

NOTICE
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2018 IL App (5th) 170189-U

NO. 5-17-0189

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).

TODD BITTLE and ELIZABETH BITTLE,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellees,)	Saline County.
)	
v.)	No. 14-MR-24
)	
LES OYLER and BRENDA OYLER,)	Honorable
)	Joseph J. Jackson,
Defendants-Appellants.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Goldenhersh and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the order of the circuit court of Saline County that granted the plaintiffs’ motion for summary judgment on the plaintiffs’ adverse possession claim, because the evidence before the court demonstrates that the plaintiffs were entitled to judgment as a matter of law.

¶ 2 The defendants, Les Oyler and Brenda Oyler, appeal the order of the circuit court of Saline County that granted the motion for summary judgment of the plaintiffs, Todd Bittle and Elizabeth Bittle, on the plaintiffs’ adverse possession claim. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. On June 18, 2014, the plaintiffs filed a four-count complaint. The first count was for ejectment, the second count was for trespass, and the third and fourth counts were for adverse possession. In the complaint, the plaintiffs alleged they purchased their property (referred to in the complaint and hereafter in this order as the “Bittle Ground”) on February 9, 2011. They alleged the defendants purchased the defendants’ property (referred to in the complaint and hereafter in this order as the “Oyler Ground”) on July 8, 2003. The plaintiffs alleged that a dispute as to the boundary line between the two properties had arisen, and that “[u]pon information and belief, [d]efendant Les Oyler obtained a survey of the Oyler Ground which shows the Oyler western property line to be approximately 11 feet west of the line of possession of the Bittle Ground[,] creating a disputed strip.” The plaintiffs alleged that after the dispute arose, and the plaintiffs continued to assert title to the disputed strip based upon their possession of it and that of their predecessors in interest, the defendants began to park vehicles on the disputed strip and dug holes, as if to begin construction on the disputed strip. Attached to the complaint were the sheriff’s deed of judicial sale by which the plaintiffs came into possession of the Bittle Ground, and the warranty deed by which the defendants came into possession of the Oyler Ground. The plaintiffs also filed on June 18, 2014, a motion for a temporary restraining order and a preliminary injunction, which reiterated the plaintiffs’ claims with regard to “a disputed strip of real estate of approximately 11 feet.” The filings were accompanied by an

affidavit executed by Todd Bittle in which Bittle averred that the facts alleged in the filings were true to the best of his knowledge.

¶ 5 Following additional filings by both parties, and some discovery, the plaintiffs filed, on March 28, 2016, a motion for summary judgment. Therein, the plaintiffs alleged, *inter alia*, that their predecessor in interest, Bill Endsley, owned the Bittle Ground “continuously from November 1952 until February 2011,” at which time the plaintiffs acquired it via the sheriff’s deed of judicial sale. The plaintiffs alleged their property “lies west of the Oyler” Ground and “[t]he properties share a common boundary approximately 660 feet in length on the east side of the [Bittle Ground] and west side of the [Oyler Ground].” They further alleged that when Bill Endsley owned the Bittle Ground, “the property was surrounded by a fence made up of woven wire and, in part, by railroad ties,” with the fence “present on all four sides of the property.” The plaintiffs alleged “[t]he fence row on the east side of the [Bittle Ground] was to the east of the tree line” that the defendants now contend is the border between the properties, but that in reality “[t]he tree line was not considered the boundary between the properties. The fence line was the boundary,” and “Endsley owned all the way to the fence” and acted accordingly during his many years of possession of the property. The plaintiffs alleged that when Endsley removed the woven wire from the fence, some of the railroad tie fence posts were left standing to serve as markers of the boundary between the two properties, and were still “present when Bill Endsley left the property in 2011.” The plaintiffs alleged Les Oyler removed all but one railroad tie in 2013, and that the remaining tie “is still standing there today and is approximately 10.5 feet east of the” line staked following

the defendants' survey. The plaintiffs alleged that therefore, *inter alia*, "[t]here is no genuine issue of material fact based upon the evidence presented that the fence line stood 10.5 feet to 11.0 feet east" of the line staked following the defendants' survey, and that the plaintiffs had "proven by clear and convincing evidence that Bill Endsley's possession of the ground to the fence line on the east side of his property was continuous, hostile and adverse, actual, open, notorious, and exclusive and under a claim of title inconsistent with that of the true owners." On May 24, 2016, the defendants filed a response in opposition to the plaintiffs' motion for summary judgment, in which the defendants raised many of the same issues they raise in this appeal with regard to the precision, or lack thereof, found in the testimony and documentation used by the plaintiffs to support their claim for adverse possession. Both parties filed documents, which will be discussed in more detail below, in support of their positions with regard to summary judgment.

¶ 6 On August 17, 2016, the circuit court ruled, in a letter to the attorneys of the parties, that after considering all the evidence in the record, and after considering "the observations made by the [c]ourt during a visual inspection of the premises as agreed by the parties," the plaintiffs were entitled to summary judgment. The court stated that "crucial" to its ruling were "the observations made by the [c]ourt of the remnants of the fence that existed for more than the statutorily required period to vest title in the [p]laintiffs by adverse possession." The court ruled that the property line was "set forth with certainty in the plat attached to the" motion for summary judgment and was "represented by the broken red line that shows encroachment by the [d]efendants onto the

[p]laintiffs’ real estate.” The defendants filed a motion to reconsider, to which the plaintiffs responded. On December 21, 2016, the circuit court entered an order in which it reiterated the findings of the court’s August 17, 2016, letter to the attorneys of the parties, memorializing that it was the defendants who requested the circuit court conduct a viewing of the premises, to which the plaintiffs agreed. The circuit court again reiterated its summary judgment findings and ruling, and ruled on the remaining issues in this case, on April 20, 2017, and May 18, 2017. This timely appeal followed.

¶ 7

ANALYSIS

¶ 8 On appeal, the defendants note that to prove a claim of adverse possession, a party must, *inter alia*, prove “by clear and unequivocal evidence” the boundaries of the land claimed by adverse possession. *Klingel v. Kehrer*, 81 Ill. App. 3d 431, 438 (1980). They further point out that “the boundaries must be susceptible of specific and definite location,” and that “the claim of title by adverse possession must be to a visible or ascertainable boundary line.” *Schwartz v. Piper*, 4 Ill. 2d 488, 493 (1954). The defendants contend the circuit court erred in entering summary judgment for the plaintiffs in this case because “a genuine issue of material fact exists as to the exact location of the boundary line of lands allegedly adversely possessed by the [p]laintiffs.” In support of this contention, the defendants posit that “[t]he use of 10.5 feet by Brown and Roberts, Inc. [in the exhibit attached to the motion for summary judgment] and the [c]ircuit [c]ourt’s finding of 10.5 feet is not supported by any other information within the record.” The defendants point to testimony and documentation that they contend contradicts or undermines the 10.5-foot figure, including the fact that in his affidavit,

Todd Bittle avers only that one railroad tie is approximately 10.5 feet east of the staked survey line, and “is silent as to the location of the other four (4) to five (5) railroad ties located along the area in dispute, despite acknowledging their existence.” Other testimony and documentation with which the defendants take issue includes: (1) the affidavit of Jim W. Brown of Brown and Roberts, Inc., (2) testimony of Endsley that they claim is unclear or contradictory, (3) the affidavit of Anthony Ellis of Brown and Roberts, Inc., and (4) the testimony of defendant Les Oyler. The defendants contend that under relevant case law, the boundary line in this case is too “uncertain, vague, indefinite, and conflicting” for the circuit court’s summary judgment ruling to stand.¹

¶ 9 The plaintiffs, on the other hand, contend the boundary in question is clearly ascertainable and that the cases relied upon by the defendants are factually distinguishable from this case. They posit that they provided clear and unequivocal evidence of the boundary line in question, and that the circuit court’s judgment should stand. In support of their position, the plaintiffs aptly note that in this case, for at least 43 years, “a fence completely surrounded” the Bittle Ground “and remnants of that fence are still in existence today.” They contend that in addition to the facts in the record about the location of the fence and the remnants thereof, it was the defendants who moved, with the agreement of the plaintiffs, for the circuit court to view the property for itself. As noted above, following that viewing the circuit court stated that “crucial” to its ruling were “the observations made by the [c]ourt of the remnants of the fence that existed for more than

¹The defendants do not challenge the circuit court’s findings as to the other elements of adverse possession. Accordingly, we summarily affirm those findings.

the statutorily required period to vest title in the [p]laintiffs by adverse possession.” The plaintiffs contend that ultimately in this case, “the evidence presented as to the location of the fence line in relation to the deed line is precise and definite,” and that the circuit court did not err in adopting the exhibit attached to the motion for summary judgment to describe the location of the fence because “[t]he southern marker of the fence is still present today,” the northern marker “was in existence from at least 1946 until at least 2007,” and the evidence thereof was in no way contradicted by the defendants.

¶ 10 Moreover, with regard to the testimony and documents with which the defendants take issue, the plaintiffs contend the defendants are attempting, in this appeal, “to cause confusion by misconstruing or misunderstanding the evidence presented by [the plaintiffs] by highlighting references to various distances in relation to the tree line,” which are irrelevant because “[t]he pertinent lines are the deed line and the fence line” in light of the fact that “Endsley testified that the fence line was the boundary line, not any tree line.” The plaintiffs point to other alleged distortions of the record made by the defendants and other testimony allegedly taken out of context by the defendants and twisted into controversy where none exists.

¶ 11 We begin with the law relevant to our analysis. A motion for summary judgment should be granted if the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2015 IL App (1st) 142804, ¶ 24 (citing 735 ILCS 5/2-1005(c) (West 2010)). Although summary judgment can play an important role in

promoting the prompt administration of justice, it is nevertheless a drastic measure and should be granted only where the moving party's right is so clear as to be free from doubt. *Id.* "In deciding a motion for summary judgment, the trial court's sole function is to determine whether issues of material fact exist; it is not to try those issues." *Prettyman v. Commonwealth Edison Co.*, 273 Ill. App. 3d 1090, 1092-93, 1093 (1995). Summary judgment is not appropriate in situations where a reasonable person could draw different inferences from the undisputed facts contained within the record. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). We review *de novo* a trial court order granting summary judgment. *Id.* We may affirm the ruling of a trial judge on any basis supported by the record. See, *e.g.*, *Evans v. Lima Lima Flight Team, Inc.*, 373 Ill. App. 3d 407, 418 (2007); see also, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 134 (2003). We may do so because the question before us on appeal is the correctness of the result reached by the trial judge, rather than the correctness of the reasoning upon which that result was reached. See, *e.g.*, *Johnson*, 208 Ill. 2d at 128.

¶ 12 We first note that, as explained above, a ruling on a motion for summary judgment is to be based upon the pleadings, depositions, and admissions on file, together with affidavits, if any, and that, also as explained above, the circuit court's sole function when deciding a motion for summary judgment is to determine whether issues of material fact exist, not to try those issues. However, the defendants did not argue in the trial court, and do not argue on appeal to this court, that the circuit court should not have viewed the premises and should not have relied upon the results of that viewing to fashion its order in this case. Accordingly, the defendants have forfeited any argument with regard to that

question. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Forfeiture notwithstanding, we reiterate that it was the defendants who asked the circuit court to view the premises at the summary judgment stage, and it is axiomatic, under the doctrine of invited error, that a party may not complain of an error it invited. See, e.g., *Stephens v. Taylor*, 207 Ill. 2d 216, 222, 223 (2003) (party cannot claim error when that party induced court's mistake; instead, party inducing error must bear its consequences).

¶ 13 With regard to the merits in this case, we agree with the plaintiffs that the evidence supports the circuit court's ruling in this case. Although the defendants attempt to pick away at various items of testimony and documentary evidence in the record on appeal, these same arguments were presented to the circuit court in the defendants' opposition to the plaintiffs' motion for summary judgment. Presumably it was because the defendants took issue with this evidence that the defendants asked the circuit court to view the premises for itself, and the circuit court did so, with defendant Les Oyler and his attorney present. Subsequently, the circuit court stated that "crucial" to its ruling were "the observations made by the [c]ourt of the remnants of the fence that existed for more than the statutorily required period to vest title in the [p]laintiffs by adverse possession." The circuit court's ruling is well supported by the evidence that was before it, including the exhibit it adopted, all of which provided sufficient precision for the boundaries in question to be deemed proven by clear and unequivocal evidence. Therefore, we do not

conclude that the boundaries in this case are, as the defendants contend, too “uncertain, vague, indefinite, and conflicting” for the circuit court’s summary judgment ruling to stand.

¶ 14

CONCLUSION

¶ 15 For the foregoing reasons, we affirm the order of the circuit court of Saline County that granted the plaintiffs’ motion for summary judgment.

¶ 16 Affirmed.