

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002014-MR

JUANITA SUE SPINKS

APPELLANT

v. APPEAL FROM EDMONSON CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 99-CI-00045

THE HOLDER CEMETERY;
WAYNE HOLDER;
CARL DWIGHT HOLDER;
CHRISTOPHER L. HOLDER;
ANTHONY TODD HOLDER; AND
CARL O. HOLDER

APPELLEES

OPINION

AFFIRMING

** ** * * * **

BEFORE: GUIDUGLI, JOHNSON AND KNOPF, JUDGES.

GUIDUGLI, JUDGE. Juanita Sue Spinks ("Spinks") appeals from a judgment of the Edmonson Circuit Court in an action initiated by the Holder Cemetery, et al., to settle a boundary dispute. We affirm.

The Holder Cemetery is an unincorporated entity situated in Edmonson County, Kentucky. It apparently was first

used in the late 1800s, and was established without a known deed. The cemetery has been maintained through the years by various members of the Holder family ("the Holders") who are plaintiffs/appellees herein.

Beginning in 1984, Spinks began purchasing from various sellers the property bordering the cemetery. In the late 1990s, a dispute arose between Spinks and the Holders regarding the placement of a fence and the location of the cemetery's boundary lines. The Holders then filed the instant action in Edmonson Circuit Court seeking a declaratory judgment pursuant to KRS 418.040 et seq.

The matter proceeded to trial in March and April of 2000, and the disputed boundary was viewed by the trial judge in June of that year. Upon considering the proof, which included documentary evidence and the testimony of witnesses, the court rendered its judgment on July 31, 2001. The court opined that the Holders obtained title to portions of the disputed property based on adverse possession, granting judgment in favor of the Holders and establishing a boundary which is set forth in the judgment. It further concluded that Spinks was not entitled to any of the disputed property by adverse possession. The boundary was established in such a way so as not to isolate an "island" of Spinks' parcel rendering it unusable. This appeal followed.

Spinks now argues that the trial court committed reversible error in its establishment of the disputed boundary. She maintains that the court improperly relied upon the theory of adverse possession because the facts failed to show that each of the elements of adverse possession was met. She does not challenge the finding that the Holders used the disputed boundary area for a period in excess of 15 years, but argues that the other necessary elements were not met.

We have closely examined Spinks'S argument, and find no error in the trial court's judgment in favor of the Holders. As the parties are well-aware, there are five elements of adverse possession: the possession must be (1) hostile and under claim of right; (2) actual; (3) open and notorious; (4) exclusive; and (5) continuous. Tartar v. Tucker, Ky., 280 S.W.2d 150 (1955). Furthermore, the continuous nature of the possession must extend for at least 15 years. KRS 413.010.

The trial court found in relevant part that there was sufficient testimony relating to burials, fencing, maintenance and the use of parking areas by the Holders and their predecessors to satisfy the elements of adverse possession for the statutory period. The question then becomes one of whether those findings are clearly erroneous. CR 52.01; Largent v. Largent, Ky., 643 S.W.2d 261, 263 (1982) ("The trial court is the finder of fact. . . and the judgment of the trial court may

not be reversed unless the findings are clearly erroneous.").
In reaching these findings, the court relied on various evidence including Spinks'S deeds, other documentary evidence, and the testimony of Wayne Holder and Carl Holder. We must conclude that this evidence properly may be characterized as substantial evidence in support of the trial court's determination that the Holders adversely possessed the disputed boundary area. Nothing more is required.

For the foregoing reasons, we affirm the judgment of the Edmonson Circuit Court.

KNOPF, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

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BRIEF FOR APPELLEES:

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