

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002392-MR

JOSEPH KNOTH; AND
CHRIS KNOTH

APPELLANTS

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 99-CI-00118

ROY GRAY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: JOHNSON AND KNOPF, JUDGES; AND MILLER, SPECIAL JUDGE.¹

JOHNSON, JUDGE: Joseph Knoth and Chris Knoth, husband and wife, have appealed from the findings of fact, conclusions of law, and order of the Lyon Circuit Court entered on October 3, 2001, which adjudged Roy Gray as the fee simple owner of approximately two acres of real property located east of the Knoths=corrected eastern boundary. Having concluded that the trial court's findings of fact were not clearly erroneous and that as a matter

¹ Senior Status Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

of law the trial court properly quieted Gray's title in the subject property, we affirm.

This matter concerns two tracts of land located in Lyon County, Kentucky. The two properties involved in this dispute were once part of the same tract of land owned by W. H. Hobson, who obtained title to the whole parcel by deed dated January 18, 1900.² In 1911, Hobson made the following conveyance of a tract of land consisting of approximately 50 acres to Thomas Gray:

A certain tract or parcel of land in Lyon County Kentucky on the waters of Cumberland River. Bounded as follows Viz:

Beginning at a stake on the bank of said river lower corner to Lot No. 9 in report of Commissioners report in the division of the land of N. C. Gray deceased, running thence down the river N 2 W 61 poles to a point two poles south East of Hack berry, Knoths corner. [T]hence with his line S 89 E 129 poles to a stake. [T]hence S 7 1/2 E 50 poles and ten feet, thence S 89 E 12 poles and 12 feet to a stake; then S 7 1/2 E 12 poles and 12 feet to a stake in R. W. Gray's line, thence with his line 134 poles to the beginning containing 50 acres more or less.

Thomas Gray died intestate in 1962 and this 50-acre tract of land was left to his widow and children. This property was subsequently conveyed to Joseph Knoth's parents in 1972,³ who in turn conveyed it to the Knoths by deed dated January 27,

² This deed was recorded in Deed Book E, Page 24 in the office of the Lyon County Court Clerk.

³ Joseph Knoth's parents' title to the property is evidenced by deed dated June 21, 1972, recorded in Deed Book 66, Page 85 in the office of the Lyon County Court Clerk.

1997.⁴ The remainder of the Hobson tract, the eastern end, was subsequently conveyed to Roy Gray by deed dated October 7, 1991.⁵

Accordingly, the Knoths owned the western end of the Hobson tract and Roy Gray owned the eastern end of the Hobson tract.

Joseph Knoth testified that his family had farmed the disputed property every year since purchasing it in 1972. He testified that through the late 1970's he used a road on Gray's property to reach his farmland. However, after Gray's wife became ill in the late 1970's or early 1980's, he asked the Knoths to use an alternate route to their farm. Knoth testified that in 1984 he used a backhoe⁶ to dig a ditch to drain a slough and cleared a road on the northern end of the disputed property so he could get his farm equipment to his farmland.

Knoth testified that since Gray has blocked his access to his farmland, he must now use a county road. This county road provides access to the road which Knoth constructed across the disputed area. From there, Knoth must go down a bluff, go to the far end of the property, and then cross onto his property. Knoth testified that this is the only feasible route to his farmland.⁷ He testified that the only other way to reach his farmland was to

⁴ This deed was recorded in Deed Book 114, Page 609 in the office of the Lyon County Court Clerk.

⁵ This deed was recorded in Deed Book 101, Page 301 in the office of the Lyon County Court Clerk.

⁶ Knoth also referred to using a bulldozer.

⁷ After observing Knoth's testimony, which was aided by a plat, it appears that the county road enters at the south end of the property.

take the county road, go along a 30-foot bluff, and then cross a 300-yard slough, all of which he claimed was not economically feasible.

The Gray family had suspected there was a problem with the boundaries of the two properties since approximately 1987, and in 1998 they decided to have the property surveyed.⁸ In February 1999 Gray hired a registered, professional land surveyor, Richard Davis,⁹ to determine the location of the boundary line between the two properties.¹⁰ Indeed, Davis found a discrepancy between the boundary lines of the two properties. Davis determined that, as described in the deed, there are areas of the two properties which overlap each other and areas which leave a gap, creating a shortage. Consequently, there are areas between the two properties that are not covered by either legal description and areas that are included in both legal descriptions. Davis also found that the legal description in the Knoths=deed did not close. Davis concluded that the error was based upon a mistaken call in the Knoths=deed. The disputed

⁸ During cross-examination, Tony Gray, Roy Gray's son, testified that he was unsure of the specific time when the Gray family first thought there was a problem. However, when the Knoths=counsel questioned him for the third time concerning how long the Gray family had notice, Tony Gray responded, "I guess it would probably be around '87 then, if I had to pick a date."

⁹ Interestingly, Tony Gray is employed as an electrical engineer by Farris, McIntosh, Tremper & Associates, Inc. Richard Davis, Gray's surveyor, created the plat in this matter. The lower right-hand corner of the plat reads "Farris, Hatcher, Tremper, & Associates, Inc., Consulting Engineers." The record does not indicate the reason for this notation.

¹⁰ The trial court found that Gray had the property surveyed in 1997. Davis prepared the plat of the property in February 1999.

area contains approximately two acres.

Davis testified that there was a gap between the Knoths=northeast corner and Gray's northwest corner of 136 feet. Davis concluded that the calls in the Knoths=deed had been mistakenly reversed. Davis testified that the call in the Knoths=deed which reads AS 89 E 129 poles@ is incorrect and should be amended to read AS 89 W 129 poles.@ If this change were made, the Knoths=property would come much closer to closing. Additionally, if the angles were reversed, the Knoths=tract would contain 50 acres, more or less.

On August 2, 1999, Gray filed this action against the Knoths to have title quieted to the disputed property.¹¹ After conducting a bench trial, the trial court ruled in favor of Gray and ordered that the call in the deed be changed according to Davis's recommendation. The trial court adjudged Gray as the fee simple owner of the disputed property lying east of the Knoths=corrected eastern boundary. The Knoths were awarded a prescriptive easement over the disputed land for their use of the road as access to their farm. Gray was given the right to bar access to this road to all other parties so long as the Knoths had the necessary means to access their property for farming purposes. The trial court ordered that the Lyon County Master Commissioner prepare a deed to correct the legal descriptions of the two deeds and to grant the Knoths a lifetime easement on

¹¹ Kentucky Revised Statutes (KRS) 411.120.

Gray's road. This appeal followed.

The Knoths present two assignments of error on appeal:

(1) that the trial court erred by awarding the disputed tract to Gray, and (2) that the trial court erred by ruling that adverse possession is not maintainable in a quiet title action. In support of their claim that the trial court erred by awarding the disputed tract to Gray, the Knoths specifically argue: (1) that deeds should be construed against the grantor and in favor of the grantee; (2) that a plaintiff in a quiet title action cannot rely on the weakness in a defendant's title, but rather must rely on the strength of his own title; and (3) that a general description in a deed must yield to a specific description.

The former Kentucky Court of Appeals has held that A deed must be construed strongly against the grantor. . . .¹² A[I]n case of ambiguity a deed will be construed most strongly against the grantor.¹³ The Knoths claim the trial court failed to follow this rule and that it erred by construing every discrepancy against them, rather than in their favor.

The trial court found that the property description in the Knoths' deed did not close and that a call in that deed was incorrect. Although the Knoths contend that the trial court erred by construing this shortage against them, they have failed to show how the deed could otherwise be construed. Davis

¹² Martin v. Wagers, 310 Ky. 363, 366, 220 S.W.2d 580, 581 (1949).

¹³ Croley v. Round Mountain Coal Co., Ky., 374 S.W.2d 852, 854 (1964).

testified that, as written in the Knoths=deed, the legal description of the property did not close. He additionally testified that since the Knoths=deed did not close, he was led to believe that there were errors within the legal description of that deed.

At trial, the Knoths failed to present an alternative explanation for this discrepancy. The Knoths did not obtain a survey to contradict Davis's survey. Moreover, in their argument to this Court, they fail to provide an explanation for either the overlapping areas or the gap between the two properties.¹⁴ Perhaps most significant is that the Knoths do not dispute Davis's findings in their argument. Rather, they merely contend that the trial court erred by construing the deed against them.

Contrary to the Knoths=assertion, the trial court did not construe every discrepancy against them. The trial court instead determined that the Knoths=deed was inaccurate because

¹⁴ In their brief to this Court, the Knoths make the following argument:

The Court extended Gray's north line to include the disputed property. The length of Knoth's north line was assumed to be short of the disputed area, even though its beginning point was established in the 19th century as a point on the bank of an ever-changing river. The Court extended Gray's south line beyond its description and moved the beginning point of Knoth's south line westward so as to allow it to extend to the point of beginning. The Court construed this shortage against Knoth, and in favor of Gray. Again, the Court assumed that the point on the river bank and the length were correct. In order to make these changes fit, the Court was forced then to adjust the northeast angle by 15 1/2 degrees. Further, in order to make Gray's description close, 10 feet were added to Gray's west line [emphasis original].

the property description did not close.

This matter was tried without a jury and the trial court made specific findings of fact and conclusions of law.¹⁵ Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.¹⁶ A factual finding is not clearly erroneous if it is supported by substantial evidence.¹⁷ Substantial evidence is evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people.¹⁸ It is within the province of the fact-finder to determine the credibility of witnesses and the weight to be given the evidence.¹⁹ The trial court was persuaded by Davis's testimony and concluded that the angle in the Knoths deed should be changed from S 89 E 129 poles to S 89 W 129 poles. Davis's testimony constituted substantial evidence in support of the trial court's determination that Gray is the legal owner of the disputed property.

The Knoths next argue that Gray, as the plaintiff in this quiet title action, cannot rely on the weakness in the

¹⁵ Kentucky Rules of Civil Procedure (CR) 52.01.

¹⁶ Id.

¹⁷ Owens-Corning Fiberglas Corp. v. Golightly, Ky., 976 S.W.2d 409, 414 (1998); Uninsured Employers Fund v. Garland, Ky., 805 S.W.2d 116, 117 (1991); Faulkner Drilling Co., Inc. v. Gross, Ky.App., 943 S.W.2d 634, 638 (1997).

¹⁸ Golightly, *supra* at 414; Janakakis-Kostun v. Janakakis, Ky.App., 6 S.W.3d 843, 852 (1999)(citing Kentucky State Racing Commission v. Fuller, Ky., 481 S.W.2d 298, 308 (1972)).

Knoths=title, but rather must rely on the strength of his own title. The Knoths allege that the record does not contain all the deeds in Gray's chain of title and his deed does not provide a specific description. The Knoths additionally allege that According to the plat, . . . prior deeds in Gray's chain of title establish his line as lying east of the disputed area.@

The surveyor, Davis, determined the following:

BY COMPUTATION OF A MATHEMATIC CLOSURE ON THE PROPERTY DESCRIBED IN DEED BOOK 66, PAGE 85, IT WAS FOUND THAT THE PHYSICAL DIMENSIONS OF THE [KNOTHS=] DESCRIPTION FAILED TO CLOSE BY A DISTANCE OF 231.04 FEET WITH THE CLOSURE BEING OFF BY 32.4 FEET IN THE NORTH-SOUTH DIRECTION AND 228.76 FEET IN THE EAST-WEST DIRECTION PROVING THAT THERE IS SIGNIFICANT ERROR WITHIN THE DATA DESCRIBED IN THE DOCUMENT. IT APPEARS THAT THE BEARING SHOULD BE IN THE SOUTHWEST DIRECTION. WHEN THIS BEARING IS THEN UTILIZED TO DELINEATE THE EAST LINE OF THE KNOTH PROPERTY, THE ACREAGE CITED WITHIN THE DESCRIPTION (50 ACRES, MORE OR LESS) WILL CHECK FAIRLY CLOSE AS COMPARED TO THE ACREAGE IF THE S 7°30' E, BEARING IS UTILIZED (53.84 ACRES, MORE OR LESS) [emphasis original].

CONCLUSION IS THAT THE KNOTHS HAVE SENIOR RIGHTS RELATIVE TO THEIR PROPERTY OF RECORD IN DEED BOOK 66, PAGE 85, AND THAT THE AREA SHOWN CROSS-HATCHED²⁰ MIGHT BE UNDER THE OWNERSHIP OF GRAY BARRING ANY RIGHT OF ADVERSE CLAIM TO SAID PROPERTY BY KNOTH.

It is conceded that in an action to quiet title the plaintiff must succeed, if at all, on the strength of his own

¹⁹ Garland, supra at 118.

²⁰ The Cross-hatched@area on the plat includes some of the disputed area. Davis testified that the basic area of dispute was the Cross-hatched@area.

title, and not on the weakness of the defendant's title.²¹ Moreover, [t]he general rule is that the plaintiff seeking to quiet his title must prove both title and possession.²² The plaintiff must succeed if at all on the strength of his own title and not on the weakness of defendant's title.²³

The Knoths assert that Gray's claim to the disputed area lies entirely on the surveyor's determination that Knoth's description fails to close. However, Gray properly observes that the Knoths do not allege that there is a defect in the title of either property. The sole problem between these two properties is the inaccuracy of the legal description that applies to the disputed area.

In his complaint, Gray claimed that he is the owner of the disputed property. In their answer, the Knoths claim[ed] all right, title and interest in the disputed property. The Knoths again asserted in their counterclaim that they were the owners of the disputed area. The Knoths further counterclaimed that, alternatively, they had acquired ownership to the disputed property by adverse possession.

The former Court of Appeals has recognized the rule

²¹ Hale v. Horn, 265 Ky. 560, 561, 97 S.W.2d 402, 403 (1936) (citing Alcorn v. Superior Oil Corp., 245 Ky. 343, 53 S.W.2d 528 (1932)).

²² Letcher County Coal & Improvement Co. v. Marlowe, Ky., 398 S.W.2d 870, 871 (1965) (citing KRS 411.120; and Leach v. Taylor, 206 Ky. 28, 266 S.W. 894 (1924)).

²³ Letcher County, supra at 871 (citing Barren County Board of Education v. Jordan, Ky., 249 S.W.2d 814 (1952)).

that where the defendant himself . . . asserts title by answer and counterclaim and asks for affirmative relief, the court, notwithstanding plaintiff's failure to show actual possession, will consider the entire evidence and pass on the question of superiority of title.²⁴ The Court additionally reasoned that

[s]uch being the case, it follows that, even had the appellee failed by his proof to show the required continuous possession as the holder of record title to the land in dispute, the defendant having himself asserted title by answer and counterclaim and asked for affirmative relief, the court, in accord with such rule, properly considered the entire evidence and passed on the superiority of title of the parties, however acquired, whether by deed or adverse possession.²⁵

In the case sub judice, the Knoths claimed ownership of the disputed tract. Thus, the trial court properly considered the entire evidence, including Davis's testimony, and determined that an incorrect call existed in the Knoths' deed. As such, the trial court correctly found that Gray was the fee simple owner of the disputed property east of the Knoths' corrected eastern boundary. The Knoths in effect counterclaimed[,] in which event it became the responsibility of the Chancellor to determine the superior title.²⁶ Therefore, after determining that a call in

²⁴ Whitaker v. Shepherd, 280 Ky. 713, 719, 134 S.W.2d 604, 607 (1939) (citing Osborn v. Osborn, 204 Ky. 144, 263 S.W. 738 (1924); and Clark v. Heirs v. Boyd, 152 Ky. 234, 153 S.W. 227 (1913)).

²⁵ Whitaker, supra at 607.

²⁶ Letcher County, 398 S.W.2d at 871 (citing Whitaker, 134 S.W.2d at 604). A chancellor is the name given in some states to the judge (or the presiding judge) of a court of chancery. @ Black's Law Dictionary 231 (6th ed.

the Knoths deed was incorrect, the trial court properly determined that Gray was the fee simple owner of the property east of the defendant's corrected east boundary.

The trial court heard all the evidence, witnesses, and had the aid of the plat in interpreting Davis's testimony. The rule in such case is that where, upon a consideration of the whole record, the mind is left in doubt and we can not say with any reasonable degree of certainty that the chancellor erred, we will not disturb his finding.²⁷ The trial court correctly found that Gray's claim was based on the strength of his own title and this Court will not disturb such a finding.

The Knoths next argue that a general description in a deed must yield to a specific description. The Knoths allege that the legal description of the property in their deed specifically encompasses the disputed area. Additionally, they claim that

Gray's deed purports to convey all that remains of property described in previous deeds. The only evidence as to the property encompassed in such previous deeds was the plat introduced through the land surveyor. Gray's general description must yield to the specific descriptions conveyed by his predecessors in interest. Likewise, Gray's general description must yield to [their] specific description. There is no specific description in any deed in Gray's chain of

1990). A court of chancery is a court of equity. Black's Law Dictionary 231 (6th ed. 1990).

²⁷ Whitaker, 134 S.W.2d at 608 (citing Wathen v. Wathen, 149 Ky. 504, 149 S.W. 902 (1912)).

title that encompasses the disputed property.
His claim must fail.

Gray concedes that a specific, particular description normally takes precedence over a general description. However, Gray contends that A[w]hen the specific description is known to be incorrect the Court can not blindly adhere to a rule which would result in two owners of the same property or in parcels of property being owned by no one.@ Gray argues that in instances in which boundaries overlap, angles may be reversed to correct the error. Gray further argues that Awhen the specific description is known to be wrong, the Court may properly rely on the more general description.@

As previously mentioned, the Knoths allege that the legal description in Gray's deed was less than specific, in that AGray's deed purports to convey all that remains=of property described in previous deeds.@ Gray's deed contains the following legal description:

A certain tract or parcel of land on the East side (descending bank) of the Cumberland River and being the residue of the lands of Lucian Gray, deceased, which was conveyed to him by Deeds as follows: Deed from W. T. Bennett et ux, recorded 3/29/10, Deed Book W, Page 314, Lyon County Court Clerk's Office and by Deed from Joseph Sauvage et ux, recorded 1/9/21, Deed Book 29, Page 633, above said office. The said residue contains 126.1 acres, more or less, and bounded on the South by lands of Walton Chandler; on West by James Knoth and Cumberland River; on the North by Arch Smith; on the South and East by Arch Smith and Roy. E. Gray, containing 126.1 acres, more or less.

We agree with the Knoths=claim that the legal description in Gray's deed is more general and less specific than the legal description in the Knoths=deed.²⁸ Also, we agree that it is well-settled that a general description in a deed must yield to a specific description.²⁹

However, while the legal description in the Knoths=deed is more specific than the legal description in Gray's deed, there still remains the fact that at least one of the two deeds contains an error. Davis concluded that the Knoths=deed was incorrect because it failed to close by 231.04 feet. Davis testified that a mathematical closure of the Knoths=property cannot be obtained through the legal description in their deed. Thus, while the legal description in the Knoths=deed may be more specific than the legal description in Gray's deed, the trial court is not required to give a preference to a more specific legal description when it contains an error.

In Watlington v. Kasey,³⁰ both parties asserted ownership of the same tract of land. After running the calls, the defendants=surveyor determined that, as written, the plaintiffs=description would not close, but instead would have

²⁸ The legal description in the Knoths=deed can be found on the second page of this Opinion.

²⁹ Pendergrass v. Butcher, 158 Ky. 321, 323, 164 S.W. 949, 950 (1914); Bland v. Kentucky Coal Corp., 306 Ky. 1, 206 S.W.2d 62, 64 (1947); Billips v. Hughes, Ky., 259 S.W.2d 6, 7 (1953).

³⁰ 293 Ky. 382, 168 S.W.2d 988 (1943).

entered the railroad's right-of-way.³¹ The surveyors changed this course from S. 32 degrees to S. 42 degrees, which closed the description. The defendants=surveyors were of the opinion that a typographical error was made in preparing the deed, or an error was made by the original surveyor in writing a A3" instead of a A4" in S. 42 degrees in his field notes when the original survey was made, or an error was made by the county clerk in recording the deed.³² The Court held that the call should be changed from S. 32 to S. 42.

Similarly, in Carroll v. Kentucky & West Virginia Gas Co.,³³ in order for the survey to close, the appellee=s surveyor was required to change the course of the closing call from S. 74 E., as set forth in the deed, to N. 74 E. The Court held that Asince a typographical error in substituting AS@ for AN@ reasonably could have occurred, we think that the surveyor=s substitution of AN@ for AS@ in the closing call, which resulted in the survey=s closing properly, was reasonable and did not render his survey unacceptable or his testimony incredible.@³⁴

In the case sub judice, the surveyor, Davis, changed a call in the Knoth=s deed from AS 89 E 129 poles@ to AS 89 W 129 poles.@ Where there is a known error, the calls may be reversed

³¹ Id. at 989-90.

³² Id. at 990.

³³ Ky., 403 S.W.2d 273 (1966).

³⁴ Id. at 275; see also Watlington, 168 S.W.2d at 988.

in order to correct the error and close the survey.³⁵ Therefore, A[i]t is our conclusion that [] [Davis's] testimony had probative value sufficient to sustain the trial court's findings of fact.³⁶

There was no error.

The Knoths's second assignment of error is that the trial court erred by holding that adverse possession is not maintainable in a quiet title action. Knoth alleges that he has used the road which runs across the disputed area to access his farmland since 1972. Knoth thus maintains that his adverse possession of the disputed area bars Gray's claim to the same area.

KRS 413.010 provides that A[n] action for the recovery of real property may be brought only within fifteen years after the right to institute it first accrued to the plaintiff, or to the person through whom he claims.³⁷ Therefore, to obtain the benefit of KRS 413.010, the Knoths alleged that they have adversely possessed this disputed property for at least 15 years.

The trial court found that a prescriptive easement across the disputed property existed on the Knoths's behalf because they had used the road across the disputed property since 1972, and the use had intensified over the past 14 years, since 1987.

The Knoths allege that the trial court erred when it

³⁵ Combs v. Jones, 244 Ky. 512, 515, 51 S.W.2d 672, 673 (1932)(citing Combs v. Valentine, 144 Ky. 184, 137 S.W. 1080 (1911)).

³⁶ Carroll, 403 S.W.2d at 275.

refused to consider their counterclaim that they had acquired title to the disputed area by adverse possession. They point out that in both their trial brief and their proposed findings of fact and conclusions of law they alleged adverse possession. Also, at trial during the cross-examination of Tony Gray, the Knoths= counsel alluded to an adverse possession claim. Similarly, during Joseph Knoth=s direct examination, the Knoths= counsel again alluded to an adverse possession argument.

We conclude that the trial court did not fail to consider the Knoths= adverse possession claim. The trial court held that the Knoths are Aentitled to a prescriptive easement for the use of the road located on [Gray=s] property to access the farm located on [their] property.@ Therefore, by inference, the trial court found that the Knoths had failed to establish their claim of adverse possession but that they were entitled to the lesser relief of a prescriptive easement. Furthermore, the trial court=s finding that Gray=s action was not prohibited by the statute of limitations is a rejection of the Knoths= claim of 15 years of adverse possession.

The Knoths also claim that the trial court erred by rejecting their evidence in support of their claim of adverse possession. The Knoths concede that Aa quiet title action cannot be barred by a statute of limitations[,]@but they allege that this rule does not apply where adverse possession has been shown. The Knoths apparently rely upon the following excerpt from Hale

v. Horn:³⁷

Sections 2505 and 2508 of the Kentucky Statutes, relied upon by the appellee, therefore have no application. These statutes merely fix the time within which an action for the recovery of real property must be brought, but, before they can be invoked, adverse possession must be shown.³⁸

We do not disagree with the Knoths' statement of the law; but from our review of the evidence, we cannot conclude that the trial court erred by not finding in favor of the Knoths' claim for adverse possession.

One may obtain a perfect title to real property by adverse possession for the statutory period of time of fifteen years even where there is no intention by the adverse possessor to claim land not belonging to him.³⁹ However, before adverse possession will bar Gray's claim to the disputed property, the Knoths must satisfy the following five elements:

1) possession must be hostile and under a claim of right, 2) it must be actual, 3) it must be exclusive, 4) it must be continuous, and 5) it must be open and notorious.⁴⁰

The Knoths allege that they need not have been present on the disputed area at all times in order to establish adverse

³⁷ 265 Ky. 560, 97 S.W.2d 402 (1936).

³⁸ Id. at 404 (citing Turner v. Begley, 239 Ky. 281, 39 S.W.2d 504 (1931)).

³⁹ Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., Ky., 824 S.W.2d 878 (1992)(citing KRS 431.010; Tartar v. Tucker, Ky., 280 S.W.2d 150, 152 (1955)).

⁴⁰ Appalachian Regional Healthcare, 824 S.W.2d at 880 (citing Tartar, 280 S.W.2d at 150).

possession.⁴¹ [T]he character of the property, its physical nature and the use to which it has been put, determine the character of the acts necessary to put the true owner on notice of the hostile claim.⁴²

Concerning the required elements of adverse possession, the former Court of Appeals has held that A[n]otoriety, exclusiveness and continuity of possession are often evidenced by the erection of physical improvements on the property, such as fences, houses or other structures.⁴³ Additionally, in the absence of any of these, A substantial activity on the land is required.@

Joseph Knoth cleared a road and drained the slough on the disputed property. The trial court found that Knoth had been using this road, off and on, since 1972. Knoth testified that he used this road A as needed,@ and that he maintained it just enough to get his farm equipment in and out of his farmland. Furthermore, he testified that the only reason he went to the farmland was to raise his crops. He testified that he planted his crops in the spring, would visit his land to service the crops, would later return to harvest the crops, and then would rarely return until the next spring to plant crops again.

⁴¹ See Thompson v. Ratcliff, Ky., 245 S.W.2d 592 (1952).

⁴² Appalachian Regional Healthcare, 824 S.W.2d at 880 (citing Ely v. Puson, 297 Ky. 325, 180 S.W.2d 90 (1944)).

⁴³ Kentucky Women's Christian Temperance Union v. Thomas, Ky., 412 S.W.2d 869, 870 (1967).

Knoth's occasional use of the road within the disputed area did not establish his claim of adverse possession as to the entire disputed tract. The Knoths neither built structures on the disputed area nor planted crops. A[S]poradic activity which would not bring home to the true owner reasonable notice of a continuing hostile claim of right . . . is generally held not to constitute an adverse holding.⁴⁴ The Knoths possession clearly did not satisfy all the elements of adverse possession. There was no error.

For these reasons, the judgment of the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANTS:

Robert L. Prince
Benton, Kentucky

BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

Kevin A. Long
Paducah, Kentucky

⁴⁴ Id. (citing Noland v. Wise, Ky., 259 S.W.2d 46 (1953)).