



Effingham County. Plaintiffs submitted as an exhibit the deed for purchase of approximately 20 acres of the southern portion of that property from Claude Parnell in 1968. Parnell retained the northern portion and remained a neighbor to plaintiffs. George Devore testified that he discussed the use of a road and cultivation of property south of the road with Parnell when he purchased the property. George Devore testified that he and Parnell agreed that a fence defined their common boundary. George Devore also testified that after the purchase, he farmed the land.

¶ 5 In 1975, Morris and Shirley Summers purchased title to the land Parnell had retained. George Devore testified that Morris had confirmed that the fence line was a boundary line for their properties.

¶ 6 In 1990, defendant purchased the title held by the Summers. In 2008, defendant had the property surveyed and made demand through counsel that plaintiffs vacate the disputed area. On December 22, 2008, plaintiffs filed suit claiming ownership up to the disputed boundary line through adverse possession.

¶ 7 After bench trial, the court entered an order finding that plaintiffs had proved each of the elements of adverse possession. The trial court adopted a description of the disputed property depicted in a survey submitted by plaintiffs.

¶ 8 Defendant appeals.

¶ 9 ANALYSIS

¶ 10 The trial court based its decision on the doctrine of adverse possession. Under the doctrine, a person who possesses real estate for 20 years effectively becomes its owner. 735 ILCS 5/13-101 (West 2010).

¶ 11 As the doctrine can divest a previous titleholder of ownership, the standard for application is rigorous. The party asserting the doctrine must prove that the possession was: (1) continuous, (2) hostile or adverse, (3) actual, (4) open, notorious, and exclusive

possession of the premises, and (5) under claim of title inconsistent with that of the true owner. *Joiner v. Janssen*, 85 Ill. 2d 74, 81, 421 N.E.2d 170, 174 (1981). The elements must be concurrent during the 20-year period. *Joiner*, 85 Ill. 2d at 81, 421 N.E.2d at 174. The claimant must prove each element by clear and unequivocal evidence. *Dwyer v. Love*, 346 Ill. App. 3d 734, 739, 805 N.E.2d 719, 723 (2004). The trial court issued explicit findings on each of these elements.

¶ 12 On appeal, defendant questions several of the factual findings. Defendant asserts that the trial court erred in finding a timeline of adverse possession, open and exclusive use by plaintiffs, and the measurement of the actual boundary. Essentially, defendant asserts that evidence supports her claim. Defendant's arguments are based on an erroneous interpretation of the requirement of clear and unequivocal proof.

¶ 13 Defendant misconstrues the requisite standard of proof. In order to rebut the presumption in favor of the titleholder, the claimant must prove each element by clear and unequivocal evidence. *Knauf v. Ryan*, 338 Ill. App. 3d 265, 269, 788 N.E.2d 805, 808 (2003). The requirement is equivalent with the more common "clear and convincing" standard. *Dwyer*, 346 Ill. App. 3d at 739, 805 N.E.2d at 724; see *New York Central R.R. Co. v. Kinsella*, 324 Ill. 339, 343, 155 N.E. 284, 286 (1927) (discussing origin of standard for adverse possession).

¶ 14 This does not mean that a claim for adverse possession must fail if the titleholder presents evidence on an element. The requirement for clear and unequivocal evidence means that in order to overcome the presumption in favor of the titleholder, the claimant under adverse possession must present strict proof of each element, and that proof cannot be made by inference or implication. *Mann v. La Salle National Bank*, 205 Ill. App. 3d 304, 308, 562 N.E.2d 1033, 1037 (1990); see, e.g., *Cagle v. Valter*, 20 Ill. 2d 589, 592, 170 N.E.2d 593, 595 (1960) (possession would not be inferred for a gap of years). The trial court still

determines the value and weight of the evidence presented. *Dwyer*, 346 Ill. App. 3d at 740, 805 N.E.2d at 724. On review, the determination of the trial court will not be disturbed unless it is against the manifest weight of the evidence. *Knauf*, 338 Ill. App. 3d at 269, 788 N.E.2d at 808.

¶ 15 Defendant's arguments on appeal fail as they rely on this misconstruction of the standard of proof. The requirement of clear and unequivocal proof should not be equated with a requirement that no issue is contested. The trial court pointed to evidence on each of the elements and did not use inference or implication. The findings are not against the manifest weight of the evidence. The trial court provided answers based on the evidence for each of the arguments raised by defendant on appeal.

¶ 16 On appeal, defendant first argues that plaintiffs failed to establish a timeline for adverse possession. In addition to overstating the standard of proof, defendant misinterprets what constitutes the timeline for continuous possession and the nature of possession being adverse. First, defendant misconstrues the elements of adverse possession with objection to the possession. Defendant points to George Devore's testimony that he did not tell defendant personally that he had a right to the property through adverse possession until 2008. The conversation between George Devore and defendant did not mark the beginning of the timeline. As the trial court pointed out, George Devore testified that he had continuously possessed the disputed property for over 40 years.

¶ 17 Moreover, the possession was adverse. Defendant contends that the possession was permissive. Defendant's claim of permissive ownership is not supported by the record. As the trial court pointed out, plaintiffs demonstrated a good faith, but mistaken, belief that they held title. As the trial court pointed out, George Devore testified that he always considered the boundary line to be the fence line and that was the understanding of Parnell and subsequent owners until defendant. Ill will is not a prerequisite for adverse possession.

*Joiner*, 85 Ill. 2d at 81, 421 N.E.2d at 174.

¶ 18 Defendant contends that plaintiffs' use was not open and exclusive. Defendant also contends that a field road was used by others. Nonetheless, the use of property at times by others does not destroy exclusivity if the claimant possesses the property independent of a like right in others. *Illinois District of American Turners, Inc. v. Rieger*, 329 Ill. App. 3d 1063, 1073, 770 N.E.2d 232, 241 (2002). The trial court pointed to evidence that plaintiffs had farmed the property.

¶ 19 Lastly, defendant contests the actual boundary found by the trial court. The trial court ordered the parties to submit their versions of the legal descriptions of the property and based its decision on a survey presented by plaintiffs. This provided reasonable certainty to the measurement. *Joiner*, 85 Ill. 2d at 83, 421 N.E.2d at 175.

¶ 20 Accordingly, the judgment of the circuit court is hereby affirmed.

¶ 21 Affirmed.