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NO. 4-16-0320

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Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RICHARD SAALBORN and M. KIM SAALBORN, Plaintiffs and Counterdefendants-Appellees, v. RICHARD EMMERT, BETTY EMMERT, and MICHAEL EMMERT, Defendants and Counterplaintiffs and Third-Party Plaintiffs-Appellants, and PHILLIP G. CONOVER and BONNIE L. CONOVER, Trustees Under the Phillip G. Conover & Bonnie L. Conover Living Trust Dated November 13, 2006, and Any Amendments thereto, Third-Party Defendants.	)	Appeal from Circuit Court of Adams County No. 12MR52 Honorable Debra L. Wellborn, Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court erred in granting the Saalborns' motion for summary judgment with regard to their claim to quiet title to tract "C" as they failed to meet the burden of proof necessary for summary judgment.

(2) The Emmerts forfeited any issue with regard to the trial court's summary judgment order concerning the Emmerts' counterclaims for injunctive relief or an easement because the Emmerts failed to cite any case law in support of their argument they had any private claim to injunctive relief or an easement with regard to the portions of the "old roadway" running through property owned by the Conovers and the Saalborns.

¶ 2 On January 19, 2016, the trial court granted plaintiffs and counterdefendants Richard and M. Kim Saalborn's motion for summary judgment, ruling the Saalborns had

superior title to tract "C" and defendants and counterplaintiffs and third-party plaintiffs Richard, Betty, and Michael Emmert had no right to injunctive relief or an easement with regard to the "old roadway" crossing property belonging to the Saalborns and Phillip G. and Bonnie L. Conover. On April 1, 2016, the trial court denied the Emmerts' motion to reconsider. The Emmerts filed this appeal, arguing the trial court erred in granting the Saalborns' motion for summary judgment. We reverse the trial court's summary judgment order with regard to tract "C" but affirm the order with regard to the Emmerts' counterclaims for injunctive relief or an easement.

¶ 3 I. BACKGROUND

¶ 4 In April 2012, the Saalborns filed a complaint to quiet title to certain tracts of property in Adams County against Richard Emmert, Betty Emmert, and Michael Emmert. According to the complaint, the Saalborns purchased the property from Keith and Sheri Knepel. The purchased property bordered property owned by Richard and Betty Emmert. Only a small portion of the property listed in the Saalborns' deed from the Knepels is at issue in this appeal, which is only before this court because of the trial court's Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) finding.

¶ 5 To help understand this case, a recent history of the property at issue is necessary. The record reflects Robert J. and Anne F. Segal purchased certain real property at a bankruptcy sale. This land, approximately 328 acres, was south of property owned by Richard and Betty Emmert. According to the September 5, 1986, trustee's deed, the Segals purchased the following property:

> "The Northeast Quarter of Section 17; the North Half of the
> Southwest Quarter of the Northwest Quarter of Section 16; the

Northwest Quarter of the Northwest Quarter of Section 16, except all that part lying North of the public highway running through such quarter quarter section as located in 1923; the South 25.38 acres of the West Half of the Southeast Quarter of Section 8, *excepting therefrom* a tract described as beginning at a point on the West line of said Southeast Quarter which is the Northwest corner of the said South 25.38 acres of said West Half of the Southeast Quarter, thence running South on the West line of said Southeast Quarter 20 rods, thence running due East 22 rods, thence running due South 6 rods to the North line of a road, thence running in a Northeasterly direction along the North line of said road to a point which is 10 rods South of a point 73 rods East of the place of beginning, thence running North 10 rods, thence running West 73 rods to the place of beginning [Tract "A"], and *also excepting* a tract described as beginning at a point 18 rods south of the Northeast corner of said South 25.38 acres of the West Half of the Southeast Quarter, running thence North 18 rods, thence West 6 rods, thence South 13 1/2 rods, thence East 9 rods to the point of beginning [Tract "C"]; also, the South Half of the Southeast Quarter of the Southeast Quarter of Section 8, except 2 acres in the Southwest corner thereof; and the North Half of the Southeast Quarter of Section 17; all in Township 1 North, Range 7 West of the Fourth Principal Meridian, Adams County, Illinois, subject to

all public and private roads and easements, and also subject to a possible Oil and Gas lease to Jepco Services, a limited partnership, and an Assignment of a 1/64 over-riding royalty interest therein to Gerald D. Morton, chairman/trustee of Rocky Ford I Association[.]" (Emphases added.)

¶ 6 In May 1998, the Segals sold the property they purchased at the bankruptcy sale to Keith and Sheri Knepel. The description of the property found in the Knepels' May 11, 1998, warranty deed was essentially the same as the property description found in the trustee's deed obtained by the Segals, with two minor exceptions not relevant to this appeal. However, in June 2004, when the Knepels sold part of the property to the Saalborns, the Saalborns' June 30, 2004, deed contained a quitclaim conveyance of tract "C," which was property specifically excepted from both the Segals' trustee's deed and the Knepels' deed. According to the quitclaim conveyance, the Knepels and Segals had adversely possessed this tract of ground.

¶ 7 In the Saalborns' June 30, 2004, deed, a piece of property called "Tract 2" essentially matched the description of the property in the Segals' trustee's deed and the Knepels' deed. Like the earlier deeds, the description of "Tract 2" in the Saalborns' deed included the following language: "and also excepting a tract described as beginning at a point 18 rods South of the Northeast corner of the said South 25.38 acres of the West Half of the Southeast Quarter, then North 18 rods, thence West 6 rods, thence South 13 1/2 rods, thence East 9 rods to the point of beginning." However, the deed later states:

"ADDITIONAL CONVEYANCE: Grantors hereby QUIT CLAIM and CONVEY to the above named Grantees, as joint

tenants and not as tenants in common, all of their right, title, and interest in the following described real estate:

Commencing at a point 18 rods South of the Northeast corner of the South 25.38 acres of the West Half of the Southeast Quarter of Section Eight (8), Township One (1) North of the Base Line, Range Seven (7) West of the Fourth Principal Meridian, Adams County, Illinois, thence North 18 rods, thence West 6 rods, thence South 13.5 rods, then East 9 rods to the place of beginning, excepting therefrom any portion of the real estate which is located within the above 23.80 acre excepted tract. PIN No. 05-0-0090-000-00

Grantors have been in the actual, open, visible, adverse, exclusive, continuous, uninterrupted, notorious, and hostile possession of the whole of above property, since May 13, 1998, to the present time. Prior to May 13, 1998, Grantors' predecessors in title to the real estate first described above, namely Anne F. Segal and Robert J. Segal, were in the actual, open, visible, adverse, exclusive, continuous, uninterrupted, notorious, and hostile possession of the whole of above last described property since Sept. 16, 1986. It is also believed that their predecessors in title, Wayne P. Zimmerman and Julia A. Zimmerman, were in similar possession of said real estate last described above since Feb. 5, 1979. We have used and enjoyed the real estate last described above and appropriated all

> revenues derived therefrom without interference from anyone and no adverse claimant has come forth directly to us asserting any interest in the above property."

The Saalborns' only claim to the property described in this "ADDITIONAL CONVEYANCE" was through the alleged adverse possession of the Knepels, the Segals, and the Zimmermans.

¶ 8 In February 2002, prior to the Saalborns purchasing the property and filing their deed, Michael R. Emmert filed a warranty deed for property conveyed to him from his parents, Richard J. and Betty V. Emmert. The deed purported to convey the following property:

> "Commencing at a point 18 rods South of the Northeast corner of the South 25.38 acres of the West Half of the Southeast Quarter of Section Eight (8), Township One (1) North of the Base Line, Range Seven (7) West of the Fourth Principal Meridian, Adams County, Illinois, thence North 18 rods, thence West 6 rods, thence South 13.5 rods, thence East 9 rods to the place of beginning [Tract "C"]."

This is the same parcel of property to which the Saalborns claim ownership via the June 30, 2004, quitclaim deed from the Knepels.

¶ 9 Count I of the Saalborns' complaint sought to quiet title to land they identified as tract "B" on an exhibit attached to their complaint. The complaint noted Richard and Betty Emmert were also claiming ownership of tract "B." Tract "B" is not at issue in this appeal. Count II sought to quiet title in land the Saalborns identified as tract "C" on the attached exhibit. According to the complaint, both Michael Emmert and the Saalborns claimed ownership of tract "C." According to the Saalborn's complaint, tract "C":

"never belonged to Richard and Betty Emmert, was never conveyed to Richard and Betty Emmert, and thus Richard and Betty Emmert had no legal authority, right or ownership to convey any parcel of land to Michael Emmert. Michael Emmert did not take this tract in good faith as he knew or had reason to know Richard and Betty Emmert were never the record title owners of the land. The record title to this piece of land belongs to the [Saalborns]."

The Saalborns' complaint also contained the following allegations:

"20. The disputed tract of land between [the Saalborns] and Michael Emmert (land C on the Exhibit) has always been located north of the old former county road. Defendant Michael Emmert in his claim to alleged ownership, has now erected fencing south of the roadway and into a creek bed located on the Conovers' property. Michael Emmert has also strung fencing over the roadway thus prohibiting the Saalborns rightful access to their property to the east of said fencing. Defendant Michael Emmert has wrongfully attempted to claim ownership of the tract, wrongfully has now attempted and taken the position the piece of land at issue extends south of the roadway, and is now unjustifiably restricting and prohibiting Saalborns access and quiet enjoyment upon land owned by the Saalborns."

¶ 10 The Emmerts filed a countercomplaint against the Saalborns to quiet title to property they alleged they owned. In count I, Richard and Betty Emmert alleged they owned the land identified by the Saalborns as tract "B." In count II, Richard and Betty Emmert asserted they had paid taxes on tract "B" for a period in excess of seven years. In count III, Richard and Betty Emmert asserted an alternative claim they had adversely possessed tract "B" in excess of 20 years. (Counts I to III are not relevant to this appeal.) In count IV, Michael Emmert claimed he was the rightful and legal owner of the land identified by the Saalborns as tract "C." In count V, Michael Emmert made an alternative claim seeking taxes he had paid on tract "C" if the court found the Saalborns were the legal owners of the tract. In count VI, Michael Emmert alternatively alleged tract "C" belonged to him by way of adverse possession. In count VII, the Emmerts sought injunctive relief requiring the Saalborns to remove any and all obstructions to the "old roadway" which was located south of tracts "A," "B," and "C." In count VIII, the Emmerts sought an easement allowing them to use the "old roadway."

¶ 11 On December 2, 2015, the Saalborns filed a motion for summary judgment on counts I and II of their complaint and all counts of the Emmerts' countercomplaint. According to the Saalborns' supporting memorandum of law, Dr. Segal testified by deposition he and his wife had purchased the land identified by the Saalborns as tracts "B," "C," and "D," and the 23.8 acres south of the "old roadway." However, Dr. Segal actually stated at deposition: "Well, we *thought* we had purchased none of A and all of B, C, and D, as well as the 23.8 acres south of the roadway and that complicated area where the spring was near the county road." (Emphasis added.)

¶ 12 Further, according to the memorandum of law, the Segals owned the land for approximately 12 years before selling it to the Knepels in 1998. Segal testified by deposition he

was out on his property every free weekend and when he had time off from work. Segal also testified he hunted on the property. He even asked Richard Emmert about going onto Emmerts' land to enter the land in question. According to the motion, Dr. Segal never saw anyone else on the land he thought he owned.

¶ 13 Dr. Segal described tract "C" as being heavily wooded and rugged. He only hunted deer on tract "C." According to Dr. Segal, the Emmerts never told him they believed they owned tract "C." He never saw anyone on tract "C."

¶ 14 In May 1998, the Knepels purchased the property from the Segals. The land did not have a home on it at that time. Further, no entry to a roadway off 1450 Street was present as depicted on exhibit No. 1 to the motion. The Knepels' home was constructed in 2000. The "old roadway" was impassable when they purchased the property. The Knepels testified by deposition they rode all-terrain vehicles (ATVs) on tracts "B" and "C." The Emmerts never told the Knepels they should not be on tracts "B" or "C."

¶ 15 The Saalborns argued their title to tract "C" was superior to Michael Emmert's claim because Richard and Betty Emmert had never been deeded tract "C." The Saalborns also argued none of the Emmerts could meet all the requirements to establish adverse possession of any of the disputed tracts of land. Finally, the Saalborns argued the Emmerts had no right to an easement to use the old road.

¶ 16 In January 2016, the trial court held a hearing on the Saalborns' motion for summary judgment. According to the Saalborns' attorney:

> "So the question for this court is, is the conveyance of the quit claim deed from the Knepels to the Saalborns superior to the deed Michael Emmert took from Richard and Betty Emmert when they

went into David Little's office and asked him to draft it in 2002. That's issue No. 1. I would state based on all of the evidence cited, the testimony, the documentation, the Saalborns' title is superior.

First, the Emmerts never had any title to convey. As has been testified to, they went to Dave Little, to, quote, start a chain of title for their son Michael. And, quite frankly, as we've said, Dave Little for whatever reason out of thin air drafted this deed and that's part of the reason why I would say we are here."

The Saalborns' counsel made a point of saying the last known conveyance of the piece of property described in Michael Emmert's deed was a conveyance of that piece of land to W.L. Curtis in 1945.

¶ 17 As for the old roadway, the Saalborns argued the "old roadway" should not come into play in this case unless the court determines Michael Emmert is the titled owner to tract "C," tract "C" is landlocked, and Michael Emmert has a right to get back into the tract.

¶ 18 On January 19, 2016, the trial court issued an order on the Saalborns' motion for summary judgment. The court found neither the Saalborns nor Richard and Betty Emmert have or had "Warranty Deed title" to the following piece of real estate:

"Commencing at a point 18 rods South of the Northeast Corner of the South 25.38 acres of the West Half of the Southeast Quarter Section Eight (8), Township One (1) North of the Base Line, Range Seven (7) West of the Fourth Principal Meridian, Adams County, Illinois, thence North 18 rods, thence West 6 rods,

thence South 13.5 rods, thence East 9 rods to the place of beginning ***."

The court noted the Knepels deeded this tract of land to the Saalborns by quitclaim deed on June 30, 2004, based on a statement of adverse possession of that tract of property.

¶ 19 The trial court continued by noting the transfer via warranty deed by Richard and Betty Emmert to their son Michael Emmert of this same tract of property was not a good title conveyance. According to the court:

"Taking all of the evidence in the light most favorable to Richard and Betty Emmert they did not have title to transfer pursuant to Warranty Deed or adverse possession and were attempting to start a process whereby their son could make a claim to Tract C. Defendant/Counter-Plaintiff/Third-Party Plaintiff, Michael Emmert does not hold title to Tract C pursuant to the Warranty Deed from his parents, by adverse possession nor by the statutory provisions of 735 ILCS 5/13-110. The Motion for Summary Judgment on the claim to Quiet Title to Tract C as to all Defendants/Counter-Plaintiffs is granted in favor of Plaintiffs/Counter-Defendants, Richard and Kim Saalborn. The opposing claim to Quiet Title on Tract C on behalf of Defendants/Counter-Claimants is denied.

As to the Defendants/Counter-Plaintiffs Counter Claims for injunctive relief to remove barriers over the pathway previously described in deeds as the roadway of 1923 (or 1928) or for an easement over the use of said pathway the Court grants the

> Plaintiff/Counter-Defendants Motion for Summary Judgment.
>
> Upon review of the evidentiary attachments to the pleadings the elements necessary for an implied easement by necessity or by preexisting use or prescriptive easement do not exist."

¶ 20 After the Emmerts filed a motion to reconsider, the trial court held a hearing on April 1, 2016. The court denied the motion to reconsider and entered a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that no just reason existed for delaying appeal.

¶ 21 II. ANALYSIS

¶ 22 Although the underlying case involves multiple tracts of ground and boundary issues, the trial court's summary judgment ruling only concerned tract "C" and the Emmerts' use of the "old roadway." The court made no rulings on issues regarding tracts "D" or "B." This appeal is only before us pursuant to the trial court's Rule 304(a) finding. As a result, we will only address issues decided by the court in its summary judgment order.

¶ 23 Our supreme court has made clear summary judgment is a drastic means of disposing of litigation. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163, 862 N.E.2d 985, 991 (2007). A movant's right must be clear and free from doubt before summary judgment is appropriate. *Id.* Further, trial courts must remember the party moving for summary judgment is the burdened party. *North American Insurance Co. v. Kemper National Insurance Co.*, 325 Ill. App. 3d 477, 482, 758 N.E.2d 856, 860 (2001). The same is true for a reviewing court.

¶ 24 The moving party must meet both the initial burden of production and the ultimate burden of proof to prevail on his motion for summary judgment. See *Pecora v. County of Cook*, 323 Ill. App. 3d 917, 933, 752 N.E.2d 532, 545 (2001); *Wortel v. Somerset Industries,*

Inc., 331 Ill. App. 3d 895, 900, 770 N.E.2d 1211, 1214 (2002); *Williams v. Covenant Medical Center*, 316 Ill. App. 3d 682, 688-89, 737 N.E.2d 662, 668 (2000); see also Barbara A. McDonald, *The Top 10 Ways to Avoid Losing a Motion for Summary Judgment*, 92 Ill. B.J. 128, 128-29 (2004).

> "If the movant has the burden of proof at trial, the movant must produce affirmative evidence that, if uncontradicted, would justify a directed verdict at trial to carry the original burden of production on the motion. [Citation.] Because the party with the burden of proof at trial will normally be the plaintiff, if the plaintiff is the movant, the affirmative evidence must cover all essential elements of the cause of action not admitted in the pleadings [citation] and any affirmative defense raised by the defendant. [Citation.]" 4 Richard Michael, Illinois Practice § 40.3, at 380-81 (2d ed. 2011) (Civil Procedure Before Trial volume, discussing the effect of the burdens of production and persuasion).

It is important to remember the Saalborns moved for summary judgment. The Emmerts did not file a motion for summary judgment. However, the focus of the Saalborns' motion for summary judgment and their argument to this court is the Emmerts' failure to establish their right to the property in question. In considering the Saalborns' motion for summary judgment on their claim to quiet title, the Emmerts' failure to establish their right to tract "C" was irrelevant until the Saalborns produced "affirmative evidence that, if uncontradicted, would justify a directed verdict at trial to carry the original burden of production on the motion."

¶ 25 We give no deference to a trial court's summary judgment order and apply a *de novo* standard of review. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309, 948 N.E.2d 1, 18 (2010). The Emmerts argue the trial court erred in granting the Saalborns' motion for summary judgment to quiet title to tract "C" and in denying the Emmerts' request to remove barriers over the "old roadway" or for an easement for use of the "old roadway."

¶ 26 We first note the trial court found neither the Saalborns nor the Emmerts had a warranty deed title to tract "C." This finding by the court is accurate based on the record in this case. However, the trial court went on to award the Saalborns summary judgment with regard to tract "C" based on their adverse possession of the property, along with the adverse possession of the Segals and the Knepels.

¶ 27 The trial court erred in doing this. To prevail in an action to quiet title, a plaintiff must actually have title to the property. *Gambino v. Boulevard Mortgage Corp*, 398 Ill. App. 3d 21, 52, 922 N.E.2d 380 (2009). Where a plaintiff has no title in himself, the plaintiff cannot succeed in an action to quiet title. *Lakeview Trust & Savings Bank v. Estrada*, 134 Ill. App. 3d 792, 812, 480 N.E.2d 1312, 1327 (1985). The Saalborns' only claim to title in this case is by way of adverse possession, and they must establish the elements of adverse possession to claim good title.

¶ 28 According to the quitclaim deed upon which the Saalborns rely for their ownership of tract "C," the Knepels had been in actual, open, visible, adverse, exclusive, continuous, uninterrupted, notorious and hostile possession of tract "C" since May 13, 1998, and the Segals and Wayne and Julia Zimmerman exercised the same possession of tract "C" since February 1979. Since, as noted earlier, the Segals' trustee's deed and the Knepels' deed acquired

from the Segals included no transfer of tract "C," the Saalborns must rely on adverse possession by themselves and their predecessors to claim title.

¶ 29 Contrary to the Saalborns' argument, the issue before the trial court, when considering the Saalborns' summary judgment motion, and this court, in reviewing the trial court's summary judgment ruling, is initially not who has superior title to tract "C." The issue is whether any material facts exist with regard to the Saalborns' claim to title via adverse possession. If material facts exist as to the Saalborns' right to title of tract "C" by way of adverse possession, then the trial court erred in granting the Saalborns' motion for summary judgment. As stated earlier, the Saalborns bore the burden of establishing their right to summary judgment.

¶ 30 A party claiming title via adverse possession must show his possession of the property was (1) continuous; (2) hostile or adverse; (3) actual; (4) open, notorious and exclusive; and (5) under claim of title inconsistent with that of the true owner for a period of 20 years. *Peters v. Greenmount Cemetery Ass'n*, 259 Ill. App. 3d 566, 632 N.E.2d 187; 735 ILCS 5/13-101, 13-105 (West 2014). The Saalborns' claim they are entitled to the title to tract "C" via adverse possession is complicated by the characteristics of the tract of land.

¶ 31 Tract "C" is rugged, wooded property. It was not used on a consistent basis by anyone. Further, the tract was surrounded by the property of both the Emmerts and the Saalborns. From the record, without making any credibility determinations, it appears all parties used tract "C" as the land allowed, primarily for hunting deer.

¶ 32 Robert Segal testified he never saw anyone other than people he invited on tract "C" before he sold it to the Knepels. Segal testified the only thing you could do on tract "C" was

hunt, which he did. Segal testified he never had any contact or conversations with the Emmerts regarding tract "C."

¶ 33 Keith Knepel testified he allowed hunters on his property, including tract "C," but he did not hunt the ground himself. He testified he would walk and ride an ATV around tract "C." Knepel said he never saw Michael Emmert or signs of anyone clearing timber on tract "C." He testified he and his wife put up "No Trespassing" signs on their property bordering the Emmerts, including tract "C."

¶ 34 Sheri Knepel testified she did not hunt on the property. She and her husband allowed people, including Richard Saalborn, to hunt on tracts "B," "C," and "D." She never saw Michael Emmert on tract "C." She put up "No Hunting" and "No Trespassing" signs along the northern border of tracts "B," "C," and "D" between their property and the Emmerts' property. Later, when asked where she put the signs, Sheri Knepel testified, "I went along—wherever that was. I went along until it turned—the fence turned south, and I put it up on trees facing their property." She did not remember if there was a fence there or not. She later said she did not know if this was the northern boundary of "B," "C," and "D." Further, she said: "My recollection is I put it as far as I could until the fence turned south. So wherever that was, that's where I did it." She also testified she never saw evidence of anyone clearing trees on tract C."

¶ 35 Sheri Knepel testified the Knepels did not have trails on tract "C" like they had on other pieces of their property. She did not know specifically if anyone hunted on tract "C." She also testified they paid no specific taxes with regard to tract "C" if not included in their regular tax bill.

¶ 36 Michael Emmert testified he never had a residence or building on tract "C." He testified he had title to "C" by way of a deed from his parents. According to his testimony, he

cleared timber from tract "C" before the Knepels purchased the Segals' property. He testified he had not hunted on the ground since college, which presumably would have been in the mid-to-late 1990s considering he graduated from high school in 1994. He testified he removed old fencing located on tract "C" because he was going to install new fence. He had not been able to complete the installation of any new fencing because he could not get a tractor to the property due to the "old roadway" being blocked. He also testified he had given Jason Watson permission to hunt on tract C. Watson still had permission from Michael to hunt on tract "C."

¶ 37 Richard Emmert testified he believed tract "C" was abandoned property based on a courthouse records search. He told Keith Knepel they were going to fence off tract "C" north of the "old roadway." Richard also testified he and Michael were going to replace the fence between tracts "C" and "D." He said there had always been a fence between tracts "B" and "C." They started the fence at the southern end of tract "C" but did not finish it. Richard testified Michael had not constructed a home or any structure on tract "C." According to Richard, Michael would have used tract "C" for livestock if they had been able to get the fence up on the border. When asked whether Michael had used tract "C" for anything other than walking or hunting on it, Richard stated Michael had cut some trees down. Richard testified he had adversely possessed tract "C" for "years and years."

¶ 38 The Emmerts provided an affidavit dated December 9, 2015, from Jason Watson, which stated:

> "I have been hunting the Emmerts property including B and C for the past 18 years. I have taken multiple deer off of these areas over the past 18 years. I[']ve never saw [*sic*] anybody else hunting or tresspassing [*sic*] on these areas B and C. Also I[']ve

had trail cameras up with no pictures of them either. There has been multiple deer stand on these areas that I have hung and hunted for years."

Watson also stated he knew Michael Emmert had cleared trees on tract "C."

¶ 39 Based on the record in this case, the trial court erred in granting the Saalborns' motion for summary judgment on their claim to quiet title to tract "C" because the record presents too many questions with regard to how tract "C" was used and who used it. This court has stated: "Under the exclusive-possession requirement, it is evident that two or more persons cannot hold one tract adversely to each other at the same time." *Malone v. Smith*, 355 Ill. App. 3d 812, 817, 823 N.E.2d 1158, 1162 (2005). Like in *Malone*, both Michael Emmert and the Saalborns have presented evidence showing they each were in possession of tract "C." As a result, a material question of fact exists as to who was in possession of this property.

¶ 40 According to the record at this time, if all the witnesses are deemed credible, both the Emmerts and the Saalborns and their predecessors in interest have jointly been in possession of tract "C." In addition, as in *Malone*, both Michael Emmert and the Saalborns basically stand on equal footing, neither having any right to tract "C" other than what may have been obtained by adverse possession. If the court were to determine the Emmerts and the Saalborns and their respective predecessors had both been in possession of tract "C" at the same time, which is entirely possible given the nature and secluded location of the ground, it is quite possible neither party acquired any real title to tract "C."

¶ 41 We next examine the trial court's ruling granting the Saalborns' motion for summary judgment with regard to the Emmerts' counterclaims for injunctive relief or an easement to use the "old roadway." The court ruled in its written order:

> "As to the [Emmerts'] Counter Claims for injunctive relief to remove barriers over the pathway previously described in deeds as the roadway of 1923 (or 1928) or for an easement over the use of said pathway the Court grants the [Saalborns'] Motion for Summary Judgment. Upon review of the evidentiary attachments to the pleadings the elements necessary for an implied easement by necessity or by preexisting use or prescriptive easement do not exist."

The Emmerts argue the trial court's failure to state its reasoning for its summary judgment order with regard to the "old roadway" requires the Emmerts to address whether a genuine issue of material fact exists with regard to the existence of the "old roadway." We fail to see the relevance of whether the existence of the "old roadway" gives the Emmerts a personal right for injunctive relief or an easement to continue using the road. Whether this is still a public road any member of the general public can use is not an issue before this court.

¶ 42 The Emmerts also argue they have a "textbook case for an implied easement." However, they cite no authority in their brief explaining why this is true. They also cite prior use of the "old roadway" by a variety of individuals but fail to offer any analysis as to why the court erred in granting the Saalborns' motion for summary judgment with regard to the Emmerts' counterclaims. Because an appellant may not simply pass the burden of argument and research to this court, we find the Emmerts forfeited any argument with regard to the trial court's summary judgment ruling on the Emmerts' counterclaims pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016). *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515, 521-22 (2001).

¶ 43 III. CONCLUSION

¶ 44 We affirm the trial court's summary judgment order with regard to the Emmerts' counterclaims but reverse the court's summary judgment order with regard to the Saalborns' claim to quiet title in tract "C."

¶ 45 Affirmed in part and reversed in part; cause remanded for further proceedings.