, to the south of which is the Delta Spindle building. An old fence line, which runs east and west for approximately 507 feet, separates the crop field and its turnrow from the Delta Spindle building. This eastern tract is adjacent to a residential neighborhood on its east side. The western tract of Lot 21, which is adjacent to Highway 65 on its west side, has been leased by Chicot Irrigation since the 1970s. There are two billboards owned by the Bunker family just

south of the property leased by Chicot Irrigation. A ditch, running east and west for approximately 209 feet, separates Chicot Irrigation’s leased property from the billboards. The fence line and the ditch are joined in the middle by a “dog-leg” area that runs north and south for approximately forty-one feet.

The disputed tract is the ground between Lot 22’s northern survey line and the ground south of the ditch, east of the “dog leg,” and south of the old fence line. In May 2021, the Bunker Trust filed a complaint alleging that it had acquired the disputed area through boundary by acquiescence or adverse possession. The Gillison Trust filed a counterclaim seeking to quiet title to the disputed tract of land.

II. *Bench Trial*

At a bench trial,¹ Drew McCord, the surveyor who had prepared a survey of “the Delta Spindle property” at the Bunker family’s request, testified that he was surprised by the results; however, he compared them to a survey from approximately the late 1990s to the early 2000s prepared by the highway department, which revealed the same boundary lines. McCord stated that he then prepared a survey of the disputed strip comprising 1.3890 acres.

¹For future reference, especially in boundary-line disputes, when lawyers ask questions of the witnesses while looking at multiple exhibits, everyone should be mindful that either party, or both, may later file an appeal from the trial court’s decision. As an appellate court, we look at the record of the testimony and exhibits after the fact, and it is exceedingly difficult to discern what the lawyers and the witnesses are referring to when they say “here,” “there,” “this,” and “that,” as they point to boundaries, monuments, and trees on photographs and surveys. See, e.g., *McJunkins v. McJunkins*, 2018 Ark. App. 293, at 4 n.2, 550 S.W.3d 895, 899 n.2.

Steve Moon testified that he has owned and managed Delta Spindle since 1982 and that Delta Spindle has leased the property from the Bunker family for “all these years that the property’s been there.” He testified that Delta Spindle has used the area all the way back to the fence line. He said that he has mowed the area, at times with a bush hog, using the fence as a guide and that he has sprayed the fence with Roundup to keep it “from just growing wild.” He said that he even had a garden for a while back near the fence line. Moon testified that he also stored various items up to the fence line, such as containers of salvage iron. He stated that no one else has ever maintained anything south of the fence. Moon said that when he was talking about purchasing the property, he had thought that he was buying “all the way back to the fence line.”

Moon stated that there is a wooded area southwest of the crop field (the “dog-leg” area referred to above) where the sewer line is located. When asked about the corner out by the highway where the billboards are located, Moon said that he had mowed it for a while but that “Mr. Bill” (meaning the late William Bunker Sr.) had told him that the Gillisons owned that. He said that Chicot Irrigation then began mowing the area. Moon said that in front of the billboards is a driveway used by Delta Spindle and that he takes care of everything from the driveway going east toward the Delta Spindle building.

William Bunker Jr. (“Will”) testified that, when he received the survey from McCord, he thought that there must have been a mistake. Referring to the fence line between the Delta Spindle building and the crop field, Will testified that it has been there his entire life and that cattle were on the property north of the fence line before the crop field was planted.

Will stated that he and his family have owned the billboards in the corner by the highway and collected the rent on them for as long as he can remember. When asked about Moon's testimony that William Bunker Sr. had told him that the Gillison family owned the land on which the billboards sit, Will stated, "It would be odd that my dad would say that and sign a lease on something he didn't own." Will acknowledged that Chicot Irrigation had items stored north of the ditch but stated that he was not aware of Chicot Irrigation using any part of the land south of the ditch. Referring to the "dog-leg" area between the east end of the ditch and the west end of the fence line, Will stated that it "fit the use" being made of the land by Chicot Irrigation.

Moreover, Will identified real estate tax records showing that the Bunker family had been paying taxes on 3.79 acres of land since at least 2009. Will testified that the acreage of Lot 22, plus the disputed area consisting of 1.3890 acres, was very close to the acreage reflected on the tax records.

Stacey Gillison testified that Lot 21 was transferred to the Gillison Trust in approximately 2005. He said that he is sixty years old and that the land has been in his family for at least fifty or sixty years. Stacey insisted that the fence line was "absolutely not" the boundary line between Lots 21 and 22. He said that he, his father who died in 1994, and a "farm hand" had built that fence north of the Delta Spindle building in the early 1990s to enclose their cattle. He explained that his family had always built fences "well within" the property line so that there would be access to both sides of the fence for maintenance. Stacey admitted that he had not mowed anything south of the fence. He testified that, when the

crop field was planted where the cattle formerly grazed, his family had received complaints from residents in the nearby neighborhood about the dust and chemicals used with the crop field. Stacey explained that he had kept the overgrown fence line as a “buffer” between the crop field and the residential homes. Stacey also testified that he had granted easements to the highway department and to a utility company for a power pole to connect to a submersible irrigation well for the crop field and that he had not sought permission from the Bunker family to give those easements.

As for the corner of the disputed property out by the highway, Stacey testified that Chicot Irrigation had stockpiled corrugated pipe north of the ditch. He said that Chicot Irrigation had also parked a drill truck there under the trees (near the “dog-leg” area) and had left it there for about thirty years. Stacey conceded that the lease with Chicot Irrigation did not contain a survey showing the boundaries of the land being leased. He also did not dispute Will’s testimony that the Bunker family had erected the billboards years ago.

Stacey identified a “wild growth forest” to the east of the Delta Spindle building and said that there had been no improvements made by the Bunker family or anyone on their behalf in that area. He denied that anyone had stored items under the trees, explaining that the forest is too dense for anyone to even walk through it. He described it as another “buffer zone” used by his family to keep the chemicals used with the crop field from drifting over to the residential neighborhood. He later acknowledged that Delta Spindle does use part of that land as “a temporary junk staging area” and said that because he is friends with Moon, he “didn’t see any point of stressing” that Moon needed to stop making such use of it.

Stacey conceded that the land directly underneath the Delta Spindle building, along with a ten-foot perimeter, had been adversely possessed by the Bunker family. He also agreed that the land under a couple of small outbuildings and the drip area by the billboards had been adversely possessed. He did not concede any other part of the disputed area and said that it had “been nothing more than a refuse pile for Delta Spindle.” Stacey testified that Moon mowed the disputed area “sporadically, at best.” He said that the majority of the land had not been maintained by Delta Spindle or anyone and that the Gillison family had exclusively used it as a buffer zone.

Cory Rowe, current president and CEO of Chicot Irrigation, testified that his grandfather had been leasing the Gillison land since the 1970s and that he had first started working at Chicot Irrigation in 1992. He testified that Chicot Irrigation had used the wooded area north of the drainage ditch to store materials, including pipes, and had parked an old decommissioned drill truck under the trees years ago and had forgotten about it. He said that the truck has since been moved because the business was moving to the other side of the highway. Referring to the corner by the highway, Rowe said that Chicot Irrigation had mowed and sprayed the grassy area north and south of the drainage ditch. He said that no one had instructed Chicot Irrigation to maintain the area, that he had done so because he assumed it was part of the land being leased, and that the mowing was done to make the business look good. He said that “people really associated looking past that billboard and seeing our office.” He clarified that Chicot Irrigation did not store anything south of the ditch and that he had nothing to do with the leasing of the billboards.

The trial court ruled that the Bunker Trust had acquired the disputed tract under theories of both boundary by acquiescence and adverse possession. The trial court remarked, “In truth, it is not a close call.” Further, the trial court, which stated that it is “very familiar” with Delta Spindle and its location, found the following:

The material facts regarding the parties’ use of the disputed property are basically one-sided. There was no material objective evidence that the Gillison family used or otherwise recognized any of the property south of the fence or the ditch as being owned by what is now the Gillison Trust. The Court finds Mr. Gillison’s testimony unsupported by objective facts and the placement of powerlines to be immaterial in the context of what parties used or owned what property. To the contrary, there is substantial evidence the Bunker Trust and Delta Spindle occupied the disputed property. Delta Spindle built its facility 70 years ago on the disputed property and used the area up to the fence line for storage of equipment and other materials without objection. It is inconceivable that the Gillisons would have allowed a huge cotton picker repair company to be built on that location and allowed it to use all the surrounding property up to the old fence line for the past 70 years had they believed the property line was as the survey revealed.

As to the property south of Chicot Irrigation, it is also clear that Chicot Irrigation and the Bunkers used the property up to the ditch. Chicot Irrigation stored equipment and materials on the ground along the north side of the ditch, but nothing south of it. The Bunkers erected a billboard along the south side of the ditch that earned income. While there was some dispute over who mowed a small grassy area in front of the billboard, the court finds that to the extent Chicot Irrigation mowed that area, it did so because that made the property immediately in front of its facility more pleasing to the public’s eye and not necessarily because they believed it to be Gillison property that it had under lease. It is not reasonable to believe that the Gillison Trust would have allowed income producing billboards to be erected, unless of course the Gillison Trust had no idea the survey line was different than the ditch.

Moreover, the aerial photographs introduced into evidence show a clearly delineated property line that could only be created by the conduct of the parties. The Court finds it difficult to believe that anyone could look at the bird’s eye view of the property and reach any other reasonable conclusion.

....

Based upon the facts presented, it is apparent to the Court that the Gillison Trust was completely unaware it owned any property south of the fence line or the ditch until it was presented with the survey. Given the fact that Delta Spindle was built approximately 70 years ago in that location, it is unlikely that anyone alive today has ever legitimately believed that the property line existed anywhere but north of the building, along the old fence and along the ditch. The only reasonable conclusion is the parties recognized the fence and ditch running east and west along the northern boundary of what the Court now declares is the Bunker Trust property.

III. *Standard of Review*

We review quiet-title and boundary-line actions de novo. *Smith v. Boatman*, 2017 Ark. App. 488, 529 S.W.3d 254. Because the location of a boundary is a disputed question of fact, we will affirm the trial court's finding unless it is clearly erroneous. *Mullins v. Helgren*, 2022 Ark. App. 3, 638 S.W.3d 864. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Smith, supra*. In reviewing a trial court's findings of fact, the appellate courts give due deference to the trial court's superior position and the weight to be accorded the testimony. *Id.*

IV. *Discussion*

The establishment of title to real property through adverse possession is governed by both statutes and case law.² Possession alone does not ripen into ownership. *SNC Revocable*

²In 1995, the General Assembly added the requirement that the claimant prove color of title and payment of taxes on the subject property or contiguous property for seven years. Ark. Code Ann. § 18-11-106 (Repl. 2015). If a claimant's right to the disputed property vested before 1995, however, he or she need not comply with the 1995 statutory change. *Collier v. Gilmore*, 2018 Ark. App. 549, 562 S.W.3d 895. Here, despite the inapplicability of this statute, the trial court found that the tax records indicated that the Bunker family more likely than not was assessed for, and paid taxes on, the disputed area.

Tr. v. Galdamez, 2023 Ark. App. 196, 665 S.W.3d 240. To establish ownership to property by adverse possession, that party has the burden of showing possession for seven years and must show that the possession is actual, open, continuous, hostile, and 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. *Id.* When a landowner takes possession of land under the belief that he owns it, encloses it, and holds it continuously for the statutory period under claim of ownership, without recognition of the possible right of another on account of mistake, such possession is adverse and hostile to the true owner. *Smith, supra.*

Boundary by acquiescence, on the other hand, may arise “without the necessity of adverse use to the line.” *Myers v. Yingling*, 372 Ark. 523, 530, 279 S.W.3d 83, 89 (2008) (quoting *Rabjohn v. Ashcraft*, 252 Ark. 565, 570, 480 S.W.2d 138, 141 (1972)). A boundary by acquiescence arises from conduct of adjoining landowners over many years that implies an agreement to treat some visible marker as their boundary, wherever the true boundary might be. *Harrison v. Stolfi*, 2023 Ark. App. 506. A boundary by acquiescence is usually represented by a fence, a turnrow, a lane, a ditch, or some other monument tacitly accepted as visible evidence of a dividing line. *Waggoner v. Alford*, 2021 Ark. App. 120, 619 S.W.3d 59. In such circumstances, the adjoining owners and their grantees are precluded from claiming that the boundary so recognized and acquiesced in is not the true one, although it may not be. *Id.*

We will address the disputed 1.3890-acre tract of land going from west at the highway to east by the residential neighborhood. The Gillison Trust discusses the property in sections

and makes separate arguments on adverse possession and boundary by acquiescence. For brevity, we combine the arguments because they are similar.

The Gillison Trust argues that Moon's testimony was that he did not maintain the area in the corner by the billboards and that he had been told by William Bunker Sr. that the Gillisons owned that land. The Gillison Trust also contends that Rowe testified that Chicot Irrigation mowed that corner, including south of the drainage ditch, because he thought that it was part of the land that Chicot Irrigation leased from the Gillison Trust.

Will testified that the Bunker family has owned and collected the rent on the billboards for as long as he can remember, and Stacey did not dispute Will's testimony that the billboards had been built by the Bunker family. Also, the trial court must have resolved any conflict between Moon's testimony that he had been told that the Gillisons owned the corner and Will's testimony suggesting that his father would not have leased something that he did not own in favor of Will's testimony. Although Chicot Irrigation may have mowed the grassy area south of the ditch, the trial court found that Chicot Irrigation had done so in order to make its business more visible and appealing to passersby on Highway 65 and not necessarily because Chicot Irrigation thought that it was leasing the corner in front of the billboards. Rowe admitted that Chicot Irrigation had not stored anything south of the ditch. Furthermore, Stacey conceded that Chicot Irrigation's lease did not include a survey or any mention of boundary lines.

As for what the trial court referred to as a "dog-leg" section to the east end of the ditch consisting of a few trees, the Gillison Trust argues that the area was not maintained

but that Chicot Irrigation had used it to stockpile pipes and that it had parked a drill truck there approximately thirty years earlier. The Gillison Trust points out that Rowe also said that the drill truck had been parked east of the “dog leg,” meaning that it was within the disputed area. The Gillison Trust argues that there was basically no testimony as to how the Bunker Trust used that area. Will was asked about that short “jog to the south,” i.e., the “dog-leg” area, and he testified that it “fit the use” being made of it by Chicot Irrigation. The trial court appears to have resolved the inconsistency in the witnesses’ testimony in favor of Will and assigned greater weight to Will’s testimony about how much of the area was used by Chicot Irrigation.

Regarding the area between the Delta Spindle building and the crop field, the Gillison Trust argues that Stacey testified that the old fence line did not mark the boundary and that his family had built the fence well inside the boundary line so that they could maintain it on each side. The trial court pointed out that the Gillison family had not maintained anything south of the fence line. Furthermore, it appears that the trial court did not believe Stacey’s testimony that the Gillison Trust had kept the overgrown fence line and had been constantly using it as a buffer between the crop field and the residential neighborhood. On the other hand, the trial court heard that Moon had maintained the area, albeit sporadically; had used it for a garden at one time; and had used it for storage purposes in connection with his business.

As for the eastern portion of the disputed tract consisting of trees and abutting the residential neighborhood, the Gillison Trust argues that the only witness to testify to its use

was Stacey, who said that the Gillison Trust uses that area as a second buffer zone and that neither the Bunker Trust nor anyone on its behalf had made any improvements to that area. Exhibits, however, show that the property was at times mowed up to the woods and that Delta Spindle had various items stored there. In fact, Stacey referred to it as a “junk staging area,” i.e., it was being used by Delta Spindle. Again, the trial court did not believe Stacey’s testimony that the woods were used by the Gillison family as a buffer zone.

Giving the proper deference to the trial court’s credibility determinations, we cannot say that the trial court clearly erred in concluding that the Bunker Trust proved that it acquired the disputed tract of land by both adverse possession and boundary by acquiescence. We recognize that the two theories *in the abstract* can be, arguably, contradictory. In this case, however, there was ample evidence that the Bunker Trust acquired some portions of the disputed land by adverse possession, such as the billboard section by the highway and the land on which the Delta Spindle building sits. As for the remaining portions, like the grassy area south of the ditch, the dog-leg area, the land south of the fence line, and the “junk-staging area,” there was sufficient evidence for the trial court to have concluded that the parties’ conduct over the course of decades demonstrates a tacit acceptance of, and an implied agreement to treat, the fence line and the ditch as the boundary between the properties. *See, e.g., Vaughn v. Chandler*, 237 Ark. 214, 372 S.W.2d 213 (1963) (discussing separate segments of disputed property and holding that the appellees had acquired land under theories of both adverse possession and boundary by acquiescence).

We affirm and remand with instructions for the trial court to amend its judgment to include a legal description of the tract acquired by the Bunker Trust. Although the trial court twice referred to Plaintiff's Exhibit 14 (the surveyor's aerial photograph with the red survey line superimposed on it), that exhibit with its legal description was not attached to the judgment or otherwise incorporated. See *Whitecotton v. Owen*, 2016 Ark. App. 120, 487 S.W.3d 380 (remanding with instructions to amend the judgment because, although the judgment referenced exhibits with legal descriptions, the order itself must describe the boundary with sufficient specificity that it can be identified solely by reference to the decree); see also *Chiodini v. Lock*, 2010 Ark. App. 340, 374 S.W.3d 835.

Affirmed; remanded with instructions to amend the judgment.

GLADWIN and WOOD, JJ., agree.

Davidson Law Firm, by: *Nickolas W. Dunn*, for appellant.

Friday, Eldredge & Clark, LLP, by: *Bruce B. Tidwell* and *Joshua C. Ashley*, for appellee.