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2016 IL App (3d) 150313-U

Order filed August 11, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

STEVEN G. RUMP,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Peoria County, Illinois.
)	
v.)	
)	
THOMAS HOLMES AND HEATHER)	Appeal No. 3-15-0313
HOLMES,)	Circuit No. 11 CH 529
)	
Defendant-Appellants)	
)	
(Lee Goldstein,)	The Honorable
)	James Mack,
)	Judge, Presiding.
Intervening Defendant-Appellant).)	

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice O'Brien and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Where adverse possession was proven under a claim of title for over 20 years and title to the property was properly conveyed to the claimant, the trial court did not err in granting the motion for summary judgment.

¶ 2 This case involves a claim for adverse possession presented by plaintiff, Steven G.

Rump, against Thomas Holmes and Heather Holmes and an intervening party, Lee Goldstein for

property, Parcel 4, located adjunct to Steven’s purported property, Parcels 1, 2, and 3. After denying his first motion for summary judgment, the trial court granted Steven’s second motion for summary judgment finding that there is no genuine issue of material fact concerning his satisfaction of the elements of adverse possession. Thomas and Heather Holmes and Goldstein (Holmes) appeal arguing (1) that the trial court erred in finding Steven satisfied all of the elements of adverse possession under a claim of title for over 20 years, (2) that the record supports the inference that the Holmes paid property taxes thus precluding a finding of adverse possession as a matter of law, (3) that Steven failed to show he adversely possessed Parcel 4 in its entirety, and (4) that the trial court erred in denying their motion to strike/motion for extension of time for Steven’s request to produce and request to admit and deeming the requests to admit judicially admitted.¹ For the following reasons, we affirm.

¶ 3

FACTS

¶ 4

Steven claims personal ownership of four contiguous parcels of land – Parcels 1, 2, and 3, to which he holds title, and Parcel 4 – located in Peoria County. Although his ownership of all of these parcels is disputed by Holmes, it is Parcel 4, which he claims to own by adverse possession, that is the central issue in this case.

¶ 5

Parcels' History

¶ 6

The documented chain of possession of all of the parcels at issue ascertainable from the record begins with recorded conveyances dating back to the late 1800's. With regard to the case at hand, George H. Rump Construction Company (Rump Construction), is a "family company"

¹ The record shows that Lee Goldstein intervened in this case, but filed no other individual pleadings. Therefore, for this order, we refer to defendants, Thomas and Heather Holmes and intervening defendant, Lee Goldstein, jointly as "Holmes."

that had been doing business since 1926 and had incorporated on July 22, 1976. In its early years, it operated on land (Parcels 1, 2, and 3) that it leased from various owners. Parcel 1 was owned by Catherine Schneider who sold it to Rump Construction in 1979. Parcels 2 and 3 were purchased jointly by Steven's grandfather, George H. Rump, and his father, Frederick Rump, the then owners and operators of Rump Construction. They had bought Parcel 2 in 1959 and Parcel 3 in 1955. In 1961, they conveyed both Parcels 2 and 3 to George and his wife, Viola Rump. Viola became sole owner of the parcels upon George's death and on November 26, 1986, conveyed the parcels to Frederick and his wife, Mildred Rump.² Frederick then conveyed both parcels to Rump Construction on December 1, 1986, thus making it the first time that all of the parcels – Parcels 1, 2, and 3 (Rump Parcels) – were owned by one entity. On that same day, Frederick conveyed the Rump Parcels to himself, personally, by deed signed by himself as the corporation's president; Rump Construction was dissolved as a corporation; and Steven incorporated Steven G. Rump Construction Co. We note that in spite of its dissolution as a corporation, Frederick remained president of Rump Construction until he retired in 2004.³

¶ 7 Although the record indicates that Rump Construction has been a tenant of the Rump Parcels since before 1980, between 1975 and 1979, the city issued several building permits directly to Rump Construction to expand its facilities on all of the parcels – the Rump Parcels

² The record notes that in 1961 Parcels 2 and 3 were conveyed to George and Viola Rump. However, at the time the parcels were conveyed to Rump Construction in 1986, only Viola is listed as the conveyer.

³ The record also notes that Rump Construction was sold to Steven at some point and he still owned and operated the company at the time he filed his initial complaint in this case. The record also indicates that Rump Construction was reincorporated on August 22, 2013.

and Parcel 4. The expansion included apartments and a design for a bigger parking lot with a retaining wall to extend onto Parcel 4. The record is unclear as to whether the retaining wall was erected, but the parking lot was expanded onto Parcel 4.

¶ 8 According to the record, the expansion also included a building to be erected on Parcel 4. Frederick, as Rump Construction president, had pavement laid and footings installed to construct the building but later abandoned the project. The pavement and footings were not removed.

¶ 9 During the time after the expansions were complete and after the Rump Parcels were conveyed to Frederick, Frederick and Steven, as Rump Construction vice president, ensured that the snow was shoveled and the grassy area surrounding the parking lot, including the part on Parcel 4, was maintained by either Steven or a hired contractor.^{4, 5}

¶ 10 On October 5, 2004, Frederick conveyed the Rump Parcels in their entirety to the Frederick G. Rump Declaration of Trust dated October 5, 2004 (Trust). The majority co-trustees at that time were Frederick, Steven, and Debra Frank. All of the parcels including Parcel 4 continued to be maintained by either Steven or a hired contractor.

⁴ Steven attached several affidavits to his first motion for summary judgment in support of his claim of adverse possession. The affiants – Christopher Frank, Garry Worley, Barbara Rump, and Steven – averred that during certain periods of time spanning from 1971 to "present" they had each been individually responsible for mowing the grass for property where "Rump Construction" is located, including Parcel 4, at the direction of either Frederick or for "Rump Construction." Steven also averred that at times he and Christopher also removed the snow from the property including Parcel 4 and that beginning in 1971 he hired or helped hire contractors to do the yard work.

⁵ Rump Construction had employed Steven since 1971 and he became vice president of the company in 1976.

¶ 11 On April 23, 2010, the then trustees of the Trust – Steven, Debra Frank, and Cynthia Cox – conveyed the Rump Parcels to Steven, personally, by Trustees Deed. The Trustees Deed included three signature pages all dated and notarized on April 20, 2010. One page showed it was signed by "Steven G. Rump" before a notary public in Monterey County, California. The typed words "personally known to me" were crossed out. Another page bears the name "Debra R. Frank" and indicates it was signed before a notary public in Peoria County, Illinois. The third page bears the signature "Cynthia R. Cox" and the attestation of a notary in St. Louis, Missouri. All notarized documents have the name of the notary and the notarization seal that shows the county and state of the notary public's commission, the commission number, and the commission's expiration date.

¶ 12 Regarding the legal conveyance of Parcel 4, none of the deeds in the chain of title purported to convey Parcel 4 and the record does not support an inference that either Steven or any of his predecessors in title ever held written legal title to Parcel 4. The record does contain an uncontested assertion that at the time Frederick and George acquired Parcels 1 and 2, they thought they had also acquired the land now designated as Parcel 4.⁶ According to the undisputed maps and sketches in the record, Parcel 4 sits as a cap to Parcels 1 and 2 and, combined, the parcels sit squarely east of Parcel 3.

⁶ We note that although the record is clear that George and Frederick had owned Parcel 2 since 1959, Parcel 1 was not conveyed to Rump Construction until 1979 by Catherine Schneider. The record does not disclose whether there was any familial relationship between Schneider and the Rumps. Thus we regard the term "acquired" in this context to reference only the aforementioned times the properties were actually conveyed to George and Frederick and not the time Rump Construction rented the properties as attested to at various times in the record.

¶ 13

Steven's Claim of Ownership

¶ 14

The ownership issue concerning Parcel 4 arose in April 2010 during Steven's purchase of all of the Trust's interest in the Rump Parcels. Prior to closing on the property, title work was ordered and it was determined that legal title to the land identified as Parcel 4 was not owned by the Trust. Steven worked with the County of Peoria to determine who the owner was. According to the record, Sarah V. Barnewolt, Thomas and Heather Holmes' predecessor in title, acquired legal title to Parcel 4 by deed on February 4, 1931 and there were no subsequent conveyances. There had, however, been a tax mapping error.

¶ 15

By letter dated August 8, 2011, the Peoria County Supervisor of Assessments informed Thomas and Heather Holmes that the county, many years earlier, had erroneously mapped Parcel 4 as a State right-of-way and that in fact they held title to it as remaindermen because the property had never been conveyed to the State.⁷ At the time the letter was sent, Parcel 4 included a portion of the Rump Parcel's parking lot, a grassy area, and the footings for an unfinished building.

¶ 16

On October 17, 2011, Steven filed a complaint for adverse possession of Parcel 4 against Thomas and Heather Holmes. He claimed that he and his predecessors in title – Rump Construction, Frederick, and the Trust – held "continuous, adverse, actual, open, notorious, and exclusive" possession of Parcel 4 for a period in excess of 30 years. He attached an aerial sketch of the properties, the legal description of each of the parcels, and an affidavit from the co-trustees of the Trust averring to the adverse possession of the Parcel 4 by Steven and his predecessors in title.

⁷ Thomas and Heather Holmes claim that they first learned of their ownership interest in Parcel 4 two months earlier in June 2011.

¶ 17 Steven had also attempted to directly purchase Parcel 4 from Thomas and Heather Holmes in November but failed. His motion to enforce the settlement agreement he had purportedly made with Thomas Holmes was also denied.

¶ 18 In December, the Holmes quitclaimed their interest in Parcel 4 to Lee Goldstein, Steven's brother-in-law. Goldstein filed a petition to intervene against Steven on April 11, 2012. Steven filed a second amended complaint on March 27, 2014, which Thomas and Heather Holmes and Goldstein (Holmes) answered on August 12.

¶ 19 On September 23, Steven moved for summary judgment and attached several affidavits in support of his motion. Holmes also filed affidavits in an attempt to counter Steven's evidence. Their affidavit from Kathy Goldstein averred that Frederick, her father, discontinued the building development where he had laid pavement and installed footings because he had learned that Parcel 4 did not belong to him. She noted that to her knowledge, Frederick never sought to dispossess anyone from Parcel 4 and that he never used the paved area of the property.

¶ 20 Along with the affidavits, Holmes filed a responsive memorandum to Steven's motion for summary judgment and attached records from the Illinois Secretary of State noting Rump Construction and Steven G. Rump Construction Company's incorporation history as of December 2014.

¶ 21 On December 23 Steven filed a reply brief in support of his motion for summary judgment and a supplemental affidavit. In his reply brief, he argued that "the identity or succession of the corporations is irrelevant because "they were predecessors in title to [Steven] and the possession of Parcel 4 by the predecessors in title is undisputed." He also asserted that Kathy's affidavit should be stricken because it contained conclusory allegations without a factual foundation in violation of Illinois Supreme Court Rule 191 (eff. Jan. 4, 2013). In his

supplemental affidavit, he averred that "George H. Rump Construction Company" is "the family business which has had continuous operation since approximately 1926 to the present." He noted that even though "the legal entity owning and running the business has changed over the years *** [he] did not include that technical information" in his previous affidavit as he "didn't think the corporate succession was relevant to the issue pending before the Court."

¶ 22 The trial court denied Steven's motion for summary judgment.

¶ 23 Thereafter, Steven served a supplemental request to produce and request to admit (requests) on Holmes. He asked Holmes to admit that they never paid property taxes for Parcel 4 prior to 2011 and that they never physically possessed, controlled, maintained, or erected any structure upon Parcel 4.

¶ 24 On March 17 Steven filed a second motion for summary judgment arguing that Holmes did not timely respond to his requests to admit, such that the requests should be deemed admitted as true. He attached his requests and proofs of service to the motion.

¶ 25 Holmes moved to strike Steven's motion arguing that the requests did not comply with Illinois Supreme Court Rule 11 (eff. Jan. 1, 2016) or Illinois Supreme Court Rule 12 (eff. Jan. 1, 2016). In the alternative, they moved for an extension of time to respond to the requests pursuant to Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011) arguing that they did not receive the requests until five days after they were purportedly mailed.

¶ 26 On March 23, 2015, Steven filed a supplemental memorandum in support of his second motion for summary judgment attaching copies of real-estate tax bills addressed to Holmes for the years 2010 through 2013, payable in 2011 through 2014. He first asserted that under *Brosie v. Borrowman*, 29 Ill. App. 3d 936, 937 (1975), whether Holmes paid property taxes is irrelevant.

Alternatively, Steven argued that the record shows Holmes did not pay taxes on the Parcel 4. On March 26 he also filed a response to Holmes' motion to strike/motion for extension of time.

¶ 27 On April 6 Holmes responded to Steven's second motion for summary judgment arguing that he failed to identify what tax bill time span he was referring to in the requests and that because discovery had not closed, they could still "seasonably supplement" their answer to his supplemental request to produce. Holmes also asserted that because the tax bills submitted by Steven showed a decrease in property taxes after they were made aware of their ownership of Parcel 4, reasonable minds could differ over whether they paid taxes for Parcel 4 prior to 2011. Steven replied on April 13.

¶ 28 On April 23, the trial court heard arguments on Holmes' motion to strike/motion for extension of time and Steven's second motion for summary judgment. After the arguments on Holmes' motion, the court stated for the record that Steven's attorney's certificate of service was "not 100 percent in compliance with the rule" but was "sufficient." Additionally, after arguments concerning Steven's motions, the trial court noted for the record that payment of taxes defeats a claim for adverse possession. However, it found that Holmes had not shown they knowingly paid taxes for the property.

¶ 29 In a written order issued on April 30, the trial court denied Holmes' motion. It found that the requests were served four days after they were mailed, presenting no good cause for a one-day extension of time. It deemed Steven's requests admitted. In the same order, the trial court granted Steven's second motion for summary judgment finding that he acquired title to Parcel 4 by adverse possession prior to 2010. It also held that the chain of title of possessors was immaterial to the issue and found that Steven was "involved in the business" and "was there on a regular basis." It also noted that the entry of summary judgment was "without reference to the

admission of the request to admit" because it was not necessary "that the request to admit be admitted to prevail on the summary judgment motion."

¶ 30 Holmes timely appealed.

¶ 31 ANALYSIS

¶ 32 Holmes presents several arguments here on appeal. First, they claim that the trial court erred in granting Steven's second motion for summary judgment because Steven failed to prove all of the elements of adverse possession of Parcel 4 and also that the record supports an inference that they paid real estate taxes for the parcel thus precluding a finding of adverse possession. Next, they argue, in the alternative, that the grant of summary judgment was erroneous because Steven failed to show he adversely possessed Parcel 4 in its entirety. Lastly, Holmes claims that the trial court erred in denying their motion to strike/motion for extension of time to respond to Steven's requests and then deeming those requests admitted. Because we find that the trial court did not err in granting Steven's second motion for summary judgment and that Steven's requests have no bearing on our dispositive finding, we do not address Holmes' arguments concerning the requests.

¶ 33 Summary judgment is proper only when the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is clearly entitled to judgment as a matter of law. *Pielet v. Pielet*, 2012 IL 112064, ¶ 29; 735 ILCS 5/2-1005(c) (West 2014). We review a trial court's grant of summary judgment *de novo*. See *Id.*, ¶ 30.

¶ 34 To succeed on a claim under the twenty-year adverse possession doctrine, a claimant must establish that for a period of twenty years possession of the property was concurrently (1) continuous, (2) hostile or adverse, (3) actual, open, notorious, and exclusive, and (4) under claim

of title inconsistent with that of the true owner. *Joiner v. Janssen*, 85 Ill. 2d 75, 81 (1981); *Township of Jubilee v. State of Illinois*, 405 Ill. App. 3d 489, 498 (2010); *Perivoliotis v. Pierson*, 167 Ill. App. 3d 259, 263 (1988). The claimant bears the burden of proving by clear and unequivocal evidence all of the elements to satisfy the doctrine. *Township of Jubilee*, 405 Ill. App. 3d at 498.

¶ 35 We note that the trial court in this case did not discuss why it found the chain of title of possessors of the Rump Parcels to be immaterial to its ultimate finding that Steven had established his claim of adverse possession. That finding is, however, erroneous. Steven has not shown that Rump Construction's involvement with the Rump Parcels was more than a mere tenancy for the majority of his claimed timeframe for adverse possession. Thus, his claim regarding it being a family business that has operated on the property for over 30 years is insufficient to support a claim of adverse possession.

¶ 36 The record shows that up until Frederick conveyed the Rump Parcels to himself in 1986, Rump Construction only owned Parcel 1 for seven years and Parcels 2 and 3 for less than a day. The affidavit from the majority co-trustees of the Trust, which Steven attached to his original complaint, clearly states that Rump Construction had been "a continuous *tenant* of the property since prior to 1980." Further, Steven does not contest Kathy's averment that his company, Steven G. Rump Construction Co., paid rent to the Trust for the use of the property. Therefore, even if we were to accept his assertions regarding Rump Construction being a family business and the noted fact that he is currently the president, Steven has not shown that Rump Construction's interest in the Rump Parcels and the adverse possession of Parcel 4 extended beyond the property boundary of or the seven years it owned Parcel 1. Furthermore, he has not shown that his personal "involve[ment] in the business" by being "there on a daily basis" before and after

Frederick deeded the Rump Parcels to the Trust or any time prior to the execution of the Trustees' Deed was more than a mere tenancy whose permissive possession of the property would not substantiate a claim of adverse possession of Parcel 4. See *Brandhorst v. Johnson*, 2014 IL App (4th) 130923, ¶ 42, ("[P]ermissive use of land, no matter how long, can never ripen into an adverse possessory right."). Our *de novo* review of the matter, therefore, must include the chain of title of the Rump Parcels.

¶ 37 Therefore, in order for Steven to satisfy the doctrine of adverse possession in this case he would need to show (1) "that [his] predecessors in title *** held the subject property adversely, thereby allowing [him] to link or 'tack' [his] predecessors' possession to that of [his] own" (*Mann v. LaSalle National Bank*, 205 Ill. App. 3d 304, 308 (1990); see *McNeil v. Ketchens*, 397 Ill. App. 3d 375, 394 (2010)); (2) that there was an intent to convey the adversely possessed property (*Bakutis v. Schramm*, 114 Ill. App. 3d 237, 239 (1983)); and (3) that he has privity of estate (*Kepley v. Scully*, 185 Ill. 52, 54 (1900)).

¶ 38 Holmes asserts that there is insufficient evidence in the record to show that Steven and his predecessors in title have met all of the elements of adverse possession of Parcel 4. They claim that the possession was not continuous, exclusive, or hostile and that Steven failed to show an adverse claim of title to Parcel 4.

¶ 39 For clarity, we pause briefly to note and discuss why we will begin our *de novo* review of whether Steven established his claim of adverse possession at the time when the Rump Parcels were jointly owned and conveyed to Frederick on December 1, 1986, and not at any time earlier. We are aware of the fact that much of Steven's argument in support of his claim involves overt acts prior to this time. Specifically, the City of Peoria had issued several building permits to and at the request of Rump Construction between 1975 and 1979 for the expansion of its facilities on

the Rump Parcels. The permitted expansions included a bigger parking lot and a retaining wall designed to extend onto Parcel 4. The record is unclear as to whether the retaining wall was actually erected, but it does show that the parking lot was expanded onto Parcel 4.

¶ 40 These facts, however, occurred during a time when the Rump Parcels were not jointly owned but were being leased from two separate owners. George, an owner and operator of Rump Construction, owned Parcels 2 and 3 and Catherine Schneider owned Parcel 1. The record does not disclose whether Schneider had more than a tenancy relationship with the Rumps or Rump Construction. It also does not discuss the extent of her knowledge, if any, of Parcel 4 or whether she had any agreement with the owners of Parcel 4 to lease or permissively use the parcel thus defeating a claim of adverse possession. The record only notes the undisputed fact that at the time George and Frederick acquired Parcels 1 and 2, they believed the parcels encompassed parcel 4.

¶ 41 We note that Catherine Schneider conveyed Parcel 1 to Rump Construction in 1979 making Rump Construction and George and Viola the collective owners of the Rump Parcels. However, we further defer the start of our analysis until after Frederick acquired all of the Rump Parcels because it is not clear from the record who was directing the maintenance of the property at that time. This is the contested act of adverse possession for the successors in title to the property. The affiants, who averred to doing the work on the property prior to 1986, stated that they did it under the direction of Rump Construction or Frederick. However, Rump Construction only owned Parcel 1. Although George owned Parcels 2 and 3, he owned them jointly with his wife. At some point prior to her conveyance of the parcels to Rump Construction, George died. Viola is not shown in the record to have had any affiliation with Rump Construction notwithstanding her marriage to George. Moreover, the record is silent about whether or not she

knew that Parcel 4 was not a part of Parcels 1 and 2. Because of this ambiguity, we begin our analysis after Frederick became the sole owner of the Rump Parcels in 1986 with some reference to Rump Construction's actions prior to that time since Frederick was the president. We will discuss his fulfillment of each of the contested elements of adverse possession and then discuss in turn each successor in title's fulfillment of the elements.

¶ 42 Frederick's Adverse Possession

¶ 43 Hostile Possession

¶ 44 The hostile nature of claimant's possession is shown if he asserts "ownership incompatible with that of the true owner and all others." *Joiner*, 85 Ill. 2d at 81. Such possession must be shown to have been adverse and not merely permissive. *Brandhorst*, 2014 IL App (4th) 130923, ¶ 42. The performance of yard maintenance, "mowing the grass," alone generally cannot establish adverse possession. *Township of Jubilee*, 405 Ill. App. 3d at 498-99; see also *Wanless v. Wraight*, 202 Ill. App. 3d 750, 754 (1990); *C.f. Morris v. Humphrey*, 146 Ill. App. 3d 612, 615-16 (1986) ("use of vacant and unenclosed land is presumed to be permissive and not adverse"). However, when combined with nonpermissive construction of a structure or public assertions laying claim to the property, such actions have been shown to constitute hostile possession and support a claim of adverse possession. See *Township of Jubilee*, 405 Ill. App. 3d at 498-99; see also *McNeil*, 397 Ill. App. 3d at 393 (noting that the contested gravel road was not constructed by any of the adverse claimants and was there prior the rightful titleholder's conveyance of the property to them); see *e.g., Nitterauer v. Pulley*, 401 Ill. 494, 503 (1948) (noting that because the predecessors in title did not tell others they were mowing the grass under a claim of title adverse possession could not be established).

¶ 45 Parcel 4 is a symmetrical cap to Parcels 1 and 2. It is unknown whether the record titleholder of Parcel 1 at that time, Schneider, was granted permission by owners of Parcel 4 to make improvements. However, the record is clear that George, the owner of Parcel 2 and Rump Construction, and Frederick, the other owner of Rump Construction, did not have permission from the record titleholder to make the improvements on Parcel 4. They did not know that Parcel 4 was a property distinct from Parcels 1 and 2 – they thought they owned it. Between 1975 and 1979, George and Frederick requested and the City of Peoria granted Rump Construction several building permits for it to expand its facilities on the Rump Parcels. The permitted expansion included a bigger parking lot and a retaining wall designed to extend onto Parcel 4. Further, under the direction of the then president of Rump Construction, Frederick, and after he became the Rump Parcel's record titleholder the property including Parcel 4 was maintained with lawn care and snow removal. These acts, therefore, substantiate hostile possession of the property.

¶ 46 Holmes asserts, however, that hostile possession of Parcel 4 cannot be established after the Rump Parcels were conveyed to Frederick in 1986 because Steven's affiants do not state under whose direction they were maintaining the property. Contrary to this assertion, we find the record indicates that the affiants were averring that they maintained the property, including Parcel 4, under the direction of Frederick for the use and benefit of Rump Construction and the lessees of the property facilities. Although Rump Construction dissolved as a corporation at the time the Rump Parcels were conveyed to Frederick, the record indicates and Holmes does not contest that the company was still operating in some form. Frederick was still its president until he retired in 2004. Thus despite the change in legal status of Rump Construction, maintenance of the property including Parcel 4 was under the direction of Frederick, the record titleholder and

president of Rump Construction. Therefore, Steven proved Frederick hostilely possessed Parcel 4 after its conveyance in 1986.

¶ 47 Exclusive Possession

¶ 48 To establish exclusivity the possession "must be of such open and visible character as to apprise the world, that the property has been appropriated, and is occupied." *Brandhorst*, 2014 IL App (4th) 130923, ¶ 56. "[I]mprovements or acts of dominion over the land as will indicate to a person residing in the immediate neighborhood who has the exclusive management and control of the land are sufficient to constitute possession." *Joiner*, 85 Ill. 2d at 82. "The party claiming exclusivity need not show that he possessed the property to the exclusion of all others *** [B]ecause exclusivity requires that the claimant possess the property independent of a like right in others, *** the alleged rightful owner, must be altogether deprived of possession." *Malone v. Smith*, 355 Ill. App. 3d 812, 817 (2005).

¶ 49 As previously discussed, Rump Construction had expanded its parking lot onto Parcel 4 and Frederick maintained it and the grass surrounding it as president of Rump Construction and as sole owner of the property for the use and benefit of Rump Construction and then that of his lessees. Their use with Frederick's permission and Frederick's maintenance of Parcel 4 "sufficiently indicated to the neighbors" that they had "claimed ownership over the land." *Brandhorst*, 2014 IL App (4th) 130923, ¶ 56.

¶ 50 Holmes' argument that Steven did not prove the element of exclusive possession because Frederick rented the use of space in his buildings to others is without merit. Frederick *exhibited ownership and control when he rented* parts of the facility to others, who, along with his guests, used the parking lot. This tenant use of the property and act of possession of Parcel 4 was imputed to Frederick, the property owner. See *Wittington v. Cameron*, 385 Ill 99 (1943).

Moreover, Steven was not required to show he or his predecessors in title excluded others from Parcel 4, but that Holmes, the opponents to Steven's claimed possession, never possessed it. *Brandhorst*, 2014 IL App (4th) 130923, ¶ 57. Thus Steven established that Frederick maintained exclusive possession of Parcel 4.

¶ 51 Claim of Title

¶ 52 The ordinary way to assert a claim of title is to simply use and control the property. *Joiner*, 85 Ill. 2d at 82. The previously discussed acts that demonstrated continuous, hostile, and exclusive possession by Frederick are also sufficient to support the assertion that he claimed the title to Parcel 4 in contravention of the ownership interest or title of Holmes and their predecessors in title.

¶ 53 Holmes' argument that Frederick abandoned Parcel 4 based on their affiant's assertion is unavailing. Kathy averred that Frederick abandoned Parcel 4 by ceasing the construction of a building on it after laying pavement and installing footings because he had learned the parcel did not belong to him. First, we note that Frederick's alleged knowledge that Parcel 4 did not belong to him does not defeat a claim of adverse possession. See *Joiner*, 85 Ill. 2d at 81 ("To hold that because the possessor knows or should know that record title is in another precludes any possibility of the possessor's title being adverse is the antithesis of the doctrine of adverse possession as it has existed in this State."). Next, and more importantly, the record does not support the assertion that Frederick abandoned the property. The acquisition of a building permit, the installation of footings, and then the cessation of construction is only evidence of the abandonment of the desire to erect a building. According to the record, the footings were not removed and remain to this day. Moreover, the parking lot that was expanded onto Parcel 4 and the grassy area surrounding it continued to be maintained by Frederick.

¶ 54 Holmes' other argument that Parcel 4's erroneous tax classification as a right of way defeats Steven's claim of adverse possession under his claim of title is also not persuasive. We are aware of the concept that the people of the state would have had a general interest in Parcel 4 if it actually had been a right of way, thus precluding a claim of adverse possession because the use by Steven's predecessors in title would be viewed as permissive. See *Miller v. Metropolitan Water Reclamation District of Greater Chicago*, 374 Ill. App. 3d 188, 190-91 (2007). However, this argument is without merit in this case. As noted in the letter Peoria County sent to Thomas and Heather Holmes, the classification of the property as a State right of way was merely a tax assessor's error. The State was never conveyed the property for it to be used as a right of way. Thus the county's error is irrelevant. See *Brandhorst*, ¶ 46. As remaindermen, Thomas and Heather Holmes were the record titleholders of Parcel 4. Frederick's maintenance of and control over Parcel 4 were inconsistent with that ownership. See *Id.* ("It is inconsistent with a private party's ownership of a piece of land for a non-owner to maintain and assert dominion over the land without any agreement to do so.") Therefore, there was an adverse claim of title.

¶ 55 The Trust's Tacked Adverse Possession

¶ 56 Next in our line of titleholders to continue the adverse possession of Parcel 4, the record shows that in 2004 Frederick conveyed his property interest by warranty deed to the Trust. Holmes raises no argument challenging the Trust's continued satisfaction of the contested elements of adverse possession of Parcel 4 or Frederick's intent to convey the disputed parcel. Still, the affidavits in the record note that maintenance of the parcel's grass area and snow removal continued under the direction of Frederick during the time title was held by the Trust, of which Frederick was a majority co-trustee. Additionally, the Trust leased the use of the property

including Parcel 4 to Rump Construction, Steven G. Rump Construction Co., and others. Thus, it exhibited its control over and claim of Parcel 4.

¶ 57 Holmes argues only that the Trust cannot adversely possess property. However, such an argument is without merit. Pursuant to the holding in *Knauf v. Ryan*, 338 Ill. App. 3d 265, 266 (2003), and this court agrees, a trust can adversely possess property so long as the elements of adverse possession have been met. Here, as in *Knauf*, they have and Holmes does not argue otherwise.

¶ 58 Steven's Tacked Adverse Possession

¶ 59 Now we address Steven's continued adverse possession of Parcel 4. Rather than arguing that Steven has not continued to satisfy the elements of adverse possession of Parcel 4 or that the Trust did not intend to convey the contested parcel, Holmes argues (1) that their property taxes payments create an issue of material fact that would preclude summary judgment and (2) that the Rump Parcels and the adversely possessed Parcel 4 were not properly conveyed to Steven.

¶ 60 First, Holmes asserts that there is a material issue as to whether they paid taxes for Parcel 4. They argue that these tax payments create an issue of fact that would defeat Steven's alleged continued adverse possession or, at the least, preclude summary judgment. They note a decrease in the property taxes they were assessed and did pay after they were officially notified of their ownership of Parcel 4. Holmes asserts that this decrease could lead a reasonable person to believe they had been paying property taxes for Parcel 4 all along.

¶ 61 Such an argument, however, is irrelevant to Steven's claim of adverse possession for three reasons. First, "payment of [real estate] taxes by the record titleholder, or nonpayment of taxes by one seeking to establish title by adverse possession does not resolve the issue where the party claiming title seeks to establish the title by proving adverse possession for a period of 20

years.” *Brosie v. Borrowman*, 29 Ill. App. 3d 936, 937 (1975). Steven need only prove the elements of this type of claim of adverse possession. *Id.*

¶ 62 Second, it is an undisputed fact that the Peoria County Assessor believed, because of its own error, that Parcel 4 was a State right-of-way. It would have sent the Holmes no tax bills and they would not know what amount of tax was owed. We find it a fair inference that the Holmes paid no taxes.

¶ 63 Third, by our calculation, Steven and his predecessors in title had already adversely possessed Parcel 4 by the time Thomas and Heather Holmes learned of their interest in the parcel. After the statutory time has run for adverse possession, in this case 20 years, "the record owner is divested of title" and subsequent acts cannot remedy the divestiture. *Knauf v. Ryan*, 338 Ill. App. 3d 265, 271 (2003). As previously noted, the expansion of Rump Construction facilities by the record titleholders onto Parcel 4 and the subsequent maintenance of that expansion began between 1975 and 1980. Sole ownership of the Rump Parcels was held by, first, Rump Construction and second, Frederick, in 1986. Pursuant to our analysis, the latest year the title would have passed through adverse possession was 2006. Thomas and Heather Holmes did not learn of their interest in the property until 2010. By this time, the property belonged to Steven, the record titleholder, and his interest could not be divested by the gratuitous payment of taxes by a stranger to the property. See *Id.* Steven's proper filing of his claim of adverse possession thus precludes Holmes' claims regarding these later tax payments.

¶ 64 Next we address Holmes' argument that the Trustee's Deed executed on April 23, 2010, by the Trust was not valid. For the following reasons, we find that argument lacks merit.

¶ 65 Initially, as matter of law, a showing of a "conveyance, agreement, or understanding which has for its object a transfer of rights of the possessor or his possession, and is accompanied

by a transfer of possession in fact" is enough to satisfy "continuity and connection of possession" for purposes of privity of estate. *Hermes v. Fischer*, 226 Ill. App. 3d 820, 827 (1992). Holmes does not deny that the intent of the listed trustees of the Trust was to transfer possession of the Rump Parcels and Parcel 4 to Steven. Therefore, a proper conveyance occurred and no material issue of fact can be drawn.

¶ 66 We also find that Holmes' argument fails on its merits. Contrary to their assertion, all of the affidavits purporting to convey the Trust Deed to Steven were properly notarized. Under Illinois law, notarizations are considered valid as long as they are "made in conformity with the laws of the State*** where it is made." 765 ILCS 5/20(2) (West 2014). This section of the statute defeats Holmes' reliance on *People v. Nelson*, 150 Ill. App. 595, 597-98 (1909), for the proposition that the seal of a notary public of another state must also state that they are authorized to administer oaths in the State of Illinois. Holmes has failed to show that the documents notarized in California and Missouri were not in conformity with the laws of those States.

¶ 67 Additionally, we do not find the crossing out of the term "personally known to me" on Steven's California notarized affidavit to be improper. Pursuant to the Illinois Notary Public Act (Notary Act), the notary public determines "*either from personal knowledge or from satisfactory evidence*" that the person signing the document they are to notarize is who they claim to be. (Emphasis added.) 5 ILCS 312/6-102(a) (West 2014). Under California law, a notary public is required to have "satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the instrument." Cal Civ. Code § 1185(c). It does not require the notary public to "personally know the individual" and, more importantly, neither does our Notary Act. Therefore, the notarizations were proper.

¶ 68 Lastly, Holmes' argument that the Trust may have required more than the submitted affidavits for proper conveyance of the Rump Parcels also fails. Though the record does not show and Steven does not argue the point, Holmes has not shown that they are parties to the Trust. They, therefore, have no standing to assert its requirements. See *Bank of America National Ass'n v. Bassman FBT, L.L.C.*, 2012 IL App (2d) 110729, ¶ 8, as modified on denial of reh'g (Dec. 7, 2012). Additionally, the record notes and Holmes does not contest the fact that the affidavits were from the majority co-trustees of the Trust at that time. Therefore, Steven validly acquired the deed to Rump Parcels and continued the adverse possession of Parcel 4.

¶ 69 Parcel 4 Adversely Possessed in its Entirety

¶ 70 Holmes argues in the alternative that Steven failed to show that he adversely possessed Parcel 4 in its entirety. They argue that, at most, he may have proven he acquired the part of the Parcel where the parking lot was extended but not the grass surrounding it because mere mowing of the grass alone is insufficient to support a claim of adverse possession. They cite *Nitterauer v. Pulley*, 401 Ill. 494, 503 (1948) and *Township of Jubilee v. State of Illinois*, 405 Ill. App. 3d 489, 498-90 (2010), in support of their position. Those cases are, however, distinguishable because their facts are limited to instances where the claimant asked permission prior to possessing the property (*Jubilee*, 405 Ill. App. 3d at 499) or he did not maintain the grass under a claim of right (*Pulley*, 401 Ill. at 503). The record is devoid of any evidence that either Steven or his predecessors in title asked Holmes or their predecessors in title for permission to use Parcel 4. Additionally, we have already discussed the maintenance of Parcel 4 under a claim of right by Steven and his predecessors in title.

¶ 71 The facts of this case are more analogous to those in *Wanless v. Wright*, 202 Ill. App. 3d 750, 754 (1990). There the court held that the maintenance of the lawn around an improvement

sufficiently established adverse possession of the area of the improvement and the grassy area surrounding it. *Id.* Here, Steven and his predecessors in title improved Parcel 4 with the extended parking lot and then continuously maintained it and its surrounding grassy area.

¶ 72 Therefore, the trial court did not err in finding that Steven proved he and his predecessors in title adversely possessed Parcel 4 for a period of more than 20 years and granting summary judgment in his favor.

¶ 73 CONCLUSION

¶ 74 The judgment of the circuit court of Peoria County is affirmed.

¶ 75 Affirmed.