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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

TED A. EIMON et al.,

Plaintiffs and Appellants,

v.

DAVID SEVERSON et al.,

Defendants and Respondents.

2d Civil No. B249662
(Super. Ct. No. CV 108407A)
(San Luis Obispo County)

Ted A. Eimon and Iris M. Eimon appeal a summary judgment entered in favor of David Severson and Gwen Severson.¹ We conclude that the trial court properly entered summary judgment on the basis of the Seversons' adverse possession and affirm.

FACTUAL AND PROCEDURAL HISTORY

The Eimons and the Seversons are adjacent real property owners on Kiler Canyon Road in Paso Robles. The Eimon property adjoins the Severson property at the Eimon property's southern boundary. The parties dispute the location of this southern boundary. The Seversons assert that the boundary is designated by a longstanding barb wire fence; the Eimons claim, based upon their recent land survey, that the boundary is 50 feet south of the fence.

¹ To ease the reader's task, we will refer to the parties as "the Eimons" or "the Seversons," except where clarity demands that we draw a distinction.

On December 20, 2010, the Eimons filed this action against the Seversons, alleging causes of action for quiet title, trespass, and injunctive relief. On May 7, 2012, the Seversons filed a cross-action seeking a judicial declaration regarding the true north/south boundary between the properties.

On July 13, 2012, the Seversons moved for summary adjudication or summary judgment, asserting that no triable issues of material fact exist regarding adverse possession, among other legal theories. Evidence submitted in support of and in opposition to the motion established this:

The Eimons own a 13.5 acre parcel located at 1630 Kiler Canyon Road in Paso Robles that was part of a larger parcel owned by Ted Eimon's grandparents. The Eimons acquired their parcel in 1990, and later constructed a residence near the parcel's southern boundary.

On September 2, 2003, Gwen Severson purchased an unimproved parcel located at 1680 Kiler Canyon Road. At the time, the seller informed her that the property constituted 9.89 acres and its northern boundary with the Eimons was a barb wire fence. Severson reviewed the San Luis Obispo County tax assessors map, entitled "Sawyers Subdivision of the Southwest Quarter of Section 6" ("Sawyers Map"), dated 1913, at the assessor's office prior to purchasing the property. The Sawyers Map indicates that the parcel constitutes 9.89 acres. Beginning in November 2003, Severson began paying real property taxes on the 9.89 acres.

On April 25, 2005, Severson deeded the property to herself and her husband. Soon, they began construction of a residence on the property and later added a vineyard, Compestela Vineyards. Between May and November 2005, the Seversons set a pad for water tanks, set water tanks and a propane tank, and added landscaping in the now-disputed area. Ted Eimon admits that in the fall of 2005, he was aware of the construction. By March 15, 2006, the Seversons' residence was completed and the property reassessed by the county tax assessor.

In 2009, the Eimons commissioned a survey by Twin Cities Surveyors of the southern boundary of their parcel. William Touchon, an employee of Twin Cities

Survey, performed a survey of the southern boundary. He concluded that the boundary line was 50 feet south of the existing barb wire fence.

Touchon also opined that the county tax assessor based the Seversons' acreage assessment on the 1913 Sawyers Map. Touchon believed that the assessor did not perform a survey and could not confirm the accuracy of the 9.89 acreage. He added: "It can also be assumed that land owners were required to pay taxes on their properties based upon those acreages, correct or not."

The Seversons provided a declaration from Albert King, a licensed surveyor, stating that the area contained within the Seversons' current fence lines is approximately 9.88 acres. If the disputed area was removed, the Seversons' parcel would be approximately 9.30 acres "unless all of the properties in the Sawyer's Subdivision were also pushed South." King stated that such a shift would cause property owners south of the Seversons' parcel to lose acreage due to the existence of a public road.

The Eimons also provided the declaration of Charron Sparks, the assessment manager for the San Luis Obispo County Tax Assessor. Sparks declared that the tax assessor does not perform a land survey to ensure that the property being valued complies with its legal description. She stated that, "[i]nstead, the Assessor's Office relies upon what appears to be the property in use and boundaries established over long periods of time between landowners." Sparks added that Gwen Severson purchased the property at 1680 Kiler Canyon Road in November 2003, that the parcel contains 9.89 acres of land, and "there is no evidence that the inspection was other than a cursory view from the access road off Kiler Canyon Road."

Following written and oral argument, the trial court granted summary judgment in favor of the Seversons. The court concluded that the Eimons did not raise triable issues of material fact regarding the Seversons' adverse possession of the disputed boundary area. In his written ruling, the trial judge stated: "Because the size of [the Seversons'] property is undisputed by [the parties] and the tax collector, it was incumbent on [the Eimons] to explain where [the Seversons'] property actually is located and bear the implications of the [e]ffects upon their own property, and all adjacent properties. Put

another way, [the Eimons] needed to create a triable issue of fact by explaining the actual location of the boundary line of their own property and those of their neighbors." The court also decided that the Eimons' causes of action for trespass were precluded by the three-year limitations period of Code of Civil Procedure section 338, subdivision (b).²

The Eimons appeal and contend that the trial court erred by granting summary judgment because triable issues of material fact exist regarding the Seversons' claim of adverse possession.

DISCUSSION

The Eimons argue that there is a triable factual issue whether the Seversons paid property taxes regarding the disputed area. (§ 325, subd. (b) [requirements of adverse possession].) They assert that summary judgment in favor of the Seversons conflicts with the law of agreed boundaries. The Eimons also contend that the legal description of each parcel establishes that the barb wire fence falls within the Eimon parcel.

In a motion for summary judgment, the moving party bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 286; *Regional Steel Corp. v. Liberty Surplus Ins. Corp.* (2014) 226 Cal.App.4th 1377, 1388.) Once the moving party meets that burden, the burden shifts to the responding party to show that a triable issue of one or more material facts exists regarding that cause of action. (§ 437c, subd. (p)(1); *Regional Steel Corp.*, at p. 1388.) A triable issue of material fact exists where "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) On appeal, we review the trial court's decision de novo, considering the evidence offered by the parties (except that which the court properly excluded) and

² All further statutory references are to the Code of Civil Procedure.

the uncontradicted inferences therefrom. (*Hartford Cas. Ins. Co.*, *supra*, at p. 286; *Regional Steel Corp.*, at p. 1388.)

To establish adverse possession, the possessor must establish tax payment and open use or possession that is continuous and uninterrupted, hostile to the true owner and under a claim of title. (§ 325; *Gilardi v. Hallam* (1981) 30 Cal.3d 317, 321 [statement of general rule]; *Mesnick v. Caton* (1986) 183 Cal.App.3d 1248, 1258 [same].) Adverse possession must have occurred for the five years prior to commencement of the lawsuit. (§ 321; *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 325.)

The trial court did not err by finding that no triable issues of material fact exist regarding the Seversons' adverse possession. The parties agree and the 1913 Sawyers Map reflects that the Seversons' parcel constitutes 9.89 acres. In 2003, the San Luis Obispo County tax assessor performed a visual inspection of the property and relied upon the property in use and the boundary established between landowners. (*Gilardi v. Hallam, supra*, 30 Cal.3d 317, 327 ["where the claimant . . . by the building of fences has visibly shown occupation of a disputed strip of land adjoining the boundary, several cases have reasoned that the 'natural inference' is that that the assessor did not base the assessment on the record boundary but valued the land and improvements visibly possessed by the parties"].) The Seversons provided evidence that since 2003, they paid the real property taxes on 9.89 acres. Surveyor King concluded that if the disputed area was removed from the 9.89 acres, the Seversons's parcel would be reduced to 9.30 acres. Surveyor Touchon stated that "[i]t can . . . be assumed that land owners were required to pay taxes on their properties based upon [the Sawyers Map] acreages, correct or not."

The trial court also properly decided that pursuant to the summary judgment statute, the burden shifted to the Eimons to explain the location of the Seversons' 9.89 acreage if their northern boundary was 50 feet south of the barb wire fence. (§ 437c, subd. (p).)

The trial court's conclusion regarding adverse possession under these circumstances does not affect the legal doctrine of agreed boundaries. The settlement of a disputed boundary by agreement differs from adverse possession in that it is based upon

consent. (*Mesnick v. Caton, supra*, 183 Cal.App.3d 1248, 1256-1257 [doctrine of agreed boundaries "a last legal resort"].)

The judgment is affirmed. Respondents shall recover costs on appeal.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Jac A. Crawford, Judge
Superior Court County of San Luis Obispo

Christian E. Iversen for Plaintiffs and Appellants.

John E.D. Nicholson for Defendants and Respondents.