

NOTICE
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2017 IL App (5th) 160237-U

NO. 5-16-0237

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).

COREN J. MILLER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Saline County.
)	
v.)	No. 11-CH-30
)	
BILL BARDOS, a/k/a William Bardos, and LOLA)	
BARDOS,)	Honorable
)	Todd D. Lambert,
Defendants-Appellants.)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* In a proceeding involving a claim for adverse possession, the circuit court’s admission of an aerial photograph of the property at issue was not an abuse of discretion where testimony established that the photograph fairly and accurately depicted the property during a relevant time period; the circuit court’s findings with respect to the exact boundaries to which the plaintiff claimed adverse possession were not against the manifest weight of the evidence.

¶ 2 This lawsuit involves a boundary dispute between the owners of two adjoining parcels of real estate. The plaintiff, Coren J. Miller, filed a complaint against the defendants, Bill Bardos and Lola Bardos, claiming adverse possession of a portion of the Bardoses’ land that adjoined her parcel. After a bench trial, the circuit court entered a

judgment in favor of Miller, granting her adverse possession of the area of land in dispute. The Bardoses now appeal the circuit court's judgment, arguing that the court abused its discretion in allowing the admission of an aerial photograph over their foundation objection because the evidence did not establish the date on which the photograph was taken. In addition, they argue that the circuit court's judgment is against the manifest weight of the evidence because Miller did not prove the exact location of her claimed boundary line. For the following reasons, we affirm the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 The Bardoses' property adjoins Miller's property along the northern and eastern edges of Miller's property. Therefore, a boundary line that runs north and south on the eastern edge of Miller's property and a boundary line that runs east and west along the northern edge of the Miller property separate her property from the Bardoses' property. Ledford Road defines the western boundary of Miller's property.

¶ 5 Miller and her late husband, Don, moved on to the property, 140 Ledford Road, in 1970. In 1974, Wayne and Opal Watkins purchased the property now owned by the Bardoses. In the early 1980s, Wayne erected two fences that he intended to be the established boundary lines between the two parcels. One fence extended east and west along what he believed to be the northern boundary line of Miller's property. The second fence extended north and south along what he believed to be the eastern boundary line of Miller's property. Miller claims adverse possession of any of the Bardoses' land that extends past these two fence lines established by Wayne years ago. Whether Miller

presented sufficient evidence to establish the location of these original fences lines with reasonable certainty lies at the heart of this appeal.

¶ 6 On June 23, 2011, Miller filed her complaint alleging adverse possession of any of the Bardoses' land that lies south of the east/west fence line and west of the north/south fence line. The Bardoses filed a counterclaim alleging a claim to quiet title and a claim of ejectment with respect to the disputed boundary. On August 20, 2015, the circuit court began a two-day bench trial on the parties' claims.

¶ 7 At the beginning of the bench trial, the parties stipulated to the admission of a survey of the properties, their boundaries, and the location of the fences that were in place as of the date of the survey, September 30, 2009. A licensed surveyor, Jerry Trover, prepared the survey. While the parties agreed that the survey accurately depicted the boundaries of the properties and the fences that were in place on September 30, 2009, they did not agree that the fences depicted in the survey showed the location of the original fences erected by Wayne Watkins.

¶ 8 At the bench trial, Miller presented testimony to establish that the Trover survey established the original fence line. She testified that she and her late husband, Don, moved to 140 Ledford Road in February 1970 and that she continued to reside at the property as of the day of the trial. In addition to living on the property, the Millers also operated an "Army store" for a number of years on the property. In 1974, Wayne and Opal Watkins acquired the property that adjoined the Millers' property to the north and to the east of the Millers' property line.

¶ 9 Miller described the fencing that Wayne erected that traveled east and west along the northern boundary of her property and fencing that traveled north and south along the eastern boundary of her property. She estimated that the fences were erected in 1981 or 1982. The east/west fence was made from hospital bed rails and the north/south fence was made from green metal posts and wire fencing. The east/west fence extended toward Ledford Road and extended “pretty much” to the end of the property. Miller testified that the original north/south fence intersected the east/west fence in the vicinity of the eastern boundary line of her property and traveled to the southeast corner of her property in a relatively straight line.

¶ 10 Miller testified that when the fences were erected, she and her husband, Don, claimed ownership of the property lying to the south and west of the original fences, up to the fence lines, and that the Watkinses claimed ownership of the property lying to the north and east of the original fences, up to the fence lines. No one presented testimony or other evidence that contradicted this claim.

¶ 11 During her testimony, Miller identified an aerial photograph that was marked as exhibit L. She testified that she and Don purchased the photograph “approximately” in 1991, that the photograph depicted an aerial view of her property, and that the photograph hung in their Army store for a number of years. In the photograph, Miller identified a playhouse, sandbox, and slide. She testified that Don built these features behind their house near the time when their grandson, Miller Craig, was around 2 to 2½ years old. At the time of the trial, Craig was 25 years old.

¶ 12 Miller testified that the aerial photograph showed parts of the two original fence lines between her property and the Watkinses' property. In describing the picture's depiction of the fence line running east and west along the northern boundary of her property, she testified: "about three quarters of an inch from the upper left-hand corner of [the] photograph there is a heavier white/gray line *** [a]nd it goes down the photograph to about two inches from the upper left-hand corner and runs off the page." With respect to the fence line that ran north and south along the eastern boundary of her property, she testified: "[a]nd then approximately two inches or so from the upper left-hand corner of that photograph and going at an angle across [the] photograph there is another line that is visible there." She testified that the photograph fairly and accurately depicted the fences as they were in place after Wayne Watkins erected them.

¶ 13 The evidence established that in 2005, the Watkinses sold their property to Lois Hanks and that Lois's daughter, Micky Hanks, moved onto the property at that time. Miller testified that when Micky Hanks moved onto the adjoining property, Micky and her boyfriend began replacing the fence wire of the original north/south fence. She observed Micky's boyfriend erecting new fencing in the same place as the original fence. She testified that he had to move some of the metal posts because Wayne had them too far apart. She explained that Micky's dogs were aggressive, so Micky's boyfriend had to place new fence posts so that the posts were closer together along the fence line. They were concerned that Micky's dogs would jump on the fence and cause it to collapse because the original posts were too far apart.

¶ 14 According to Miller, Micky's boyfriend also replaced the east/west fence made of hospital bed railing. Miller testified, "[H]e would take like the bed rails down in a certain area and he would put posts up and he would put new wire up, you know." He "did that all the way around" and "would take old stuff down and he would put new up, but he left the metal posts that were already there."

¶ 15 Miller testified that Micky and her boyfriend made only one modification to the location of the north/south fence line. She explained that the Army store sat on a concrete pad that she and Don had poured sometime in the 1970s. The original fence running north/south came within approximately four feet from this concrete pad.

¶ 16 Miller testified that as Micky and her boyfriend replaced the original fencing and added fence posts, they also added a bow in the fence that curved away from the concrete pad and onto Micky's property. The purpose of this bow was to provide more space between the fence and the Millers' concrete pad. According to Miller, Micky was concerned about the fence being too close to the concrete pad because of the aggressive nature of her dogs. Miller testified that she and Don told Micky that she did not have to curve the fence; nonetheless, Micky added the bow in the fence. Miller testified that she does not claim any ownership of any property inside the bowed portion of the fence. She testified that the fence modified by Micky and her boyfriend "was in the same place as the original fence with the exception of the bow."

¶ 17 Miller testified about one additional modification to the north/south fence that had occurred since Wayne Watkins had erected the original fence. She testified that she saw defendant, Ms. Bardos, "working" on the fence at the northeast corner where the two

fences intersected. She testified that she noticed that the fence corner had been moved west and onto her property. She also testified, however, that this modification was done after Trover completed his survey and that the Trover survey showed the location of the fence before the northeast corner was modified. She also testified that, at the time of the trial, there was a metal post in the ground located near the southeast corner of her property that was part of Wayne's original fence. This was the southernmost post of the original fence. On cross-examination, Miller testified that some of the posts from the original fence are still present in the new fence and that there could be some portion of the original fencing there as well.

¶ 18 Miller's daughter, Nancy Miller-Phillips, testified that she was approximately two years old when they moved onto the property in 1970. She continually resided on the property until 1984. After 1984, she visited her mother on the property on a weekly basis. At the trial, Nancy identified the aerial photograph marked as exhibit L and identified the original fences erected by Wayne as being depicted in the photograph. She testified that the aerial photograph marked as exhibit L was taken "roughly around somewhere between '89 and '90" and that it fairly and accurately depicted where the original fence lines were located.

¶ 19 Nancy testified that Wayne Watkins erected the fences sometime before her grandfather died in 1983. She testified that the original fence line running east and west was made of hospital bed railings and ended at the west end "almost to [Ledford] [R]oad." The original fence that ran north and south was made of metal posts and fencing. She explained that after Wayne erected the fences, they remained in the same

place until Micky Hanks occupied the property. She testified that Micky put the bow in the south end of the fence that ran north and south and that, other than the bow, Micky did not move the original fence to any other location.

¶ 20 Nancy testified that the current east/west fence was not made from the same fence material that Wayne originally erected, *i.e.*, hospital bed railings. In addition, Nancy was not sure whether Micky replaced portions of the north/south fence but testified the existing fence remained “in the exact spot” other than the bowed portion of the fence. She testified that she did not have the ability to identify whether any of the existing fence materials were part of the original fence. She testified that regardless of whether the materials changed, the location did not.

¶ 21 Wayne and Opal Watkins’ grandson, Marshall Watkins, testified that he started living with his grandparents on their property when his mother became sick with cancer in 1979. He lived with his grandparents until he graduated high school in 1988. After 1988, he continued to visit his grandparents at the property until they moved in 2005.

¶ 22 Marshall testified that his grandfather erected hospital bed railings along the northern edge of Miller’s property and erected a fence that ran north and south along the Millers’ eastern property line made from metal T-posts and fence material. He described the north/south fence as running “reasonably straight” and intersecting with the other fence to form a corner. He testified that he was living with his grandparents when Wayne erected the fences and that he regularly mowed along the fence line. He testified that Wayne told him not to blow grass on the Millers’ side of the fences when he mowed. He

further testified that he did not believe that his grandfather claimed or used any property on the Millers' side of the fences.

¶ 23 At the trial, Marshall viewed the aerial photograph marked as exhibit L. He identified the photograph as a picture of Miller's property. In viewing the photograph, he testified that he believed that the photograph showed the fences that his grandfather erected in 1982 or 1983. He testified that the aerial photograph marked as exhibit L fairly and accurately represented the location of the fences erected by his grandfather. He did not know when the photograph was taken. He testified that the fence made of hospital bed railings is no longer present, but another fence is located in the same location.

¶ 24 On cross-examination, when asked whether any portion of his grandfather's fence was still there, he answered, "Not that I am aware of." On redirect examination, he testified that he believed that there was a corner post "that was a portion of the original fence in the south corner."

¶ 25 Arthur Kidd testified that he knew the Millers when they moved to the property in 1970 and visited them at the property almost daily. The property was "just across a field" from where he lived at that time. During his testimony, Kidd identified the aerial photograph marked as exhibit L as a photograph of the Millers' property. Kidd identified the fence that Wayne Watkins erected as being depicted in the aerial photograph.

¶ 26 During cross-examination, Kidd was asked whether he knew when the aerial photograph marked as exhibit L was taken, and he responded: "No. It was in the '70's, I'm sure. I feel confident it was in the '70's." He was then asked, "But you're not sure, this particular photograph," and he answered, "No."

¶ 27 According to Kidd, Wayne had his property surveyed and placed the fencing based on the survey. He testified that he “remembered when the stakes were there and then [Wayne] put the fence in.” At that time, Wayne worked for him, and he saw Wayne “every day.” Kidd explained that prior to Wayne’s survey, Don Miller thought he owned a fishing pond that was located nearby. Don allowed Kidd and his children to fish in the pond. Kidd testified, “And then after Wayne had it surveyed, [Don] didn’t own any of it.” Wayne then did not allow any fishing in the pond. According to Kidd, Wayne told him that he erected the fence on what he believed to be the property line between his and the Millers’ property.

¶ 28 Kidd testified that, to the best of his recollection, there is still fencing located in the same locations or “[p]retty close.” He added, “[I]t may be off an inch or two.” He testified that at the southern end of the fence that runs north and south, there is a steel corner post that has “been there for a long time.” He testified, “I don’t know if it’s the same fence, but it’s the same line *** from the steel post up to where it intersected the one coming from the road.”

¶ 29 Kidd testified that in the past nine years, he had visited Miller at her property three or four times a year but never really paid much attention to the fences. Prior to the trial, at the request of Miller, he went to the property, looked at the fence that was in place, and told her, “yeah, that’s the way the fence ran.”

¶ 30 John Gowdy testified that he owns property near Miller’s and the Bardoses’ properties. He owns property south and east of their properties and testified about the fence line that separates Miller’s and the Bardoses’ properties. During the trial, he

reviewed the Trover survey and identified the fence lines marked on the survey. He testified that he did not know who erected the original fence but that it had “been there almost ever since [he could] remember.”

¶ 31 Gowdy testified that the survey showed that the fence running north and south had a bow. He testified that, other than the bow, the fence that had existed on the property followed a straight line similar to what was reflected on the Trover survey. He testified that he recently viewed the property lines and believed that the corner where the east/west and north/south fences intersected had moved west. On cross-examination, when asked whether any of the original fence was still left, he testified that the “[t]he original corner post is still inside his fence” but is not attached to the current fence. He testified that the current fence location was “fairly close” to the location of the original fence, except for the bow placed in the north/south fence and except for the northeast corner that had been moved 15 or 20 feet.

¶ 32 Charles King testified that he is married to the sister of Miller’s deceased husband, Don. He testified that he lived directly across Ledford Road from Miller and had known her for 18 years. Over the past 18 years, he had visited Miller’s property for various reasons “quite often.” He testified that the fences on Miller’s property remained roughly in the same location up to the time the Bardoses acquired the adjoining property. He testified that the fence was accurately depicted in the aerial photograph marked as exhibit L and that the fence had been “pretty much right there” for the 18½ years he had known Miller. He testified that he knew that Micky Hanks had occupied the adjoining property for a period prior to the Bardoses. He testified that the only modification that Micky

made with respect to the location of the fence was “a little dip” behind Miller’s house “just to give [Miller] a little bit more yard” behind her house.

¶ 33 On cross-examination, King testified that he did not know whether the current fence was the original fence. He testified that if it was a new fence, he was not “100 percent sure that it’s in exactly the same spot as the old fence.”

¶ 34 Micky Hanks testified at the trial by way of an evidence deposition. She testified that her mother purchased the property adjoining Miller’s property from the Watkinses on her behalf in 2005. Micky testified that when her mother bought the property, there was an “old, short four-foot rusted” fence on the property. Opal Watkins told Micky that the fence had been “there for many, many years” and that it was the property line. Micky explained that she used the old fence when she “put [her] new fence up as the property line.” When asked whether the fence that was on the property when she moved in was still there, she testified: “No, not in that one location. I’m sure it’s been moved all around, as a matter of fact.”

¶ 35 Micky testified that she bought a new fence and constructed it right up alongside the old fence. She added: “And then I had a surveyor come out and do the back part of the property so I got all those points exactly correct. And then I took the old fence down, the rusty one.” She testified that she left “a little piece” of the old fence in the very front and that she did not believe that there was any part of the original fence remaining on the property. She said that she “took it all down that I know of.”

¶ 36 Micky testified that after she moved onto the property, the Millers poured a concrete slab that came within four to five inches of the fence. According to Micky, they

asked her if she could move her fence “over just a little bit” to give them a little more room near the concrete pad. Micky testified that she agreed to move the fence to allow the Millers to use a portion of her property if they agreed not to cut down any of the trees along the tree line. She testified that she moved the fence away from the concrete pad 16 or 18 feet.

¶ 37 During her testimony, Micky identified two photographs that showed buildings on Miller’s property as well as some fencing. She testified that she put up the fencing shown in the picture but the fencing was not in the same location. She did not know “who could have moved it.” She drew a line on the photograph marked as exhibit C to indicate what she believed to be the boundary line where the original fence was located. She described the old fence as “[s]traightaway” and “[s]traight across.”

¶ 38 On cross-examination, she explained that she replaced the old fence “as nearly as she could” where the original fence had been. At the time she sold the property to the Bardoses, the fence she erected was still standing. She testified that the old fence was a straight line and that the fence she erected was also a straight line in the beginning. As an accommodation to the Millers, she later placed the bow into the fence.

¶ 39 She testified that she had not seen the property since she moved in 2008 except in pictures. She testified that at the time she sold the property to the Bardoses, the fence lines were located on what she believed were the boundary lines between her property and the Millers’ property with the exception of the bowed area near the Millers’ concrete pad.

¶ 40 At the conclusion of the bench trial, Miller moved to admit the aerial photograph marked as exhibit L. The Bardoses objected, arguing that Miller had not laid the proper foundation because Kidd testified that it was from the 1970s, Nancy testified it was from 1989 or 1990, and Miller testified that it was from approximately 1991. The circuit court overruled the Bardoses' objection and admitted the photograph. In allowing the admission of the photograph, the circuit court explained:

“I think the person who purchased it has a better idea of when it was purchased. Her daughter's testimony is that that's [*sic*] significantly different from hers. Mr. Kidd is way off. So I think that affects his weight, the weight of his testimony. But I think she sufficiently laid the proper foundation for the admission of this photograph. She testified that they purchased it, that it was about 1991, that it's been hanging in her business where she's viewed it every day since and it accurately represents what it's supposed to represent, and I think that's all she needs to do and I'm going to admit it.”

¶ 41 Following the bench trial, the circuit court took the matter under advisement. On March 10, 2016, the circuit court entered a judgment in favor of Miller and dismissed the Bardoses' counterclaim in its entirety. In entering the judgment, the circuit court found, “Except for the area which is bowed in the middle of the fence line, as well as the north end of the fence which was changed by Defendants immediately prior to the initiation of this lawsuit, no witnesses have controverted Plaintiff's use of the property in question, except perhaps Micky Hanks.” The court found that the testimony of Micky Hanks and Arthur Kidd was equivocal and that the Bardoses' claim that Miller could not establish

the original fence line was without merit. The court found that Miller “established by clear and convincing evidence the area of land which she has adversely possessed” and that her possession of the land was “continuous, adverse, actual, open, notorious and exclusive for more than 20 years.” Specifically, the court found that the Trover survey “measured the distance from plaintiff’s property’s last boundary line to the west boundary of the subject property which Plaintiff adversely possessed.”

¶ 42 The court defined the property line between Miller’s property and the Bardoses’ property as follows:

“Beginning at the Southernmost point of the now existing fence which is a point approximately 23.8 feet northeast of Plaintiff’s property’s southeast corner, and proceeding northerly along the current fence line to a point where the fence bows out to the east, then northerly to a point where an extension of the line to the north would meet an extension of Plaintiff’s north fence line by extending the same line to the east and then west to the Plaintiff’s north fence line.”

¶ 43 The Bardoses appeal the circuit court’s judgment.

¶ 44 ANALYSIS

¶ 45 The first argument that the Bardoses raise on appeal is that the circuit court abused its discretion in admitting the aerial photograph marked as exhibit L into evidence over their foundation objection. Specifically, they argue that Miller did not adequately establish the date the photograph was taken in order to allow its admission. We disagree.

¶ 46 “It is the function of the trial court to determine the admissibility of evidence, and its rulings will not be disturbed absent an abuse of discretion.” *Jackson v. Seib*, 372 Ill.

App. 3d 1061, 1070 (2007). Therefore, the admission of photographs “is entrusted to the trial court’s discretion.” *People v. Taylor*, 2011 IL 110067, ¶ 27. An abuse of discretion occurs only when the trial court’s ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23.

¶ 47 Photographs are demonstrative evidence that can be used to help the jury to better understand the issues in a case. *Prochnow v. El Paso Golf Club, Inc.*, 253 Ill. App. 3d 387, 403 (1993) (citing M. Graham, Cleary & Graham’s Handbook of Illinois Evidence §§ 401.2, 401.8 (5th ed. 1990)). Photographs portraying the scene of an incident are admissible to show the condition of the premises and are proper tools to aid in the trier of fact’s understanding of the condition of the property. *Gausselin v. Commonwealth Edison Co.*, 260 Ill. App. 3d 1068, 1084 (1994).

¶ 48 In determining whether to admit photographs, the trial court’s overriding considerations are relevancy and fairness. *Prochnow*, 253 Ill. App. 3d at 403. In order to demonstrate relevancy and fairness, the proponent of the admission of a photograph must present “testimony of a witness, who has personal knowledge of the photographed object at a time relevant to the litigation, that the photograph being offered is a fair and accurate representation of the object at the relevant time.” *Gaunt & Haynes, Inc. v. Mortiz Corp.*, 138 Ill. App. 3d 356, 364 (1985). “[T]he witness need not be the taker of the photograph or know of the time or condition of the taking.” *Lawson v. Belt Ry. Co. of Chicago*, 34 Ill. App. 3d 7, 21 (1975).

¶ 49 For example, *Gaunt & Haynes, Inc.* involved a dispute between a grocery store owner and a contractor that was under contract with the state to widen a street on which the grocery store was located. *Grant & Haynes, Inc.*, 138 Ill. App. 3d at 359. Following a jury trial, the trial court entered a judgment against the contractor for negligently failing to allow for sufficient access to the storeowner’s property during construction. *Id.* The contractor appealed. *Id.* On appeal, the contractor argued that the trial court abused its discretion in admitting a number of photographs of the construction site. *Id.* at 364.

¶ 50 In ruling that a sufficient foundation for the admission of the photographs had been established, the court stated, “At the time the photographs were offered into evidence, plaintiff did not provide the exact times the photographs were taken; however, approximate times were provided and there was testimony to the effect that the photographs fairly represented the construction site at the various stages in the construction.” *Id.* The court rejected the contractor’s argument that the testimony concerning the time at which the photographs were taken must be more precise. *Id.*

¶ 51 Likewise, in *Jackson*, a case involving a motor vehicle accident, the trial court admitted the defendant’s photographs of the plaintiff’s vehicle following the accident when the defendant did not identify who took the photographs. *Jackson*, 372 Ill. App. 3d at 1070. The court held that the trial court did not abuse its discretion in admitting the photographs where the plaintiff admitted in his deposition that the photographs fairly and accurately portrayed the condition of his vehicle after the accident even though the plaintiff attempted to backtrack from this testimony at the trial. *Id.*

¶ 52 Similarly, in the present case, the circuit court did not abuse its discretion in admitting the aerial photograph marked as exhibit L. Miller testified that she purchased the photograph in approximately 1991 and that the photograph hung in her store for a number of years. She testified that the aerial photograph fairly and accurately portrayed the original fence that Wayne Watkins erected along the northern and eastern boundaries of her property. This testimony alone was sufficient for the circuit court to exercise its discretion and allow the admission of the photograph.

¶ 53 Further testimony at the trial supported the circuit court's finding that a sufficient foundation for the admission of the photograph was established. Miller's daughter, Nancy, testified that the photograph fairly and accurately depicted where the original fence lines were located. Although she testified that the photograph was taken "roughly around somewhere between" 1989 and 1990, this minor discrepancy between Miller's and Nancy's testimony does not establish that the circuit court's evidentiary ruling was arbitrary, fanciful, unreasonable, or one that no reasonable person would take. Both Miller and Nancy testified in terms of approximate dates of the photograph, and the parties did not dispute that the original fence line remained on the property between 1989 and 1991. King also testified that the photograph accurately depicted the original fence. Therefore, under the facts of the present case, the exact date on which the picture was taken during the years 1989 through 1991 was not crucial for Miller to establish the foundational requirements for admitting the photograph into evidence.

¶ 54 Although Kidd testified that he felt "confident" that the aerial photograph was taken in the 1970s, which is a time prior to Wayne erecting the original fence, Kidd also

testified that he was “not sure” when the photograph was taken. Kidd’s testimony was not so compelling that it required the circuit court to sustain the Bardoses’ foundation objection and deny the admission of the photograph, particularly in light of Miller’s testimony concerning when she purchased the photograph and her personal knowledge of what it depicted. Based on the record before us, we cannot reverse the circuit court’s admission of the photograph under the abuse of discretion standard.

¶ 55 Next, the Bardoses argue that the circuit court’s judgment is against the manifest weight of the evidence. Specifically, they argue that Miller failed to present sufficient evidence to establish the exact boundary of the area of land in which she claimed adverse possession. Again, we disagree.

¶ 56 “[W]here the testimony is conflicting in a bench trial, the trial court’s findings will not be disturbed unless they are against the manifest weight of the evidence.” *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995). We use this standard of review because the trial judge, “as the trier of fact, is in a position superior to a reviewing court to observe witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive.” *Id.* at 214-15. “A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.” *Harper Square Housing Corp. v. Hayes*, 305 Ill. App. 3d 955, 964 (1999). We must affirm the judgment if there is sufficient evidence to support it. *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 25.

¶ 57 Accordingly, in the present case, our task on appeal is not to reweigh conflicting testimony or second-guess the circuit court’s findings on issues of credibility. Instead, our task is limited to reviewing the record and determining whether there is sufficient evidence to support the circuit court’s findings. Based on the record before us, we cannot reverse the circuit court’s judgment under the manifest weight of the evidence standard.

¶ 58 In order to sustain her claim of adverse possession, Miller was required to prove that she occupied the property at issue for a 20-year statutory period (735 ILCS 5/13-101 (West 2010)) and that her possession 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. *Brandhorst v. Johnson*, 2014 IL App (4th) 130923, ¶ 37. In addition, although not one of the five elements of possession, the plaintiff must also prove, by clear and convincing evidence, the exact location of the boundary line to which she claims. *Id.* “It is essential that the line to which adverse possession is claimed be ascertainable and that the evidence *** establish its location *with reasonable certainty.*” (Emphasis added.) *Schwartz v. Piper*, 4 Ill. 2d 488, 496 (1954).

¶ 59 In adverse possession cases, “[a]ll presumptions are in favor of the title owner, and the party claiming title by adverse possession must prove each element by clear and unequivocal evidence.” *Knauf v. Ryan*, 338 Ill. App. 3d 265, 269 (2003). “Because the supreme court has not explained the meaning of ‘clear and unequivocal evidence,’ courts have applied the clear and convincing burden of proof in adverse possession cases.” *Brandhorst*, 2014 IL App (4th) 130923, ¶ 38.

¶ 60 In the present case, the Bardoses do not dispute that, sometime in 1981, 1982, or 1983, Wayne Watkins erected a fence along the northern and eastern boundaries of the Millers' property and that both the Millers and the Watkinses intended for this original fence to define the boundaries of their respective properties. The Bardoses also do not dispute that Miller adversely occupied property up to this original fence line for the required 20-year statutory period. Therefore, the Bardoses' appeal does not challenge the circuit court's findings with respect to any of the five elements of adverse possession. Instead, the Bardoses take issue with the circuit court's findings concerning the exact location of the original fence line to which Miller claimed adverse possession. However, we believe that the circuit court's findings with respect to the boundary lines are not against the manifest weight of the evidence. Miller's testimony alone, if believed by the circuit court, was sufficient for it to enter a judgment in her favor.

¶ 61 Miller testified that the original fence remained in place until Micky Hanks occupied the adjoining property. She explained that when Micky moved onto the adjoining property, her boyfriend began replacing fence wire and adding additional fence posts along the same fence line. She observed the boyfriend as he worked on the fence. According to Miller, Micky had aggressive dogs and was concerned that they could collapse the fence because Wayne had spread the fence posts too far apart. Miller observed Micky's boyfriend take down old fence wire, put up new fence wire, and place new fence posts so that the posts were closer together. Miller testified that the boyfriend "left the metal posts that were already there."

¶ 62 On appeal, the Bardoses argue that Miller’s testimony was “contradictory and lacked credibility.” They argue that Miller’s testimony at the trial was inconsistent with her prior deposition testimony “that she had no knowledge of the location of *any* of the materials that comprised of the original Watkins north-south fence.” (Emphasis added.) We disagree with the Bardoses’ description of Miller’s deposition testimony. During the trial, the Bardoses attempted to impeach Miller by reading her deposition testimony as follows:

“Question, let me ask it a different way. Do you know what happened to the material, the bed rail and the chicken wire? Answer, No, I don’t. Question, you don’t know what happened to it? Answer, I have no knowledge. Question, You don’t know where it is today? Answer, no, I don’t.”

¶ 63 This deposition testimony does not necessarily impeach Miller’s testimony that she saw Micky’s boyfriend add new fence posts between Wayne’s old fence posts, leaving the old posts in place. Her deposition testimony indicates that she did not know what happened to the original “materials,” *i.e.*, “bed rails” or “chicken wire.” This deposition testimony does not indicate that Miller was specifically asked about the original fence posts used by Watkins. The deposition questions were vague and inconclusive at best. Furthermore, even if Miller’s testimony was impeached with a prior inconsistent statement, the weight to be given to her testimony after the impeachment was a matter for the circuit court to determine at the trial, not the appellate court on appeal.

¶ 64 Miller testified that the only modification that Micky and her boyfriend made to the fence was to curve the fence onto Micky’s property and away from Miller’s concrete

pad in order to give Miller more room around the perimeter of the pad. She said that after Micky's modification of the fence, it remained "in the same place as the original fence with the exception of the bow." Miller made no claim to ownership of any of the property inside this bow/curve. She claimed only the property on her side of the original fence line, which traveled in a straight line. With respect to the exact location of the boundary line to which she claimed, Miller offered the Trover survey, which, the parties stipulated, accurately measured the fence line that was in place as of the date of the survey, which was the original fence line.

¶ 65 As noted above, the circuit court was in a position superior to a reviewing court to observe witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive. By entering a judgment in her favor, the circuit court apparently determined that Miller was a credible witness, and nothing in the record allows us to second-guess the trial court's credibility findings. The substance of Miller's testimony alone supports the circuit court's judgment. Therefore, because the record supports the circuit court's judgment, we cannot reverse the judgment under the manifest weight of the evidence standard.

¶ 66 Furthermore, other witnesses corroborated important aspects of Miller's testimony, which further supports the circuit court's judgment. Miller's daughter, Nancy, testified that Micky did not move the fence line except the bow that she placed near Miller's concrete pad. She testified that the fence remained "in the exact spot" after Micky's modifications. Kidd testified that the fencing was still located in the same locations or "[p]retty close." He testified, "I don't know if it's the same fence, but it's the

same line.” During Gowdy’s testimony, he identified the fence line depicted on Trover’s survey and testified that he did not know who erected the original fence but that it had been there ever since he could remember. According to Gowdy, other than the bow added by Micky, the fence that had existed on the property followed a straight line similar to what was reflected on the Trover survey. During King’s testimony, he explained that the fence line remained roughly in the same place until the Bardoses acquired the property.

¶ 67 Micky’s testimony contradicted Miller’s in some aspects, but it also corroborated important aspects of Miller’s testimony. Micky testified that when she replaced the fence, she used the old fence as the property line and placed new fencing alongside the old fence. She explained why she put the bow in the fence and testified that she otherwise placed the new fence “as nearly as she could” where the original fence had been.

¶ 68 At the trial, Micky viewed photographs of the current fence and opined that the current fence was not in the location where she had placed her fence. However, the trial court was not obligated to believe this testimony. Micky lived on the property for approximately five years and had not seen the property since 2008 when she moved. Miller, however, had lived there since 1970 and continued to live on the property as of the day of the trial. She testified that the current fence remained in the same location as Micky left it except for the northeast corner, which someone had moved after Trover completed his survey. Micky also testified that the fencing she erected remained in the same place when she sold the property to the Bardoses.

¶ 69 To the extent that Micky’s testimony contradicted Miller’s testimony, the conflicting testimony was a matter for the circuit court to weigh and consider in making

its findings of fact. Nothing in the record allows us to reassess the credibility of these witnesses and reach conclusions different than the circuit court's. We cannot say that Micky was more credible than Miller.

¶ 70 The Bardoses take issue with the trial court's finding as it relates to the southernmost point of the original north/south fence. The circuit court's judgment defined the north/south fence line as "[b]eginning at the Southernmost point of the now existing fence which is a point approximately 23.8 feet northeast of Plaintiff's property's southeast corner." The Bardoses argue that this finding is against the manifest weight of the evidence and illustrates the inadequacy of the circuit court's findings with respect to the exact location of the original fence. They argue that the evidence presented at the bench trial established that the point on Trover's survey that was 23.8 feet from Miller's surveyed boundary was the metal corner post that was not connected to the current fence line. Therefore, they argue, the current fence line, as depicted in Trover's survey, could not be the same as the old fence line.

¶ 71 At the beginning of the trial, the trial court judge viewed the property along with the parties' attorneys. Later, when the parties discussed the admission of the Trover survey, Miller's attorney stated, "I'd like to reflect that the distance from the actual survey line *to the corner post that we saw today* is 23.8 feet." (Emphasis added.) Miller's attorney explained that the next relevant measurement on Trover's survey was north of the concrete pad and was a distance of 28.9 feet from the surveyed boundary of Miller's property to the existing fence. He stated that the final measurement was the northeast corner of the fence line that measured 31.4 feet from the surveyed boundary to the current

fence line. As noted above, the circuit court used the fence measured in the Trover survey to define the exact boundary of the property that Miller adversely possessed.

¶ 72 During her testimony, Miller described the metal post in the southeast corner of her property being a monument that marked the location of the original fence. She testified that this metal post had been in the ground since the erection of the original fence. During Marshall Watkins' testimony, he was asked whether he saw "a corner post that was a portion of the original fence in the south corner," and he responded, "I believe it was." Kidd testified about a steel post "at the far end" of the fence that he understood to be the corner post. He added that "[i]t had been there for a long time" and was not "new." He testified that the original fence ran along the same line as the new fence "*from the steel post* up to where it intersected the one coming from the road." (Emphasis added.)

¶ 73 This evidence supported the circuit court's finding with respect to the location of the southernmost point of the original north/south fence line. The evidence supports a finding that the old fence began at the corner post that Trover measured on his survey as being 23.8 feet from the surveyed boundary of Miller's property.

¶ 74 The Bardoses argue that the evidence "undisputedly" established that the southernmost point of the current fence is not in the same location as the original corner post that remains on the property. In support of their argument, they cite Gowdy's testimony during which he said that the "original corner post is still *inside* of his fence" and was not attached to the current fence. (Emphasis added.) However, at best, this portion of Gowdy's testimony merely conflicted with the other testimony described above. Again, conflicts in the witnesses' testimony were matters for the trial court to

consider in making its factual findings. Gowdy's testimony falls far short of establishing that the evidence "undisputedly" favored the Bardoses or that the circuit court's findings were against the manifest weight of the evidence.

¶ 75 In addition to the testimony described above, we note that the trial court judge viewed the property at issue at the request of the Bardoses and with Miller's consent. The parties' attorneys agreed that they would accompany the judge during his view of the property and that they could tell the judge whatever they wished while at the site without a court reporter being present. The parties further agreed that the trial judge could "take into consideration [his] personal observations while [he was] there in making [his] decision." As noted above, when the parties later discussed the admission of the Trover survey, Miller's attorney pointed out that the "corner post that we saw today" was identified by Trover in his survey as being 23.8 feet from the surveyed boundary of Miller's property.

¶ 76 The record, therefore, establishes that the circuit court not only considered the conflicting evidence but also considered its personal observations of the southernmost fence/corner post located on the property in making its findings. The court determined that the southernmost point of the original north/south fence line was represented on the Trover survey as being 23.8 feet from the actual survey line of Miller's property. The evidence in the record is more than sufficient to support this finding as well as the circuit court's other findings with respect to the exact boundary of the property for which Miller claimed adverse possession.

¶ 77

CONCLUSION

¶ 78 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 79 Affirmed.