

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).

2019 IL App (4th) 180363-U

NO. 4-18-0363

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 7, 2019

Carla Bender

4th District Appellate

Court, IL

JOHN H. OLIVER, INC.,)	Appeal from
Plaintiff and Counterdefendant-)	Circuit Court of
Appellant,)	Adams County
v.)	No. 15L9
FRED H. KIENTZLE III,)	Honorable
Defendant and Counterplaintiff-)	Charles H. W. Burch,
Appellee.)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court (1) properly granted summary judgment in defendant’s favor on plaintiff’s claims of nuisance and trespass, (2) properly quieted title in defendant’s favor based on adverse possession, and (3) did not abuse its discretion in awarding defendant reimbursement for survey expenses and \$2000 in nominal damages on his trespass claim.

¶ 2 In March 2015, plaintiff, John H. Oliver, Inc., filed a complaint against defendant, Fred H. Kientzle III, raising claims for (1) private nuisance, (2) trespass, and (3) quieting title. Plaintiff’s representative, William L. Mills, is the president and sole shareholder of John H. Oliver, Inc., and resides on plaintiff’s property at issue in this case. For clarity, we refer to John H. Oliver, Inc., and Mills collectively as “plaintiff.” In July 2015, defendant filed an answer and counterclaim asserting the affirmative defenses of superior title and *laches* and raising claims for (1) trespass, (2) quieting title, (3) adverse possession, and (4) nuisance. In March 2017, the trial

court granted defendant's motion for summary judgment on plaintiff's claims for nuisance and trespass and on defendant's trespass claim. In December 2017, following a bench trial, the court concluded defendant proved his adverse possession claim by clear and convincing evidence and quieted title to the disputed property in defendant's favor. The court also awarded defendant (1) the cost of the survey he had performed in the amount of \$1000 and (2) \$2000 in nominal damages on his trespass claim on which the court previously granted defendant's motion for summary judgment. In April 2018, the court denied plaintiff's motion to reconsider.

¶ 3 Plaintiff appeals, arguing the trial court erred by (1) granting summary judgment in favor of defendant on plaintiff's nuisance and trespass claims, (2) quieting title in defendant's favor based on adverse possession, (3) granting defendant reimbursement for survey expenses, and (4) awarding excessive nominal damages on defendant's trespass claim. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 This case involves a dispute over defendant's construction of an addition to his home, which partially obstructs plaintiff's view of Quincy Bay, and the line between the parties' adjoining properties.

¶ 6 In March 2015, plaintiff filed a complaint against defendant, his next-door neighbor, alleging an addition defendant was building on his home was a private nuisance because it blocked plaintiff's view of Quincy Bay (count I). The complaint alleged that in August 2013, defendant began building an addition that appeared to be an open-air deck. Plaintiff informed defendant the addition appeared to encroach on his property. In late autumn 2013, work stopped on the addition, leaving a deck with a roof that partially blocked plaintiff's view of Quincy Bay. In December 2014, defendant informed plaintiff further work on the

addition would commence to enclose the structure. Plaintiff left town for two days, and when he returned, the structure was enclosed and completely blocked his southwesterly view. The complaint alleged the addition created a substantial interference with plaintiff's property rights. The complaint requested an injunction and more than \$50,000 in damages. Alternatively, the complaint requested the court order defendant to tear down and move the addition at his own expense.

¶ 7 The complaint further alleged a survey plaintiff obtained showed the addition trespassed onto plaintiff's property in an area "at most 5.7 feet and at least 1.4 feet across the property line" (count II). The survey also showed plaintiff's garage slightly overlapped the property line onto defendant's property. However, the complaint alleged plaintiff moved the garage so it sat entirely on his property. The complaint requested \$50,000 in damages, attorney fees, and reimbursement for the survey. Finally, the complaint raised a claim to quiet title as to the line between the parties' properties (count III). Count III requested reimbursement for the survey and attorney fees.

¶ 8 In July 2015, defendant filed an answer and counterclaim asserting the affirmative defenses of superior title and *laches*, alleging plaintiff failed to timely assert any right he had to the disputed property. The counterclaim alleged plaintiff constructed a concrete pad that trespassed on defendant's property (count I). Defendant further alleged he was the rightful owner of the disputed portion of the property and requested the court quiet title in his favor (count II). Alternatively, defendant alleged he was the owner of the disputed piece of property through adverse possession (count III). Specifically, count III alleged defendant had been in open, hostile, continuous, and exclusive possession of the disputed property since April 1988. Finally, the counterclaim alleged plaintiff's actions created a private nuisance by unreasonably

trespassing on defendant's property and pestering and harassing defendant over his use of his land (count IV).

¶ 9 A. Summary Judgment

¶ 10 In September 2016, defendant filed a motion for summary judgment. The motion alleged defendant was entitled to summary judgment on plaintiff's nuisance claim because the claim was not an actionable nuisance recognized under Illinois law. Defendant also asserted he was entitled to summary judgment on all of plaintiff's claims based on the affirmative defense of *laches*. Finally, the motion alleged summary judgment should be granted in defendant's favor on plaintiff's trespass claim and defendant's trespass counterclaim. In support of his motion for summary judgment, defendant attached transcripts of his deposition and plaintiff's deposition.

¶ 11 1. *Plaintiff's Deposition*

¶ 12 Plaintiff purchased his property at 219 Weems Camp Road in 2003. When plaintiff purchased the property, he relied on the deed and did not have a survey conducted. Plaintiff agreed defendant owned the adjacent property for 15 years before plaintiff purchased his property and had owned the adjacent property for 25 years in August 2013. At the time plaintiff purchased his property, there was a garage, concrete pad, fence, and dog kennel that plaintiff believed were on his property. Plaintiff acknowledged a different concrete pad and cinder block structure were on what appeared to be defendant's property since plaintiff purchased his land in 2003. Between 2003 and 2013, plaintiff was unsure where the property line was, but he believed his garage was on his own property.

¶ 13 In February 2015, during work on defendant's addition, plaintiff obtained a survey, which showed a portion of his garage, concrete pad, fence, and dog kennel were actually on defendant's property. Once defendant filed his counterclaims, plaintiff hired a crew to

remove the garage and concrete pad. Plaintiff did not ask defendant for permission to remove the garage. The crew moved the garage approximately three feet north onto plaintiff's property and cut off a portion of the concrete pad. The crew smoothed the area where the garage and concrete pad had been removed but did not lay down sod.

¶ 14 Plaintiff stated defendant began building an addition in August 2013. According to plaintiff, in August 2013, defendant began building a deck connected to his house and a portion of that structure was on plaintiff's property. At that time, plaintiff told defendant the structure was encroaching on plaintiff's property and obstructing his view. By the end of 2013, the deck was covered by a roof and construction stopped. The structure partially blocked plaintiff's view to the southwest, but plaintiff had unobstructed views to the west and north. Plaintiff did not ask defendant to take the structure down, file a lawsuit, send a written demand letter, or file for an injunction or temporary restraining order.

¶ 15 Plaintiff stated the support posts for the deck rested on a concrete pad that existed on what appeared to be defendant's property prior to construction beginning in 2013. According to the survey plaintiff obtained, defendant's addition was over the property line in an area of 5.7 feet to 1.4 feet. Plaintiff stated the survey showed his garage was on defendant's property in an area of 0.9 feet to 1.3 feet.

¶ 16 In December 2014, defendant informed plaintiff he planned to enclose the deck to make a room for his ailing father-in-law. Plaintiff left town for two days and upon his return discovered defendant had enclosed the deck. Plaintiff contacted the city and the county to inquire about building permits and zoning restrictions. In early 2015, plaintiff told defendant to stop construction. When plaintiff filed his lawsuit in March 2015, the construction was

uncompleted and the structure had walls up with windows installed and Tyvek HomeWrap installed.

¶ 17

2. Defendant's Deposition

¶ 18

Defendant stated he has owned his property on Weems Camp Road for approximately 25 years. In the summer of 2013, defendant hired a contractor to build a covered deck. According to defendant, the contractor obtained a building permit and finished building the covered deck in December 2013. When the structure was finished, it had a roof, support posts, and a knee wall. Throughout 2014, defendant installed screens. In 2013, the contractor added the poles that supported the addition and at least one of the poles sat on a concrete pad that had been there for "20 years or better." When construction began in 2013, plaintiff asked defendant what he was building and said he hoped the screened-in porch would not block his view.

¶ 19

In January 2015, defendant had a surveyor come to his property and informally see where the property line was. According to defendant, the surveyor was able to locate one pin and measured where the property line between defendant and plaintiff would be. Defendant and the surveyor "eyeballed" the property line from the pin and concluded part of plaintiff's garage was on defendant's property and defendant's addition did not cross over onto plaintiff's property. At the time of defendant's deposition, plaintiff had moved his garage. Defendant was upset plaintiff moved the garage because defendant did not think anything should have been done until the litigation was concluded.

¶ 20

In December 2014, defendant decided to enclose the covered deck to make room for his ailing in-laws. Defendant informed plaintiff of the planned construction and the work began a day or two later. On January 5, 2015, defendant received a construction permit from

Adams County. Once plaintiff filed his lawsuit in March 2015, construction stopped and the addition remained incomplete.

¶ 21

3. Trial Court's Ruling

¶ 22

The trial court granted defendant's motion for summary judgment on plaintiff's nuisance and trespass claims and on defendant's trespass counterclaim. The court concluded plaintiff's nuisance claim was not actionable under Illinois law because plaintiff had no right to an unobstructed view across defendant's property. The court further concluded plaintiff's trespass claim was barred by *laches* because he did not exercise due diligence in raising an objection to the construction that began in August 2013 and defendant was prejudiced by plaintiff waiting two years to raise an objection such that defendant was unable to complete the construction project. Additionally, the court concluded nothing in the pleadings, plaintiff's response to the motion for summary judgment, or the depositions indicated any intentional trespass by defendant. Accordingly, the court granted summary judgment in favor of defendant on plaintiff's nuisance and trespass claims.

¶ 23

As to defendant's counterclaim for trespass, the trial court concluded plaintiff conceded during his deposition that he trespassed on defendant's property. Accordingly, the court granted summary judgment for defendant on his trespass claim and reserved the issue of damages for further determination.

¶ 24

B. Bench Trial

¶ 25

In October 2017, the matter proceeded to a bench trial on the quiet title actions, the adverse possession claim, and the issue of damages on defendant's trespass counterclaim. The trial court heard the following evidence.

¶ 26

1. Plaintiff

¶ 27 Plaintiff's testimony at trial was largely consistent with his deposition testimony. Photographs were introduced into evidence that showed an area between plaintiff's home and defendant's home. One photograph depicts some poles for a clothesline, a cinderblock wall, a strip of land, a concrete wall, and a concrete pad. Support posts and scaffolding for defendant's addition rest on the concrete pad. According to plaintiff, these structures were all in existence at the time he purchased his property in 2003. In the 10-year period between plaintiff's 2003 purchase of his property and defendant's 2013 construction, defendant stored various items on the concrete pad, including his tractor, vehicles, and firewood.

¶ 28 Between the cinderblock wall and the concrete pad, there was a small strip of land. Plaintiff testified he never mowed that strip of land but he had knocked down weeds there. Plaintiff never planted grass or flowers on the strip of land and mowed his yard up to the cinderblock wall. Plaintiff testified he had not done much to the boundary line since he filed his lawsuit but he usually kept it clean. Plaintiff further testified he had cut the brush down before. According to plaintiff, he occasionally socialized with defendant on the concrete pad. Plaintiff never stored his tools or other possessions on the concrete pad.

¶ 29 *2. Defendant*

¶ 30 Defendant's testimony was largely consistent with his deposition testimony. Defendant acquired his property in 1988 from his mother. According to defendant, Dick Hardy owned the adjacent property from at least 1990 to 2003, when he sold his property to plaintiff. According to defendant, Hardy put up the clothesline in the area between the two properties. Defendant testified that in 1990 or 1991 he installed the cinderblocks, concrete wall, and concrete pad. After installing the concrete pad, defendant used it as a driveway to store his tractor, vehicles, boats, and firewood. Since 1991, defendant maintained the strip of land

between the cinderblock wall and the concrete wall and pad by knocking weeds down and spraying the weeds.

¶ 31 According to defendant, he began building an elevated, covered deck in 2013. The support posts for the deck rested on the concrete pad and had been in place since 2013. From 2013 through the end of 2014, plaintiff never complained to defendant that the support posts were on plaintiff's property. After plaintiff filed his lawsuit in March 2015, defendant stopped construction on the addition. At some point, plaintiff moved his garage and tore up the concrete that was on defendant's property. Defendant testified he was eventually going to do something about the area because plaintiff left behind a rut. As part of the lawsuit, defendant commissioned a survey of his property that he paid \$1000 for.

¶ 32 *3. Trial Court's Ruling*

¶ 33 In December 2017, the trial court concluded defendant proved his adverse possession claim over the area between the properties with the cinderblocks, strip of land, concrete wall, and concrete pad. The court found that the area in dispute started near the concrete wall and extended toward an area near the edge of the cinderblocks. The court found defendant installed the concrete pad, wall, and cinderblocks in 1991 and continuously possessed the land for more than 20 years. The court concluded defendant proved all the elements of adverse possession through his use of and control over the area in dispute by mowing, raking, and weeding the area and using the land to store his possessions. The court determined defendant gained title to the disputed property through adverse possession and quieted title in his favor.

¶ 34 The trial court awarded defendant \$1000 for the cost of the survey he commissioned. The trial court further awarded defendant \$2000 in nominal damages on defendant's trespass claim. In April 2018, the court denied plaintiff's motion to reconsider.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, plaintiff argues the trial court erred by (1) granting summary judgment in favor of defendant on plaintiff's nuisance and trespass claims, (2) quieting title in defendant's favor based on adverse possession, (3) granting defendant reimbursement for survey expenses, and (4) awarding excessive nominal damages on defendant's trespass claim. We turn first to plaintiff's claim the trial court erred by granting summary judgment in favor of defendant.

¶ 38 A. Summary Judgment

¶ 39 Plaintiff contends the trial court erred by granting summary judgment in defendant's favor on plaintiff's nuisance and trespass claims. Plaintiff further asserts summary judgment should not have been granted based upon defendant's affirmative defense of *laches*.

¶ 40 1. *Standard of Review*

¶ 41 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). Summary judgment is a drastic means of disposing of litigation and should only be granted when the right of the moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1256 (2004). Our review of a summary judgment ruling is *de novo*. *Id.*

¶ 42 2. *Nuisance*

¶ 43 Plaintiff asserts the trial court erred by granting summary judgment in defendant's favor on his claim of a private nuisance. Specifically, plaintiff contends a genuine issue of material fact exists as to the suitability of defendant's use of the property in that particular location. Defendant contends the trial court properly granted summary judgment in his favor because plaintiff's claim that the addition obstructed his view is not actionable under Illinois law.

¶ 44 "A private nuisance is an invasion of another's interest in land in a substantial manner, done either negligently or intentionally and unreasonably." *Carroll v. Hurst*, 103 Ill. App. 3d 984, 990, 431 N.E.2d 1344, 1349 (1982). Such an invasion must cause a substantial annoyance, without accounting for any special sensitivity the affected landowner may have. *Id.* "The trial court must balance the harm done to the plaintiffs against the benefit caused by the defendant's use of the land and the suitability of the use in that particular location." *Id.*

¶ 45 As noted above, plaintiff contends a genuine issue of material fact exists as to whether defendant's use of the addition as a residence for his in-laws was suitable to that location. Plaintiff asserts Quincy Bay is a recreational area on the water and defendant did not build his addition for recreational activities. Defendant contends an obstructed view is not an actionable private nuisance under Illinois law. We agree.

¶ 46 In Illinois, a property owner has the right to use and enjoy his property in the manner he sees fit. *City of Dixon v. Messer*, 136 Ill. App. 488, 491 (1907). While a property owner may not place anything harmful or offensive on his property, "he may erect a high wooden building, or he may build a fence or a wall fifty feet high on his own land, and thereby cut off the light and air and view of his neighbor ***." *Id.* In the absence of an easement or grant to the contrary, a landowner has no prescriptive right to the light, the air, or the

unobstructed view over a neighboring piece of property. *Guest v. Reynolds*, 68 Ill. 478, 483 (1873).

¶ 47 Moreover, a landowner may not dictate what is in view on a neighbor's property. *Carroll*, 103 Ill. App. 3d at 990. In *Carroll*, the plaintiff asserted a neighbor's junkyard was a private nuisance. *Id.* Although unsightly, the court concluded the junkyard was not a nuisance because, "under Illinois law, a landowner does not have a right to a pleasing view of his neighbor's land." *Id.* Defendant also cites *Honsel v. Conant*, 12 Ill. App. 259 (1883) in support of his argument. In *Honsel*, the appellee planted a hedge and allowed it to grow to a height of approximately 16 feet. *Id.* at 260. The appellant alleged the hedge was a nuisance and deprived his home of currents of air, causing the home to become "damp and unwholesome." *Id.* Relying on *Guest*, the *Honsel* court concluded "that in the absence of an adverse right by prescription, grant or otherwise, the owner has a right to erect a fence or building upon his own land, which will have the effect to deprive the owner of adjacent premises of light and air to his house, and obstruct his view from the same, and such erection, unless made of offensive material, will not be a nuisance for which an action will lie." *Id.*

¶ 48 We conclude plaintiff's private nuisance claim is not actionable under Illinois law. Plaintiff had no right to an unobstructed view across defendant's property. Defendant has the right to use his property as he sees fit, and that includes the right to construct an addition to serve as a residence for his extended family. To the extent that plaintiff asserts there is a genuine issue of material fact as to the suitability of the location for this use of the property, we are not persuaded. First, plaintiff cites no authority to support his argument that waterfront property is more suitable to recreational pursuits rather than to expand one's home to care for elderly relatives. Moreover, the property is residential and not a nature preserve. The harm to plaintiff's

ability “to enjoy the views of the Bay” does not outweigh the benefit created by defendant’s addition to an existing residential structure for the purpose of caring for elderly relatives.

¶ 49 As plaintiff’s claim regarding the obstruction of his view is not actionable in Illinois, we conclude the trial court did not err in granting summary judgment in defendant’s favor on the private nuisance claim. Accordingly, we affirm the court’s judgment.

¶ 50 *3. Trespass*

¶ 51 Plaintiff argues he attached a survey from a licensed surveyor showing that defendant’s structure was partially on plaintiff’s property. Plaintiff argues the survey was sufficient to raise an issue of material fact to defeat summary judgment of the trespass claim. Plaintiff contends the court should not have granted summary judgment based on *laches* because there were contested issues of material fact. Plaintiff also asserts the trial court “miscalculated” the start of “the problem” as summer 2013 instead of December 2014.

¶ 52 We decline to address this argument because we find our resolution of the court’s adverse possession judgment dispositive. We discuss the court’s adverse possession judgment in detail below but note that its determination that defendant gained title to the disputed property through adverse possession contains an implicit finding that there was no trespass. See *Applebey v. Lenschow*, 144 Ill. App. 3d 208, 216, 494 N.E.2d 529, 535 (1986) (“The conclusion that there has been no trespass was implicit in the jury’s finding in favor of the defendant on the issue of adverse possession.”). Because defendant prevailed on the adverse possession claim following a bench trial, a remand for a trial on plaintiff’s trespass claim would produce no new, noncumulative evidence and would not be in the interest of judicial economy. Accordingly, we turn now to defendant’s adverse possession claim.

¶ 53 *B. Adverse Possession*

¶ 54 Plaintiff contends the trial court erred by quieting title in defendant's favor by adverse possession because defendant did not prove exclusive use. Defendant argues the trial court's finding of adverse possession was not against the manifest weight of the evidence.

¶ 55 When reviewing a trial court's judgment following a bench trial, we must determine whether the judgment is against the manifest weight of the evidence. *Diocese of Quincy v. Episcopal Church*, 2014 IL App (4th) 130901, ¶ 38, 14 N.E.3d 1245. Title based on adverse possession may be sufficient title to sustain an action to quiet or remove cloud from the title. *Yeates v. Daily*, 13 Ill. 2d 510, 514, 150 N.E.2d 159, 161 (1958). To claim title by adverse possession, a party must prove each element by clear and unequivocal evidence. *Knauf v. Ryan*, 338 Ill. App. 3d 265, 269, 788 N.E.2d 805, 808 (2003). To prevail on a claim of adverse possession, a party must show "20 years' concurrent existence of the five elements: (1) continuous, (2) hostile or adverse, (3) actual, (4) open, notorious, and exclusive possession of the premises, and (5) under claim of title inconsistent with that of the true owner." *Joiner v. Janssen*, 85 Ill. 2d 74, 81, 421 N.E.2d 170, 174 (1981).

¶ 56 As to the element of continuous possession, the evidence showed the cinderblocks, concrete wall, and concrete slab define the disputed area. Defendant testified he installed the cinderblocks, wall, and pad in 1991. Plaintiff purchased his property in 2003 and testified the cinderblocks, wall, and pad were in place at that time. Plaintiff testified he knew defendant was in possession of the property because he could see items defendant stored on the concrete pad. Moreover, there were no boundary issues raised or disputes over defendant's use, maintenance, or possession of the area through the end of 2013. In light of this evidence, we conclude the trial court's finding that defendant continuously possessed the disputed area for 22 years was not against the manifest weight of the evidence.

¶ 57 The trial court further found defendant's possession was hostile or adverse. The court found defendant asserted ownership over the disputed area and engaged in acts that constituted ownership, including installing the cinderblocks, the wall, the concrete pad, and maintaining the area. The hostile nature of the possession does not mean actual ill will but only an assertion of ownership that is incompatible with that of the true owner and others. *Hermes v. Fischer*, 226 Ill. App. 3d 820, 824, 589 N.E.2d 1005, 1009 (1992). "The controlling factor in determining whether possession to a mistaken boundary is hostile is the exercise of acts of ownership incompatible with that of the record owner, through the use and control of the disputed property to demonstrable parameters." *Id.* at 824-25. Here, the evidence established defendant asserted ownership over the disputed area, in part by placing the cinderblocks, wall, and pad. The trial court found defendant's possession was hostile and not permissive. See *Brandhorst v. Johnson*, 2014 IL App (4th) 130923, ¶ 42, 12 N.E.3d 198 (permissive use of land can never ripen into adverse possessory right). Based on the foregoing, we conclude the trial court's findings were not against the manifest weight of the evidence.

¶ 58 As to actual possession, the trial court found defendant exerted management and control of the disputed strip by mowing, raking, weeding, spraying weeds, and storing his possessions on the disputed area. Accordingly, we conclude the trial court's finding of actual possession was not against the manifest weight of the evidence. See *Ewald v. Horenberger*, 37 Ill. App. 3d 348, 351, 345 N.E.2d 524, 527 (1976) ("The making of improvements or acts of dominion over land, indicating to persons residing in the immediate neighborhood who has exclusive management and control of the land, are sufficient to constitute possession.").

¶ 59 The test for open and notorious possession "is whether the community in the vicinity of the land at issue is or could be apprised of defendants' possession and exclusive use

and enjoyment.” *Beverly Trust Co. v. Dekowski*, 216 Ill. App. 3d 732, 739, 576 N.E.2d 1049, 1054 (1991). The evidence showed defendant stored various items on the concrete pad, including a tractor and wood. The trial court found the natural contour of defendant’s driveway followed the outline of the concrete pad and cinderblocks and defendant used the driveway since owning the property. Placing the cinderblocks, wall, and pad constituted open and notorious possession and his regular maintenance of the area was of such an open and visible character as to let everyone know of his possession and use of the disputed area. Accordingly, we conclude the trial court’s findings were not against the manifest weight of the evidence.

¶ 60 As to exclusivity, defendant need not prove he excluded plaintiff from the disputed area. “Instead, ‘exclusivity requires that the claimant possess the property independent of a like right in others, [and that] the opponent, the alleged rightful owner, must be altogether deprived of possession.’ ” *Brandhorst*, 2014 IL App (4th) 130923, ¶ 57 (quoting *Malone v. Smith*, 355 Ill. App. 3d 812, 817, 823 N.E.2d 1158, 1162 (2005)). Plaintiff argues the trial court erred by finding defendant had exclusive possession of the disputed area because plaintiff testified he had weeded the area between the cinderblocks and the wall in the past and had socialized with defendant on the concrete pad. This is not enough to show he possessed the disputed area. First, the trial court clearly credited defendant’s testimony that he was the only person who maintained the disputed property and had never seen plaintiff trim the weeds. Second, merely pulling some weeds from the area does not show possession. To the contrary, defendant showed possession by installing the cinderblocks, wall, and pad, and he showed continuous possession in part through his maintenance of the area. This evidence established that defendant controlled the strip in question as if he were the true owner, and the fact that

plaintiff might have pulled a few weeds does not show he *possessed* the property at any point during the 22-year period in question.

¶ 61 The use and control of property as an owner is the ordinary way to assert a claim of title inconsistent with that of the true owner. *Id.* ¶ 60. This element is similar to the elements of actual and hostile possession. Based upon the evidence already discussed, we conclude the trial court’s finding that defendant satisfied this element was not against the manifest weight of the evidence.

¶ 62 We conclude the trial court’s finding that defendant proved the elements of adverse possession by clear and unequivocal evidence was not against the manifest weight of the evidence. As such, we conclude the court properly found defendant gained title to the disputed property through adverse possession and quieted title in his favor. Thus, we affirm the judgment of the trial court.

¶ 63 C. Survey Expenses and Nominal Damages

¶ 64 Finally, plaintiff argues the trial court erred by awarding defendant survey costs and nominal damages in the amount of \$2000. Plaintiff cites no authority to support his argument on these points. This court “is entitled to the benefit of clearly defined issues with pertinent authority cited and a cohesive legal argument. [Citation.] The appellate court is not a depository in which an appellant may dump the entire matter of argument and research.” *Wing v. Chicago Transit Authority*, 2016 IL App (1st) 153517, ¶ 11, 70 N.E.3d 244. Arguments without citation to authority are procedurally defaulted. *Id.* Accordingly, we find plaintiff has procedurally defaulted on his claims regarding survey expenses and nominal damages.

¶ 65 Even if we were to find plaintiff has not forfeited these issues by failing to cite any authority, we conclude the trial court did not abuse its discretion. We review an award of

costs by the trial court for an abuse of discretion. *Chicago Title Land Trust Co. v. JS II, LLC*, 2012 IL App (1st) 063420, ¶ 75, 977 N.E.2d 198. A plaintiff who has proved trespass need not prove actual damages to recover nominal damages. *Id.* Defendant contends the trial court did not abuse its discretion in awarding defendant \$2000 in nominal damages for intentional trespass. We agree.

¶ 66 Although no evidence of actual damages was introduced, the evidence showed plaintiff hired a crew that dug up a concrete slab and moved plaintiff's garage. The crew did not replace the concrete with anything but rather left behind a dirt depression. Defendant testified he would have to spend money to hire someone or fix the area himself. Plaintiff also testified the crew left the area untouched after digging up the concrete. Under these circumstances, we conclude the trial court's award of \$2000 in nominal damages was not an abuse of discretion.

¶ 67 As for the survey costs, we note that a successful party in a quiet title action is entitled to receive attorney fees and costs related to the quieting of title. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 67, 922 N.E.2d 380, 423 (2009). Defendant succeeded on his quiet title claim and the trial court awarded \$1000 for the cost of the survey defendant obtained. This award for survey costs was not an abuse of discretion. Accordingly, we affirm the judgment of the trial court.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, we affirm the trial court's judgment.

¶ 70 Affirmed.