

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001040-MR

ANTHONY McGEE AND SHARON  
McGEE, HIS WIFE

APPELLANTS

v. APPEAL FROM TRIGG CIRCUIT COURT  
HONORABLE CLARENCE A WOODALL, III, JUDGE  
ACTION NO. 06-CI-00095

MICHAEL DAVIS AND UNKNOWN DEFENDANT,  
SPOUSE OF MICHAEL DAVIS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; ACREE AND THOMPSON, JUDGES.

COMBS, CHIEF JUDGE: Anthony McGee and Sharon McGee (The McGees) appeal from a judgment of the Trigg Circuit Court holding that Michael Davis owned a disputed piece of property through adverse possession. The McGees claim that the jury instructions were inadequate. After our review of the record, we affirm the judgment of the Trigg Circuit Court.

At the outset, we first note that the appellant's brief did not comply with Kentucky Rule of Civil Procedure 76.12(4)(c)(iv), which requires "a STATEMENT OF THE CASE consisting of a chronological summary of the facts and procedural events

necessary to an understanding of the issues presented by the appeal[.]” However, because the issue is uncomplicated, we have elected to review it and to conduct our own search of the record rather than to delay the outcome of this litigation.

The McGees, who reside in Iowa, and Davis own abutting parcels of land in Trigg County, Kentucky. Davis purchased his property on May 2, 1989. The record does not indicate when the McGees acquired ownership of their land; it is referred to as the Monroe McGee property<sup>1</sup>. It is undisputed that the deed descriptions of the property overlap by approximately ten acres. On May 26, 2006, the McGees filed for a Temporary Restraining Order in order to prevent Davis from harvesting timber on the disputed tract. The complaint in this case was filed on May 30, 2006. The trial court filed its order and judgment in favor of Davis on May 9, 2007.

The McGees argue that the jury instructions did not “clearly and concisely submit the elements of adverse possession.” Appellants’ Brief at 2. The jury instructions that were submitted repeated nearly verbatim the instructions included in *Kentucky Instructions to Juries* captioned as “Boundary Dispute; Defendant Relying on Adverse Possession.” The Court modified the instructions by incorporating language from the McGees’ proposed jury instructions.

Kentucky’s standard for jury instructions originated with *Cox v. Cooper*, 510 S.W.2d 530, 535 (Ky. 1974), in which our Supreme Court held, “our approach to instructions is that they should provide only the bare bones, which can be fleshed out by counsel in their closing arguments if they so desire.” As the Court more recently discussed, this standard “is buttressed by a long line of Kentucky cases which call for a substantially similar approach.” *Bayless v. Boyer*, 180 S.W.3d 439, 450 (Ky. 2005), (citations omitted).

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<sup>1</sup> The record refers to Monroe McGee as their predecessor owner.

Five elements must be shown in order to establish a claim for adverse possession. Possession must be: adverse, actual, open and notorious, exclusive, and continuous. See *Tartar v. Tucker*, 280 S.W.2d 150, 152 (Ky. 1955). The five elements must coincide continuously for fifteen years. KRS § 413.010.

The pertinent jury instructions had two parts. Part One provided, “You will find for [the McGees], unless you are satisfied from the evidence that [Davis] held adverse possession of all or some portion of the land in controversy continuously and without interruption for fifteen years or more at any time before May 26, 2006.” Trial Record at 49. Part Two defines *adverse possession*:

The term “adverse possession” as used in Instruction No. 1 means the visible exercise of exclusive authority and control to a well marked and defined boundary under claim of ownership as against all others. It requires such open demonstration of physical occupancy or intended use as would bring it to the attention of an ordinarily prudent owner, inquirer, or intending purchaser. Claim of ownership may be shown by acts and conduct and need not be in the form of an express declaration. While the surveying and marking of a boundary, occasional entries, or other temporary uses are incidents of adverse possession, they do not in themselves constitute adverse possession.

Trial Record at 50.

The instructions included the fifteen-year requirement and all five elements as summarized:

Element one: possession must be hostile and under claim of right. It is unnecessary that the term *hostile* be used as hostility is implicit in the inherent definition of *adverse possession*. *Garthwaite v. Harges*, 192 S.W.2d 734, 735 (Ky. 1945), citing *Vincent v. Willis*, 82 S.W. 583 (Ky. 1904). The jury instructions also contained the recital that the possession be a “claim of ownership as against all others.” Trial Record at 50.

Element two: possession must be actual. The instructions required the jury to consider whether there was physical occupancy. *Id.*

Element three: possession must be open and notorious. The court required the jury to consider whether there was “such open demonstration of physical occupancy or intended use as would bring it to the attention of an ordinarily prudent owner, inquirer, or intending purchaser.” *Id.*

Element four: possession must be exclusive. The jury instructions not only used the word *exclusive*; they emphasized it by defining it with more particularity: “control ... under claim of ownership as against all others.” *Id.*

Element five: possession must be continuous. Part One of the jury instructions charged the jurors to examine whether Davis possessed the disputed land “continuously and without interruption for fifteen years.” *Id.* at 49.

It is apparent that the jury instructions included all of the elements necessary to prove adverse possession. Under Kentucky’s “bare bones” standard, they were amply clear for the jury to comprehend. We find no error.

Accordingly, we affirm the judgment of the Trigg Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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