

NOTICE
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2014 IL App (5th) 130572-U

NO. 5-13-0572

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JIM SWITCHER and LORI SWITCHER,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	Saline County.
)	
v.)	No. 13-MR-2
)	
NATHAN FEAZEL,)	Honorable
)	Todd D. Lambert,
Defendant-Appellee.)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Presiding Justice Welch and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's directed judgment in favor of the defendant was not against the manifest weight of the evidence.

¶ 2 The plaintiffs, Jim Switcher and Lori Switcher, filed a complaint to quiet title, asserting an adverse possession claim on a 99-foot strip of property that encompassed their driveway and water meter. During a bench trial, the circuit court directed judgment in favor of the defendant, Nathan Feazel, pursuant to section 2-1110 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1110 (West 2012)). For the reasons that follow, we affirm the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 On January 28, 2013, the plaintiffs filed their complaint, alleging that on September 11, 1997, Lori and her former husband, Davy R. Ratcliffe, Jr., purchased a plot of land in Harrisburg, Illinois, that Davy thereafter conveyed his ownership of the property to Lori, and that Lori had resided and paid real estate taxes on the premises since September 1997. The plaintiffs alleged that in 2012, the defendant claimed title to a 99-foot strip of property that encompassed the plaintiffs' driveway and certain ground adjoining the driveway. The plaintiffs alleged that the defendant had stated his intention to build a fence on the property and had demanded that the plaintiffs move their underground utilities and abandon their driveway. The plaintiffs requested the court to enter an order to quiet title, in addition to a temporary restraining order prohibiting the defendant from building a fence or interfering with the plaintiffs' right to possession and use of the disputed premises.

¶ 5 At a bench trial held on September 23, 2013, Lori testified that in 1997, when she purchased the plaintiffs' property, the real estate agent indicated that a particular concrete marker identified the east/west boundary line of the property and that the concrete marker's placement included the disputed 99-foot strip as the plaintiffs' property. Lori testified that this strip of property ultimately encompassed their driveway and water meter and that they had used it exclusively for 15 years. Lori testified that in January 2012, she and Jim had hired an excavator who was breaking ground for their home, and the defendant had requested that they cease the operations, stating that the strip was his property pursuant to a survey completed in 2001.

¶ 6 Lori testified that she had believed since 1997 that she had purchased the 99-foot strip and that it was included in her deed's property description. Lori testified that she was first notified of a dispute regarding the property when the 2001 survey was completed and showed the boundary markers to be different than what she had believed. On cross-examination, Lori acknowledged that they had not occupied the disputed premises for 20 years.

¶ 7 The plaintiffs entered into evidence their warranty deed conveying "The surface only of the West Twenty-Four (24) acres of the Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) of Section Thirty-Five (35), Township Eight (8) South, Range Five (5) East of The Third Principal Meridian, Saline County, Illinois." The defendant stipulated that the plaintiffs had paid real estate taxes since 1997 on the property described in their warranty deed.

¶ 8 The defendant presented the testimony of Mitch Garrett, a professional land surveyor. Garrett testified that in 2001, he had surveyed land for James K. Hankins, the defendant's predecessor in title. Garrett testified that the plaintiffs' driveway, included within the disputed 99-foot strip, began on the defendant's predecessor's property. Garrett confirmed in testimony that, pursuant to the survey, the property that the defendant owned contained the 99-foot strip claimed by the plaintiffs. The defendant offered into evidence the plat of survey performed in October 2001, which reveals, *inter alia*, that the plaintiffs' driveway is located in the 99-foot strip included as the defendant's property. The survey's description of the plaintiffs' property, *i.e.*, the west 24 acres of the southwest quarter of the southwest quarter of section 35, township 8 south, range 5 east

of the third principal meridian, Saline County, Illinois, is consistent with the description in the plaintiffs' deed.

¶ 9 The circuit court denied the defendant's initial motion for directed verdict at the close of the plaintiffs' case. However, after Garrett's testimony, the defendant renewed his motion, and the circuit court entered a directed judgment in favor of the defendant (735 ILCS 5/2-1110 (West 2012)). On October 31, 2013, the circuit court denied the plaintiffs' motion to reconsider. The plaintiffs appeal.

¶ 10 ANALYSIS

¶ 11 At the conclusion of the plaintiffs' case in chief, the defendant, pursuant to section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2012)), moved for a finding in his favor. "Section 2-1110 provides that in all cases tried without a jury, a defendant may, at the close of the plaintiff's case, move for a finding or judgment in his or her favor." *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). "In ruling on this motion, a court must engage in a two-prong analysis." *Id.* "First, the court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case." *Id.* "A plaintiff establishes a *prima facie* case by proffering at least 'some evidence on every element essential to [the plaintiff's underlying] cause of action.'" *Id.* (quoting *Kokinis v. Kotrich*, 81 Ill. 2d 151, 154 (1980)). "If the plaintiff has failed to meet this burden, the court should grant the motion and enter judgment in the defendant's favor." *Id.* "Because a determination that a plaintiff has failed to present a *prima facie* case is a question of law, the circuit court's ruling is reviewed *de novo* on appeal." *Id.*

¶ 12 "If, however, the circuit court determines that the plaintiff has presented a *prima facie* case, the court then moves to the second prong of the inquiry." *Id.* "In its role as the finder of fact, the court must consider the totality of the evidence presented, including any evidence which is favorable to the defendant." *Id.* at 275-76. "Contrary to the *Pedrick* standard, which governs a motion for directed verdict during a jury trial (*Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494 (1967)), under section 2-1110 the court is not to view the evidence in the light most favorable to the plaintiff." *Id.* at 276. "Rather, the circuit court must weigh all the evidence, determine the credibility of the witnesses, and draw reasonable inferences therefrom. 735 ILCS 5/2-1110 (West 2000)." *Id.* "This weighing process may result in the negation of some of the evidence presented by the plaintiff." *Id.* "After weighing the quality of all of the evidence, both that presented by the plaintiff and that presented by the defendant, the court should determine, applying the standard of proof required for the underlying cause, whether sufficient evidence remains to establish the plaintiff's *prima facie* case." *Id.*

¶ 13 "If the circuit court finds that sufficient evidence has been presented to establish the plaintiff's *prima facie* case, the court should deny the defendant's motion and proceed with the trial." *Id.* "If, however, the court determines that the evidence warrants a finding in favor of the defendant, it should grant the defendant's motion and enter a judgment dismissing the action." *Id.* "A reviewing court will not reverse the circuit court's ruling on appeal unless it is contrary to the manifest weight of the evidence." *Id.* A judgment is only found to be against the manifest weight of the evidence if the

"opposite conclusion is clearly evident." *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 51 (2009).

¶ 14 As the doctrine of adverse possession can divest a previous titleholder of ownership, the standard for application is rigorous. In order to rebut the presumption in favor of the titleholder, the claimant must prove each element of adverse possession by clear and unequivocal evidence. *Knauf v. Ryan*, 338 Ill. App. 3d 265, 269 (2003).

¶ 15 The plaintiffs claimed to have obtained the land in 1997, and their suit was instituted in 2013. It is, therefore, apparent that they do not claim to have held the land for 20 years, as is required to claim title by adverse possession pursuant to section 13-101 of the Code (735 ILCS 5/13-101 (West 2012)). However, the plaintiffs claim title by virtue of section 13-109 of the Code (735 ILCS 5/13-109 (West 2012)), which provides as follows:

"Payment of taxes with color of title. Every person in the actual possession of lands or tenements, under claim and color of title, made in good faith, and who for 7 successive years continues in such possession, and also, during such time, pays all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of such lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, legacy or descent, before such 7 years have expired, and who continue such possession, and continue to pay the taxes as above set forth so as to complete the possession and payment of taxes for the term above set forth, are entitled to the benefit of this Section." 735 ILCS 5/13-109 (West 2012).

¶ 16 Accordingly, adverse possession pursuant to the terms of section 13-109 of the Code requires: "(1) claim and color of title, made in good faith; (2) payment of taxes for seven successive years; and (3) continuous, uninterrupted, hostile possession for the statutory period adverse to the opponent." *Malone v. Smith*, 355 Ill. App. 3d 812, 816 (2005). " '[C]olor of title made in good faith[] is shown by any deed or instrument in writing which purports on its face to convey title, which a party is willing to, and does pay his money for, apart from any fraud, and pays all the public taxes assessed upon the land so conveyed.' " *Bergesen v. Clauss*, 15 Ill. 2d 337, 342 (1958) (quoting *Dickenson v. Breeden*, 30 Ill. 279, 326 (1863)).

¶ 17 Ownership of land by possession and payment of taxes under claim and color of title can be acquired only to the extent and according to the purport of the paper title. *Cienki v. Rusnak*, 398 Ill. 77, 85 (1947). "When possession is asserted to have been under color of title, the actual limits described in the writing set up as color will not be extended to embrace other land not included in the writing merely because such land lying beyond the limits described in the writing has been taken possession of under a mistake and occupied for over seven years" in good faith. *Nilson Bros. v. Kahn*, 314 Ill. 275, 279 (1924).

¶ 18 In this case, although the evidence showed that the plaintiffs possessed and paid taxes on the 24 acres granted to them in their deed, the evidence also revealed that the plaintiffs' deed did not include the disputed premises. Because the Illinois statute clearly limits adverse possession via the shorter seven-year statute of limitations "to the extent and according to the purport of his or her paper title" (see *Cienki*, 398 Ill. at 85), the

plaintiffs' claim fails. The deed's effectiveness in supporting adverse possession is limited to the bounds expressly stated therein and cannot provide color of title for anything that lies beyond those bounds. See *id.* at 85-87. We cannot extend the limits of description in the plaintiffs' deed to embrace land not included merely because the plaintiffs took possession of land and occupied it for over seven years in good faith. See *Nilson*, 314 Ill. at 279. For the outlying lands, putative adverse possessors must generally resort to the longer statute of limitations provided by section 13-101 (735 ILCS 5/13-101 (West 2012)).

¶ 19 The plaintiffs further cite section 13-107 of the Code (735 ILCS 5/13-107 (West 2012)) to support their action. However, section 13-107 of the Code requires that the plaintiffs claim the disputed premises through "a connected title, deductible of record." 735 ILCS 5/13-107 (West 2012). Section 13-107 of the Code provides as follows:

"§ 13-107. Seven years with possession and record title. Actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual residence thereon for 7 successive years, having a connected title, deductible of record, from this State or the United States, or from any public officer or other person authorized by the laws of this State to sell such land for the non-payment of taxes, or from any sheriff, marshal, or other person authorized to sell such land for the enforcement of a judgment or under any order or judgment of any court shall be brought within 7 years next after possession is taken, but when the possessor acquires such title after taking such possession, the

limitation shall begin to run from the time of acquiring title." 735 ILCS 5/13-107 (West 2012).

¶ 20 Because the plaintiffs' deed did not purport to include the 99-foot strip at issue, it was therefore insufficient to constitute color of title or record title. See *Cienki*, 398 Ill. at 85 (defendant's evidence insufficient where deed did not purport to include disputed premises); *Department of Public Works & Buildings v. Klinefelter*, 119 Ill. App. 2d 50, 61 (1970) (no color of title shown where deed excepted disputed tract). The plaintiffs therefore failed to present evidence showing they held color of title or record title to the 99-foot strip in question. Accordingly, we cannot say that the circuit court's ruling was against the manifest weight of the evidence. The circuit court properly entered judgment in the defendant's favor.

¶ 21 **CONCLUSION**

¶ 22 For the reasons stated, we affirm the judgment of the circuit court of Saline County.

¶ 23 Affirmed.