

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000800-MR

WANDA JACKSON

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT  
HONORABLE DANIEL R. SPARKS, JUDGE  
ACTION NO. 00-CI-00360

BALLARD RAY  
AND NANNIE MAGDALENE RAY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: HENRY AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.<sup>1</sup>

HENRY, JUDGE: The Appellant, Wanda Jackson, brought this appeal from the decision of the Johnson Circuit Court denying her claim for adverse possession of property claimed by the Appellees, Ballard Ray and Magdalene Ray. Jackson originally filed a quiet title action in Johnson Circuit Court, claiming she had adversely possessed part of a 200 acre tract located directly

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<sup>1</sup> Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110.(5)(b) of the Kentucky Constitution and KRS 21.580.

behind her home. In her testimony in the quiet title action Jackson indicated that she was not claiming the entire 200 acres of property, but only a portion she designated by drawing a line across a hand-drawn depiction on a chalkboard.

As evidence for her claim, Jackson testified that she had conducted various activities on the property, including maintaining it, parking cars on it, using it for a "hog killing," riding horses, and building a barn on it. Jackson also called witnesses, but their testimony did not consistently support her claim. Some of Jackson's witnesses testified that they were unaware of any boundary of the claimed property, and some said that certain events occurred in a manner that contradicted Jackson's testimony. The Rays' witnesses, a neighbor and a surveyor, corroborated their version of the facts. Evidence was also presented that Jackson had attempted to purchase the subject property from the Rays and previous owners for \$5,000 on more than one occasion. The Trial Commissioner submitted his findings of fact and conclusions of law to the Johnson Circuit Court, recommending a ruling against Jackson. The Johnson Circuit Court agreed with the findings and adopted them.

On appeal Jackson claims that the findings of fact were improper, and that the trial court erred in allowing evidence of past attempts by Jackson to purchase the property.

The findings of fact of a trial court are overturned only when they are clearly erroneous. CR<sup>2</sup> 52.01. When findings of fact are developed by a trial commissioner and are adopted by the trial court, they are treated as if they are the findings of the trial court. Id. Findings of fact are not clearly erroneous if they are supported by substantial evidence. Owens-Corning Fiberglas Corp. v. Golightly, 976 S.W.2d 409, 414 (Ky. 1998).

To succeed, Jackson had to prove that her possession of the subject property was hostile, actual, open, notorious, exclusive and continuous for the statutory period. Kentucky Women's Christian Temperance Union v. Thomas, 412 S.W.2d 869, 870 (Ky. 1967). These elements must be proved by clear and unequivocal evidence. Commonwealth, Department of Parks v. Stephens, 407 S.W.2d 711, 713 (Ky. 1996).

The rigorous standards for obtaining title to property by adverse possession, as outlined in Thomas, have included a requirement of a "well-defined boundary." Hudson v. Hudson, 253 Ky. 814, 70 S.W.2d 935, 938 (Ky. 1934). "Possession, to ripen into title, must be to a well-defined boundary." Gover v. Queen, 300 Ky. 704, 706; 189 S.W.2d 672, 673 (Ky. 1945). It is not necessary that the boundary be marked by a fence, but some evidence of a boundary must exist. Greenway v. Watson, 268 Ky.

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<sup>2</sup> Rules of Civil Procedure.

745, 105 S.W.2d 848, 850 (Ky. 1937). The boundary must be indicated in some sufficient manner so that a claim of ownership and possession will give notice to the adjoining owners. Id. This requirement is necessary because a "flag of ownership and possession must wave continuously for 15 years, the statutory period, in such a way that the public may know the purpose and intention of the claimant." Id. A claim of property by adverse possession cannot "sneak up on" the original owner. Adverse possession exists only when a claimant openly treats property as his own, and is not challenged by the true owner for the statutory period of time.

Jackson did not establish by clear and unequivocal evidence that she adversely possessed the property. For example, the Trial Commissioner noted that witnesses described Jackson's barn as having been built unusually close to her house. If Jackson owned the property she is claiming, she would have had ample room to build the barn farther from the house. Given the odor that often emanates from a livestock barn, not to mention insects and other vermin, the Commissioner considered the placement of the barn inconsistent with Jackson's claim.

Defense witnesses testified that they were under the impression that the subject property belonged to the Rays, contradicting Jackson's evidence. The Trial Commissioner also noted that on three occasions Jackson had attempted to purchase

the property from the Rays or their predecessors in title. If Jackson were truly treating the land as hers and hers alone, she should not have felt the need to negotiate for it. We also note that the lack of evidence of a boundary or any clear delineation of the contested property is a recurring theme in the evidence presented. As noted above, such delineation is crucial to establishing a case of adverse possession. While the standard outlined in Greenway does not require a fence, drawing a line across a chalkboard drawing of the property is clearly not sufficient.

Jackson claims that evidence of her offers to buy the property should have been ruled inadmissible under KRE<sup>3</sup> 408, which bars evidence of offers to compromise or settle claims. While evidence was introduced that Jackson tried to buy the property on more than one occasion, there was no showing that any of the offers were made in order to compromise or settle a claim. Jackson's attempts to buy the property are inconsistent with her adverse possession claim and are admissible. The rule does not apply.

The findings of the trial court were not clearly erroneous. The Appellant failed to meet her burden of proof to establish adverse possession. We affirm.

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<sup>3</sup> Kentucky Rules of Evidence.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert C. Bishop  
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Michael S. Endicott  
Paintsville, Kentucky