2019 IL App (5th) 180404-U

NO. 5-18-0404

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

E. ALAN RUPPERT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Perry County.
	)	
v.	)	No. 16-CH-17
	)	
CRAIG WELZ and ERIC WELZ,	)	Honorable
	)	James W. Campanella,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the trial court's dismissal of the plaintiff's quiet title action because he can properly bring an adverse possession claim through an action to quiet title. We also reverse the court's *sua sponte* dismissal of his adverse possession claim as a matter of law where the court found that the plaintiff had argued that he was not required to prove, by clear and unequivocal evidence, the requirements of adverse possession to quiet title to the disputed property. Because we find that the trial court misinterpreted the plaintiff's argument, and the plaintiff had acknowledged that he was required to prove the adverse possession requirements, the court's finding was in error. We lack jurisdiction to review the trial court's denial of the plaintiff's motion to dismiss the defendants' counterclaims because his notice of appeal made no mention that he was appealing this finding. We remand for further proceedings consistent with this decision.

¶ 2 This action was brought to quiet title to a disputed tract of land in which the plaintiff, E. Alan Ruppert, claimed had vested in him by adverse possession during the period of June 13, 1959, through June 8, 1998, or in the alternative, to establish ownership of the disputed tract through a claim of adverse possession. The defendants, Craig Welz and Eric Welz (the Welz brothers), were the record titleholders of the property. On February 27, 2017, the trial court entered an order dismissing the quiet title count pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2016)). On February 13, 2018, Ruppert filed a motion for summary judgment with regard to his remaining adverse possession claim. On March 6, 2018, the trial court, *sua sponte*, dismissed his adverse possession claim. Ruppert then filed a motion to reconsider the court's ruling, which was denied on May 15, 2018. On August 21, 2018, Ruppert filed a notice of appeal from the (1) February 27, 2017, order dismissing his quiet title claim; (2) March 6, 2018, order *sua sponte* dismissing his adverse possession claim; and (3) May 15, 2018, order denying his motion to reconsider.[1] For the reasons that follow, we reverse and remand for further proceedings.

¶ 3 Ruppert and the Welz brothers own neighboring parcels of land in Perry County, Illinois. The Welz brothers own what is referred to as the section 17 property (section 17 property or Welz property) and is described as:

> Except all the part thereof laying North of the Perry County Road No. 11 (also known as Swanwick to Rice Road); the Northeast Quarter of the Southeast

[1]Although Ruppert's complaint was dismissed in its entirety, there were pending counterclaims filed by the Welz brothers against Ruppert that still needed to be resolved. The final order on those counterclaims was entered on July 27, 2018. We will discuss the counterclaims in more detail below.

Quarter and the Southwest Quarter of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter of Section 17, Township 4 South, Range 3 West of the Third Principal Meridian, Perry County, Illinois.

¶ 4 Ruppert owns what is referred to as the section 16 property (section 16 property or Ruppert property), which is described as follows:

> The Southwest Quarter of the Southwest Quarter of Section 16 and the Northwest Quarter of the Southwest Quarter of Section 16, Township 4 South, Range 3 West of the Third Principal Meridian, Perry County, Illinois.

¶ 5 In 1959, the section 16 property was owned by Earl and Mary Wright, Ruppert's grandparents. Thereafter, it was conveyed to Ruppert's mother, Rose Gertrude Ruppert. On April 28, 2015, Rose conveyed the section 16 property by quitclaim deed to Ruppert. There is no specific mention of the disputed property in that quitclaim deed. The section 17 property was conveyed from Ayrshire Land Company to William Cavens, Lisa Ervin, Laura Ervin, and Vicky Ervin (collectively, the Cavens) on June 18, 1997. On June 19, 1998, the Cavens conveyed the property by warranty deed to the Welz brothers. There is no evidence in the record establishing when the property was conveyed to Ayrshire Land Company. At the time of the Welz brothers' purchase of the section 17 property, the section 16 property was owned by Mary and was managed at least in part by Elmer Ruppert, Ruppert's father.

¶ 6 To the north of the two parcels is Swanwick-Rice Road and connected to Swanwick-Rice Road is Logging Road. Logging Road is a rocked road that begins at the north end of the Welz brothers' property, travels in a southerly direction at a slight diagonal angle to the east, and ends at the southern end of a tree line located on the Welz

brothers' property. The disputed property in this appeal includes Logging Road and the property to the east of the road up to the section 16 and section 17 boundary line (disputed property).

¶ 7 On April 27, 2016, Ruppert filed a five-count complaint against the Welz brothers, which, in pertinent part, sought title of the disputed property through adverse possession. In the adverse possession count, Ruppert asserted that after June 13, 1959, his predecessors in interest constructed Logging Road to access their neighboring farm field and that, for a period of 20 years, he and/or his predecessors in interest had been in actual, exclusive, open, continuous, and adverse possession of the disputed property. Attached to the complaint was Ruppert's affidavit, which indicated that after June 13, 1959, he and his predecessors in interest had maintained Logging Road, sold clay from the disputed property to the Perry County Highway Department, and farmed the real property lying to the east of Logging Road.

¶ 8 On May 3, 2016, the Welz brothers filed a countercomplaint, which asserted that, at the time of the purchase of their property, the boundary line between the two properties was marked by orange ribbons that showed that the northern end of Logging Road was situated entirely on their property and that the boundary between the two properties was east of Logging Road. Three surveys had also confirmed this boundary line. The countercomplaint also asserted that the Welz brothers had given Elmer permission to use Logging Road and that they had also given him permission to farm, as a tenant, from the boundary line to Logging Road.

¶ 9 After Ruppert's grandmother passed away, his mother inherited the section 16 property, and, in or around 2013, Ruppert began maintaining the property. At some point, Ruppert began excavating the disputed property. During excavation, he removed soil from the property, used it to construct a berm on his section 16 property, and cut down trees on the property. In August 2015, the Welz brothers had a survey completed, after which they staked the boundary line between the properties in accordance with that survey. Thereafter, the Welz brothers noticed that the stakes had been moved west of their original location and that Ruppert continued to excavate the disputed property. In March 2016, they built a fence along the boundary line in accordance with the survey and put "no trespassing" signs and orange tape along the boundary. However, Ruppert and one of his family members still used Logging Road to access Ruppert's property.

¶ 10 In the countercomplaint, the Welz brothers, in pertinent part, sought quiet title of the property, contending that Ruppert had unlawfully claimed rights in and title to the disputed property and had treated it as if it belonged to him by entering the property without permission, disregarding marked boundary lines, removing dirt from the property, and blocking access to the property. Thus, they argued that Ruppert had created a cloud on their title, which greatly diminished the property's value, and requested that they be declared the rightful owners in fee simple, free and clear of Ruppert's claim.

¶ 11 In July 2016, the parties stipulated and agreed to permit a surveyor to perform a survey to determine the boundary lines between the two properties. The parties agreed that whatever boundary the surveyor marked would become the official boundary

between their properties. Thereafter, the survey was performed, and it indicated that Logging Road was entirely located on the Welz brothers' property.

¶ 12 In November 2016, the Welz brothers served requests to admit on Ruppert, aimed at showing that he did not have exclusive possession of the disputed property during his possession of the section 16 property.

¶ 13 In December 2016, Ruppert objected to several of the Welz brothers' requests to admit as vague and ambiguous. On January 13, 2017, the Welz brothers filed a motion to compel, seeking an order from the trial court compelling Ruppert to answer the requests. On January 18, 2017, the trial court ordered the Welz brothers to rephrase the requests to admit and also ordered Ruppert to respond within 10 days thereafter.

¶ 14 In January 2017, the Welz brothers served a second request to admit on Ruppert, which rephrased the previous requests that Ruppert had objected to on the basis that they were vague. On February 7, 2017, Ruppert filed a response to the Welz brothers' second request to admit, objecting to many of the requests on the basis of relevance.

¶ 15 Also on February 7, 2017, Ruppert filed a second amended complaint alleging claims of adverse possession and quiet title. Regarding the adverse possession claim, Ruppert alleged that he and his predecessors in interest had established title to the disputed property in that, for more than 20 years, they had continuously, adversely, actually, openly, exclusively, and under a claim of title inconsistent with that of the Welz brothers and their predecessors in interest possessed, controlled, maintained, and exercised dominion over the disputed property. Ruppert alleged that he and his predecessors had exercised dominion over the property through one or more of the

following acts: (1) farming and/or maintaining the disputed property beginning in 1959; (2) reconfiguring Logging Road on or about June 13, 1959; (3) repairing and maintaining Logging Road on and after June 13, 1959; (4) prohibiting all others, including the Welz brothers' predecessors in interest, from driving on, traveling, or using, in any manner, Logging Road except to the extent that permission was granted by Ruppert and/or his predecessors in interest; and (5) exclusively possessing the property, farming the property, clearing trees from the property, excavating the property, installing drain tile on the property, selling dirt/clay from the property, maintaining the property, maintaining the creek on the property, refusing access to the property except to persons to whom permission was given, and engaging in recreational activities on the property. He further alleged that, from June 13, 1959, until June 8, 1998, the Welz brothers' predecessors in interest did not contest or dispute his and his predecessors' claim of ownership or possession of the property.

¶ 16 As for the quiet title claim, Ruppert asserted that a dispute had arisen regarding the ownership of the disputed property in which the Welz brothers claimed ownership by way of a June 9, 1998, deed, and he claimed ownership through adverse possession. Ruppert again claimed that he and his predecessors in interest had met the adverse possession requirements for the approximate 39-year period prior to June 8, 1998, and reiterated the above stated acts, which indicated that they had exercised dominion over the property during the relevant time period. He contended that his predecessors in interest had obtained equitable title to the disputed property through adverse possession, which was superior to the Welz brothers' title; that, on or about April 29, 2015, his

predecessors transferred or intended to transfer the legal and equitable title in the section 16 property and the disputed property to him; and that the Welz brothers' claim of ownership of the disputed property created a cloud on his equitable title. He left out the previous allegations referring to his own adverse possession of the disputed property and instead relied on his predecessors' adverse possession to establish his claim.

¶ 17 At the hearing on the motion to file the second amended complaint, Ruppert's counsel clarified that the new complaint deleted the allegations that he had adversely possessed the disputed property and was instead relying solely on activities that happened between 1959 and 1998 to support his claim on the property.

¶ 18 On February 9, 2017, the Welz brothers filed a motion to dismiss the second amended complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)) and a motion for sanctions. In the motion to dismiss, the Welz brothers asserted that the 20-year adverse possession limitation period barred Ruppert's adverse possession claim in that he and his predecessors in interest had 20 years from the point in which they were entitled to have their title confirmed in the property to take action to do so. Specifically, they contended that his predecessors' alleged right to claim title to the disputed property through adverse possession accrued in 1979; that the 20-year deadline to file suit expired in 1999; and neither he nor his predecessors filed suit until 2016, which was well past the 20-year deadline. They also asserted that Ruppert did not have standing to bring an adverse possession claim; they acknowledged that Ruppert could tack his adverse possession time onto the time of his predecessors in interest but argued that there was no authority for the position that he could claim adverse possession when

he had not adversely possessed the property in question himself. They argued that Ruppert, rather than tacking, was attempting to step into the shoes of his predecessors and make a claim on their behalf.

¶ 19 In the motion for sanctions, the Welz brothers requested that the trial court impose sanctions against Ruppert because his claim of exclusive use of the disputed property during the Welz brothers' period of possession was false. They asserted that, when confronted with the falsity of his claim, Ruppert amended his complaint to change the time period over which he asserted exclusive possession to avoid admitting that his pleadings contained false allegations. They also contended that he failed to properly answer the requests to admit.

¶ 20 On February 21, 2017, Ruppert filed a response to the Welz brothers' motion to dismiss the second amended complaint, arguing that, once the 20-year adverse possession period had run, the record owner was divested of title and the holder by adverse possession obtained title, which could only be divested by conveyance of the land to another or by a subsequent adverse possessor for the 20-year period. He contended that the requisite period of adverse possession need not occur immediately before the adverse possessor files suit; that no deed was necessary to support title by adverse possession; and that the 20-year limitation period only ran against the titleholder, not the adverse possessor. He further argued that he had standing to bring the adverse possession claim as he, through his predecessors in interests, was the owner of the disputed property.

¶ 21 That same day, Ruppert filed a motion to dismiss the Welz brothers' countercomplaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)),

in which he argued, in pertinent part, that on June 13, 1979, his predecessors obtained title of the disputed property by adverse possession and that the Welz brothers' claim for quiet title was untimely and should be dismissed for the same reasons raised in his response to their motion to dismiss. Attached to the motion to dismiss was his affidavit, which stated that between June 13, 1959, and June 8, 1998, his predecessors in interest had possessed, farmed, maintained, improved, and recreationally used the disputed property. Specifically, the affidavit asserted as follows: (1) on approximately June 13, 1959, Earl reconfigured and/or built Logging Road; (2) from approximately June 13, 1959, to June 8, 1998, Earl and/or Mary continuously, openly, and exclusively used and maintained Logging Road as a means of ingress and egress to their southern farm field and farmed all of the land to the east of Logging Road; (3) between 1959 and 1963, Earl continuously, openly, and exclusively farmed, maintained, and improved the disputed property; (4) between 1963 and 1970, Elmer Ruppert and Frank Ruppert Sr., for the benefit of Earl and Mary, continuously, openly, and exclusively farmed, maintained, and improved the disputed property; (5) between 1970 and 1985, Elmer, for the benefit of Earl and Mary, continuously, openly, and exclusively farmed, maintained, and improved the disputed property; (6) between 1985 and June 9, 1998, Frank Ruppert, for the benefit of Earl and Mary, continuously, openly, and exclusively farmed, maintained, and improved the disputed property; (7) between June 9, 1998, and September 12, 2012, Frank, for the benefit of Mary, continuously and openly possessed, farmed, maintained, and improved the disputed property; (8) between September 12, 2012, and April 29, 2015, Frank, for the benefit of Rose, continuously and openly possessed, farmed,

maintained, and improved the disputed property; (9) between April 29, 2015, and the present, Frank, for the benefit of Ruppert, continuously and openly possessed, farmed, maintained, and improved the disputed property; and (10) between 1963 and 1978, Ruppert assisted in the farming, maintenance, and improvement of the disputed property for the benefit of Earl and Mary. Also attached to the motion was Frank's affidavit, which reiterated the statements made in Ruppert's affidavit.

¶ 22 On February 27, 2017, the trial court held a hearing on the cross-motions for dismissal pursuant to section 2-619 of the Code. Before hearing any argument on the motions to dismiss, Judge James Campanella indicated that, after reviewing the various motions filed by the parties, he had reached certain principles that would apply at trial; one of the principles was that the person seeking quiet title must have title to the property before he could petition to quiet title, and the only way Ruppert could have title would be to predispose the issue of adverse possession by saying that he already owned the property by adverse possession. In explanation, Judge Campanella stated as follows:

> "In other words, you can't say, okay, I want you to find that I own the disputed property, which by stipulation and of record and given the survey is owned by Welzes by adverse possession through me and then turn around and say, okay, I want to quiet title to the real estate that I own because you just told me you didn't own it. You just told me that I would have to find you own it by adverse possession. It's inconsistent. So again, you show me something that contravenes that particular notion and I will read it thoroughly and dwell upon it."

Judge Campanella then stated as follows:

> "I can see where you could file a complaint and ask me to adjudicate title, but what you are doing is presupposing that you are going to be victorious. And my point is everything that you have done after that proposition is based upon that theory and that is once you get to 20 years they're out come heck or high water. It doesn't matter what they do at that time after that, you are already the owner, never

mind the fact that there is no deed, there is no Court order, there is *** nothing except your position that you have had it for 20 years. That would cause havoc in my opinion with the records for real estate and everything else involved.

So again, you might want to take that principle and try to somehow shore it up, but for you to argue that they have legally recognized title doing nothing except sitting on someone else's property for 20 years, not going to court, not telling anybody that they own it until perhaps the opposing party says what are you doing here? I am going to file suit to eject you, then you come with your adverse possession. I don't know how in the world logically speaking that that proposition you just threw out there could be correct because it would just cause havoc with the real estate records."

The following colloquy then occurred between Judge Campanella and Ruppert's attorney:

"THE COURT: You take someone else's land and you use it for 20 years, how do I know you own that? I can't go to the County and look.

[RUPPERT'S COUNSEL]: And I would agree with that. You don't know I own it.

THE COURT: The only way I figure that out is if there is a court case and you prove your adverse possession and the Court order says, yep, you own it.

[RUPPERT'S COUNSEL]: And here is the continuation of that though. My title once I hit my 20 years—

THE COURT: You are entitled to come in and ask me to adjudicate that property in your name.

[RUPPERT'S COUNSEL]: I can or I can sit around and wait until somebody tries to take the land back from me.

THE COURT: Either way, you are in a courtroom.

[RUPPERT'S COUNSEL]: And I can either do a quiet title or I could do an ejectment.

THE COURT: I don't agree with the quiet title because you don't have any title.

[RUPPERT'S COUNSEL]: Okay, then I—

THE COURT: Only your legally recognized title there you say that comes about automatically, which I dispute. I am waiting for you to show me differently so you will have to give me those cases and I will read them.

* * *

THE COURT: *** We've got you telling me that you automatically own this property because of adverse possession and they telling us, no, you don't because you never proved your adverse possession ***. *** You are taking and trying to get the Court to adjudicate legally recognized title to the disputed property in you.

[RUPPERT'S COUNSEL]: The point being is I don't have a 20 year statute of limitations to prove up my adverse possession.

THE COURT: No, you do not. I agree with you. You can come in at any time after 20 years."

¶ 23 Judge Campanella then clarified that he was not saying that Ruppert did not have a right to prove adverse possession but that Ruppert had no claim for quiet title. He indicated that Ruppert's attorney could refute that position with case law within 14 days. As for the limitation period arguments, Judge Campanella concluded that the 20-year adverse possession limitation period ran against the titleholder, not the adverse possessor. He then stated as follows:

"The statute of limitations pertaining to adverse possession can only run against a person who would have a right to claim possession. *** In other words, the statute of [limitations] can only be a bar against one who would have the right of entry into possession during the 20 years. *** When plaintiff claims adverse possession he admits that during the last 20 years the defendant had paper title and superior right of possession."

¶ 24 Based on his comments, Judge Campanella then granted the Welz brothers' section 2-619 motion to dismiss with regard to Ruppert's quiet title claim and denied the motion to dismiss with respect to Ruppert's adverse possession claim. The following colloquy then occurred between Judge Campanella and counsel:

"THE COURT: *** [T]he presumption that I get from their pleadings and from the law is that any use at any time with their predecessors or yours was permissive. That will be again the presumption that they will start with and you will have to overcome. ***

That's where you were coming from, right?

[THE WELZ BROTHERS' COUNSEL]: Right.

THE COURT: So that shouldn't be a big surprise to you. They are going to say permissive use from day one.

[RUPPERT'S COUNSEL]: But if title vests prior to that time, none of their stuff—

THE COURT: If title vests. And my point is I am going to stick with my guns. You are dead wrong. Title vesting to me is a legally adjudicated title to

> disputed property. Title vesting in you is 20 years, I am the winner, nobody can touch me. That's where we disagree. So find me whatever you need to find me to give to me in the next 14 days and I will change my mind. Because I do not believe—and let me put it to you this way. Twenty years go by. Now I come and I look at that piece of property. I say I would like to buy this. How much do you want for it, Mr. Ruppert? Oh, twenty thousand. Done deal. And, by the way, can I see your deed? Oh, hell, I ain't got one of them. Well, how about your title insurance? I don't have none of that either. I just own it automatically. Good luck with that theory."

¶ 25 He reserved any decision on the motion for sanctions until after trial, noting that the sanctions were based primarily on the fact that the Welz brothers were arguing that Ruppert's pleadings were false. However, he noted that that determination had yet to be made because there had not been a trial and to award sanctions before the evidence had been adduced was illogical.

¶ 26 That same day, Judge Campanella entered a written order, memorializing the findings that he had made at the hearing. In the written order, he dismissed Ruppert's quiet title action, rejecting the legal theory that an adverse claimant can file a complaint for adjudication of adverse possession and title and then conversely in count II of the complaint allege that he already had legal title. He also denied Ruppert's motion to dismiss the Welz brothers' counterclaims on all but the riparian rights claim (he reserved ruling on this claim) because all of Ruppert's theories for dismissal presumed that he had already acquired title.

¶ 27 On September 11, 2017, the Welz brothers filed amended counterclaims, consisting of seven counts, which included all of the counterclaims previously asserted against Ruppert as well as two new counts for their own adverse possession of the disputed property.

¶ 28 On February 13, 2018, Ruppert filed a motion for summary judgment on his remaining claim of adverse possession, arguing that there was no genuine issue of material fact that from June 13, 1959, until May 31, 1997, he and his predecessors in interest had continuous, hostile, actual, open, notorious, exclusive possession of the disputed property and that their possession was inconsistent with that of the Welz brothers' and their predecessors. The motion asserted that the Welz brothers' predecessors were divested of title to the disputed property as early as June 13, 1979. Attached to the motion were the following: (1) Ruppert's affidavit, which reiterated the statements made in his earlier affidavit attached to his complaint; (2) Frank's affidavit, which reiterated the statements made in Ruppert's affidavit; and (3) an excerpt from the defendant Craig Welz's August 17, 2017, discovery deposition in which he agreed that he personally had no information as to how the disputed property was being used and as to who was claiming rights to the property from 1959 to prior to June 1997 and that, although he noted that in June 1997, his predecessor had used the disputed property for logging, he was not privy to any conversations that his predecessor had with the Rupperts about the logging.

¶ 29 On February 26, 2018, the Welz brothers filed a response to Ruppert's motion for summary judgment, contending that Ruppert's predecessors in interest did not meet the adverse possession requirements for the statutory 20-year period in that his predecessors did not believe that they owned the disputed property when they used it prior to the Welz brothers' purchase of the section 17 property. Instead, they believed that the Rupperts' use of the disputed property was permissive, which is evidenced by the fact that the

Rupperts never filed an adverse possession claim to obtain title of the disputed property. They also again argued that Ruppert was not entitled to judgment as a matter of law as he had no standing to bring an adverse possession claim where he had not alleged any acts of adverse possession on his own part and that if Ruppert's predecessors in interest had adversely possessed the property, they did not effectively convey that property to one another by deed.

¶ 30 Attached to the response was an affidavit and excerpt of the May 16, 2017, evidence deposition of Elmer Bailey in which he stated that he had worked as a timber contractor in 1997, and he had logged the section 17 property for the property owner, William Cavins, who was also his employer, from 1997 through 1998. During that time, he was on the property on an almost daily basis, and he spoke with Elmer, who oversaw the farming operations on the neighboring property, before he began logging to avoid any dispute over the ownership of the land from which timber was cut. Elmer showed him where the property line was and assisted him in marking the line with orange ribbons. According to the boundary line that he and Elmer marked, no part of Logging Road was on the Ruppert property; the entirety of the road was located on the section 17 property. After meeting with Elmer to determine the boundary line, Bailey obtained permission from Cavins to lay rock on Logging Road because it was a mud road and the logging trucks were unable to use the road in its present state. Bailey also asked Elmer whether he had any objections to him laying the rock on Logging Road, and Elmer responded that he had no objection because it was not his land. Bailey also indicated that Elmer had observed him directing the laying of the rock on the road on approximately 12 to 15

occasions and never raised an objection. He further indicated that he never observed Elmer, or anyone purporting to be an agent of his, using Logging Road or farming the disputed property during the time that he was on the section 17 property. During his deposition, he testified that he had also removed trees from Logging Road and to the west of the road.

¶ 31 On March 6, 2018, the trial court held a hearing on the motion for summary judgment. During the hearing, the following colloquy occurred between Judge Campanella and Ruppert's counsel:

> "[THE COURT:] There was a motion to dismiss in which we engaged in colloquy and I asked you a question and I will ask you again and see what your response is. I own a house and five acres. I leave for whatever reason, probably my employment, and I go overseas in 1980. Unfortunately for me, I am captured and held hostage or for whatever reason I am absent for 20 years. The day after I leave, John Smith, a vagabond, looks at houses and sees mine and there is nobody home. He's cold, he's hungry, so he goes in and he squats and surprisingly to him for 20 years nobody comes and says, John Smith, what are you doing here? Twenty-one years later I am released or I am freed of my bonds and I can come back to my house in the United States and I get here and I walk in the back door and I say: John Smith, what are you doing here? John Smith replies: I own this by adverse possession and you are prohibited by the 20 year statute of limitations from doing anything about it. Now is that your interpretation of the adverse possession law?
>
> [RUPPERT'S COUNSEL]: Yes.
>
> THE COURT: Then this argument is over because as long as you continue with that legal theory of which I have asked you to substantiate, which you have given me no law that directly applies to the set of circumstances that I just gave you, I am going to dismiss on my own motion your complaint for adverse possession before you ever get started because there is no way in my mind that that set of circumstances applied to your theory can be the law and let you take it up and let them send it back and tell me that I am dead wrong.
>
> [RUPPERT'S COUNSEL]: Well, if you are going to do that then I want to make sure I am on record because I believe in fact you are wrong and I have provided all of the relevant case law. *Joiner v. Joiner* is very specific on that point as well as all of the other cases that I have cited in my motion. I would also reference the case of *Hermes v. Fischer*, 226 Ill. App. 3d 820, a Fourth District

1992 case, that talks about privity, talks about tacking, talks about farming as all being open and obvious. The only and the fact of the matter is that adverse possession is in fact if you meet all of those elements by operation of law it transfers title. You do not have a record title. You don't have to have any muniment of title. You have to have nothing. And if the dispute subsequently comes up like in this case or like in your example where somebody comes back after 20 years of being gone, as long as that person has already *** met that 20 year period and can show that he has met that 20 year period, he has title to the property. And the only way you get that title back is if you adversely possess him or you buy it from him.

THE COURT: So again, if I have you arrested today and you are charged with a crime and you are convicted and you go to jail, prison, and your term is 21 years and I move into your house tomorrow and you are stuck in prison and you can't get out and do anything about it and you get out the 21st year on parole and you come to your house, you have lost it.

[RUPPERT'S COUNSEL]: Well, the only thing I can tell you is, yes, assuming that that is not some sort of legal disability that—

* * *

THE COURT: No. I am just using that as again an example.

* * *

[RUPPERT'S COUNSEL]: If there is something that tolls the statute of limitations—

THE COURT: Putting aside all the tolling part, again, the set of circumstances being what they are, I can't get out, I can't come back, even if I could I didn't come back, let's just say I took the opportunity to go on a 20 year vacation, I want to make it perfectly clear for the record when I take my 20 year vacation and I come back to my house, it's gone now by operation of law.

[RUPPERT'S COUNSEL]: Yes, sir.

* * *

[RUPPERT'S COUNSEL]: As long as the elements have been met.

THE COURT: Then again, as far as a motion for summary judgment goes, while we can argue all day long about what are in these depositions, while we can argue all day long whether or not reasonable men can disagree, we have a very plain question of law here which I interpret totally different than [Ruppert's counsel], completely different ***. So at this point if he is going to proceed as a plaintiff under the pretense that he already owns the property and doesn't have to do anything except show me he has been there for 20 years with all of the attributes of adverse possession having attached, it looks like the burden would be on [the Welz brothers] which is totally contra to what I was thinking. I thought the burden was by clear and unequivocal evidence he had to show me that he had adversely possessed it. We are so far apart that the oceans couldn't bridge the gap. So I have got to let you appeal it and have somebody tell me I am dead wrong."

¶ 32 The court then dismissed Ruppert's complaint with regard to count I, the adverse possession claim. Ruppert's counsel then clarified that he had to prove, by clear and convincing evidence, that the adverse possession requirements were met and that, once proven, the disputed property by operation of law vested with Ruppert. However, the court did not change the ruling.

¶ 33 That same day, the trial court entered a written order dismissing Ruppert's adverse possession claim for the reasons stated on the record. The order stated as follows: "Since Count 2, Quiet Title, had previously been dismissed with leave to amend within 14 days, and since Plaintiff has chosen to not so amend, Count 2 is hereby dismissed with prejudice as well."

¶ 34 On April 4, 2018, Ruppert filed a motion to reconsider the court's dismissal of his adverse possession and quiet title claims. With regard to the quiet title claim, Ruppert argued that the dismissal was a misapplication of the existing law in that section 2-613(b) of the Code (735 ILCS 5/2-613(b) (West 2016)) permitted the filing of alternative pleadings regardless of the consistency of the allegations in the complaint and that title acquired by adverse possession may be used as a basis for an action to quiet title. As for the adverse possession claim, he argued that he had established, by clear and convincing evidence, that he and his predecessors in interest had adversely possessed the disputed property; that the events that took place after the divestiture of the record owner of legal title were irrelevant; that the statutory period of adverse possession need not occur immediately before the adverse possessor files suit; that no deed was necessary to support

title by adverse possession; and that the adverse possessors' title can only be divested by a subsequent disseisin for the statutory period.

¶ 35 On May 15, 2018, the trial court held a hearing on the motion to reconsider. Judge Campanella explained his reasoning for the dismissal of the adverse possession claim as follows:

> "[I]t is a total difference of legal interpretation of the adverse possession statute that I take issue with, because by his interpretation by operation of law, once you possess adversely for 20 years what is admitted as someone else's property, real estate, then you do nothing except sit back and bask and relish the fact that you have had it for 20 years and it's up to the other party to come in and try to take it back because the burden would be on them. That's where we ran into problems with my allowing him to go forward with his adverse possession claim.
>
> If I were to allow him to do that, then everything that I think the adverse possession statute stands for would be turned on end and everything would be reversed, putting the burden on the defendant even though the plaintiff is the one that I thought had the burden of proving adverse possession like he started with his complaint in so saying. So I don't know how we got the tables turned, but once he disclosed to me that if I went to Vietnam and I were captured and I was held prisoner for 20 years and I came back after being released finally and went to my house and [Ruppert's attorney] lived there and had lived there for 20 years, he could rightfully tell me that I was completely out of luck, that he adversely possessed it and would have absolutely no judgment or Court order to that effect and by operation of law would own the property. That's what you told me.
>
> So with that in mind, I couldn't see how we could have a trial to prove adverse possession when you are telling me that by operation of law the Rupperts already owed it. I thought you were in here to show me that the Rupperts had the elements of adverse possession so that I could Court order the Rupperts as owners by virtue of adverse possession. Having that large discrepancy in the interpretation of the adverse possession statute, I couldn't see any way that he had pled a cause of action and therefore dismissed it on my own motion with no ability to amend because unless he completely changed his philosophy with regard to adverse possession, we could never get to the point where I would think the adverse possession statute would apply.
>
> As to quiet title, we got rid of that a long time ago because you can't quiet title if you don't have it. He wants to tell me by operation of law and the adverse possession statute that he already owns this property that's being disputed. And I want to think that the Welzes own it until they lose it by virtue of an adverse possession complaint in which all the elements of adverse possession are proven

> by a preponderance of the evidence and a Court order is entered to that effect. So with that fundamental difference in the interpretation of the adverse possession statute, at this point we remain with a complaint that has been dismissed with prejudice and only the counterclaims will survive."

¶ 36 That same day, the trial court entered a written order, denying Ruppert's motion to reconsider. On July 20, 2018, the Welz brothers filed a motion for voluntary dismissal of their counterclaims except for the counts alleging their adverse possession of the disputed property. On July 27, 2018, the trial court granted the Welz brothers' motion to voluntarily dismiss. In the order, the court noted that the claims relating to the Welz brothers' adverse possession remained pending but were moot in light of the ruling that they were the owners of the disputed property. Ruppert then filed a notice of appeal, appealing the trial court's February 27, 2017, order granting the Welz brothers' motion to dismiss count II (the quiet title action) of the second amended complaint; the March 6, 2018, order dismissing, *sua sponte*, count I (the adverse possession claim) of his second amended complaint instead of determining his motion for summary judgment; and the May 15, 2018, order denying his motion to reconsider.

¶ 37 On appeal, Ruppert argues that the trial court erred in dismissing his complaint and in denying his motion to dismiss the Welz brothers' counterclaims. A section 2-619 motion to dismiss admits the legal sufficiency of the complaint but asserts an affirmative matter outside of the complaint that defeats the cause of action. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). When ruling on the motion, the court must accept all well-pleaded facts as true and draw all reasonable inferences in favor of plaintiff. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. The motion should only be

granted if plaintiff can prove no set of facts that would support the cause of action. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. This court reviews *de novo* a section 2-619 motion to dismiss. *Kean*, 235 Ill. 2d at 361. A trial court may, *sua sponte*, dispose of a matter when it is clear on its face that the requesting party is not entitled to relief as a matter of law. *People v. Vincent*, 226 Ill. 2d 1, 12 (2007).

¶ 38 A quiet title action in property is an equitable proceeding where a party seeks to remove a cloud on his title to the property. *Hoch v. Boehme*, 2013 IL App (2d) 120664, ¶ 41. However, a title acquired by adverse possession may be used as a basis for an action to quiet title. *Yeates v. Daily*, 13 Ill. 2d 510, 514 (1958). "Title may be quieted and clouds may be removed from the title to land acquired by adverse possession. Such an owner may successfully use title acquired by adverse possession in an offensive action. Such a title may be asserted against all the world, including the owner of record." (Internal quotation marks omitted.) *Scales v. Mitchell*, 406 Ill. 130, 136 (1950).

¶ 39 A party claiming title by adverse possession claims in derogation of the right of the real owner. *Joiner v. Janssen*, 85 Ill. 2d 74, 80 (1981). In claiming adverse possession, the party admits that legal title is in another but rests his claim, not on title in himself as the true owner, but upon holding adversely to the true owner for the statutorily prescribed limitation period. *Id.* at 80-81.

¶ 40 To establish title by adverse possession, a plaintiff must prove possession of the disputed property for a period of 20 years (735 ILCS 5/13-101 (West 2016)), and that, during the 20-year period, his possession was (1) continuous; (2) hostile; (3) actual; (4) open, notorious, and exclusive; and (5) under a claim of title inconsistent with that of

the true owner. *Beverly Trust Co. v. Dekowski*, 216 Ill. App. 3d 732, 736 (1991). All five of these elements must be shown to have existed concurrently for the full 20-year period before the doctrine will apply. *Tapley v. Peterson*, 141 Ill. App. 3d 401, 404 (1986). The possession is not hostile or adverse where the property is used with the permission of the owner; permission to use the land can never ripen into a claim for adverse possession. *In re Estate of Cargola*, 2017 IL App (1st) 151823, ¶¶ 19, 21.

¶ 41 The adverse possessions by successive possessors of property who were in privity can be tacked together to establish continuous possession for the statutory period of limitation. *McNeil v. Ketchens*, 397 Ill. App. 3d 375, 394 (2010). In that case, to satisfy the doctrine of adverse possession, the possessor would need to show that his predecessors in title held the disputed property adversely, thereby allowing him to tack his predecessors' possession to his own (*Mann v. LaSalle National Bank*, 205 Ill. App. 3d 304, 308 (1990); see *McNeil*, 397 Ill. App. 3d at 394); that there was an intent to convey the adversely possessed property (*Bakutis v. Schramm*, 114 Ill. App. 3d 237, 239 (1983)); and that the possession was successive (*Hermes v. Fischer*, 226 Ill. App. 3d 820, 826 (1992)). The requisite adverse possession period need not occur immediately before the claimant files suit. *Knauf v. Ryan*, 338 Ill. App. 3d 265, 271 (2003).

¶ 42 "If the statute of limitations bars the titleholder from bringing an action to recover the real estate, the one who possessed the real estate for 20 years effectively becomes its new owner." *McNeil*, 397 Ill. App. 3d at 393. Where adverse possession is established, the claimant is accorded title to the land, and the previous titleholder is divested of title. *Continental Illinois National Bank & Trust Co. of Chicago v. Wilson*, 103 Ill. App. 3d

357, 361 (1982). The holder by adverse possession obtains title that can only be divested by the conveyance of the land to another or by a subsequent disseisin for the statutory period. *Knauf*, 338 Ill. App. 3d at 271.

¶ 43 No deed is required to support ownership under adverse possession. *Tapley*, 141 Ill. App. 3d at 404. Instead, in Illinois, actions alone can adequately convey the intent to claim title adversely to all the world, including the titleholder. *Id.* "Where there has been an actual, visible and exclusive possession for twenty years it is not essential to the bar of the Statute of Limitations that there should have been any muniment of title or any oral declaration of claim of title, but it is sufficient if the proof shows that the party in possession has acted so as to clearly indicate that he did claim title." (Internal quotation marks omitted.) *Joiner*, 85 Ill. 2d at 81-82. "If the owner permits the occupation of his land for a period of twenty years by a party asserting ownership, he is barred by the statute from making an entry or bringing an action to regain possession. It is the possession that bars the owner of a recovery. No deed is requisite to the inception, the continuance, or the completion of the bar." *Augustus v. Lydig*, 353 Ill. 215, 222 (1933). "The statute of limitations pertaining to adverse possession could only run against a person who would have a right to claim possession. In other words it could only be a bar against one who would have the right of entry into possession during this 20-year period." *Continental Illinois National Bank & Trust Co. of Chicago*, 103 Ill. App. 3d at 361.

¶ 44 However, all presumptions are in favor of the record titleholder. *Morris v. Humphrey*, 146 Ill. App. 3d 612, 615 (1986). To rebut the presumption in favor of the

titleholder, the claimant must prove each element of adverse possession by clear and unequivocal evidence. *In re Estate of Williams*, 146 Ill. App. 3d 445, 455 (1986). Strict proof of each element of adverse possession is required to overcome the presumption, which may not be made out by inference or implication. *Tapley*, 141 Ill. App. 3d at 405. Because our supreme court has not defined "clear and unequivocal" evidence, courts have applied the clear and convincing burden of proof in adverse possession cases. *Brandhorst v. Johnson*, 2014 IL App (4th) 130923, ¶ 38.

¶ 45 Here, the trial court dismissed Ruppert's quiet title claim on the basis that a claimant seeking quiet title must have title to the property before he can quiet title. However, as the above case law shows, and as acknowledged by the Welz brothers, a title acquired by adverse possession may be used as a basis for an action to quiet title; the quiet title action is the vehicle through which an adverse possession claim can be made. The quiet title cause of action in Ruppert's second amended complaint asserted that his possessors in interest had adversely possessed the disputed property for the requisite limitation period and, thus, he sought title to the property. Because this was an appropriate method of asserting his adverse possession claim, the trial court erred when it dismissed the quiet title cause of action on the basis that he had to have title to bring a quiet title action. Accordingly, we reverse the trial court's dismissal of count II of Ruppert's second amended complaint.[2]

[2]Although the trial court's March 6, 2018, order noted that the quiet title action had previously been dismissed with leave to amend within 14 days, and that Ruppert had failed to amend his complaint, we find that the record does not clearly show that the court gave him leave to amend his complaint when the quiet title action was dismissed in February 2017.

¶ 46 Next, we determine whether the trial court's, *sua sponte*, dismissal of Ruppert's adverse possession claim as a matter of law was in error. At the hearing on Ruppert's summary judgment, the trial court found that, as a matter of law, an adverse possession claimant did not automatically obtain title to the adversely possessed property at the expiration of the limitation period. Instead, the court found that the adverse possessor must prove, by clear and unequivocal evidence with all presumptions in favor of the titleholder, all of the adverse possessing elements before title could vest in the claimant. Because the court found that Ruppert was arguing that he had automatically obtained title to the disputed property upon the expiration of the 20-year adverse possession limitation period, and that the burden had shifted to the Welz brothers, the court dismissed Ruppert's adverse possession claim as a matter of law.

¶ 47 However, after carefully reviewing the second amended complaint, we do not find this conclusion consistent with the arguments set forth in Ruppert's complaint. As noted above, an adverse possessor obtains colorable title to the disputed property after all of the adverse possession requirements have been met for the 20-year limitation period. However, that does not relieve the claimant from his burden of proving, by clear and unequivocal evidence, all five elements of adverse possession when seeking quiet title based on adverse possession. Also, all presumptions are in favor of the record titleholder. In his second amended complaint, Ruppert contended that he and/or his predecessors in interest had met each requirement for adverse possession, identified various acts which he asserted evidenced their possession of the disputed property over a 39-year period, and asserted that the Welz brothers' predecessors in interest did not contest or dispute his

and/or his predecessors in interest's claim of ownership of the disputed property prior to the Welz brothers' purchase of the section 17 property. Thus, we find that the trial court erroneously found that Ruppert was claiming that he was not required to prove the adverse-possession requirements in order to quiet title to the disputed property.

¶ 48 Further, we note that, at this stage in the proceedings, the pleading stage, Ruppert was not required to prove his claim of adverse possession by clear and unequivocal evidence. Instead, all well-pleaded facts alleged in the complaint must be taken as true, and all reasonable inferences must be drawn in the plaintiff's favor. *Sandholm*, 2012 IL 111443, ¶ 55. Because the trial court dismissed Ruppert's last remaining count in his complaint at the summary-judgment hearing, the court made no determination as to whether summary judgment was appropriate, *i.e.*, whether there was a genuine issue of material fact. Thus, we reverse the trial court's dismissal of counts I and II of Ruppert's complaint based on the well-established principles of law set forth in this decision and remand to allow the trial court an opportunity to determine whether there is a genuine issue of material fact here.

¶ 49 Ruppert next argues that the trial court erred in denying his section 2-619 motion to dismiss the Welz brothers' counterclaims. As noted above, the Welz brothers filed the following counterclaims against Ruppert: (1) a quiet title action (count I); (2) violation of riparian rights (count II); (3) a trespass action (count III); (4) a conversion action (count IV); and (5) a wrongful tree cutting cause of action (count V). Thereafter, Ruppert filed a section 2-619 motion to dismiss the counterclaims on the basis that he had obtained colorable title to the land based on his and his predecessors in interest's adverse

possession. On February 27, 2017, the trial court denied the motion to dismiss regarding every counterclaim except the riparian rights cause of action (the court reserved ruling on that claim). Subsequently, the Welz brothers filed seven amended counterclaims, which reiterated the previous claims and added two claims based on their own adverse possession of the disputed property. Ruppert filed an answer to the amended counterclaims and did not move to dismiss those claims. After the court's March 6, 2018, order dismissing Ruppert's complaint in its entirety, the Welz brothers moved to voluntarily dismiss the original five counterclaims, leaving intact the two adverse possession claims.[3] The court granted the motion to dismiss and held that the remaining counterclaims for adverse possession were moot and, thus, no Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)) finding would be necessary to make this case ripe for appeal.

¶ 50 In response, the Welz brothers contend that this court lacks jurisdiction to review the denial of Ruppert's motion to dismiss because his notice of appeal, which specified that he was appealing the February 27, 2017, order, granting the Welz brothers' motion to dismiss the quiet title claim in his second amended complaint, made no mention of the denial of the motion to dismiss in relation to the counterclaims. Alternatively, they contend that Ruppert has forfeited review of this issue by answering their amended counterclaims; that Ruppert's argument is moot as all but two of the counterclaims were voluntarily dismissed, and the two remaining counterclaims were nonexistent at the time

[3]The Welz brothers did not move to voluntarily dismiss these claims to ensure that, if Ruppert would be adjudicated the owner of the disputed property based on adverse possession after this appeal, the Welz brothers would not have waived their claim that they adversely possessed the disputed property back from Ruppert.

that the court entered its February 2017 order; and that the trial court properly denied his motion to dismiss.

¶ 51 Illinois Supreme Court Rule 303(b)(2) (eff. July 1, 2017) instructs that a notice of appeal must specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court. We acquire no jurisdiction to review parts of judgments that are not specified in or inferred from the notice of appeal. *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010). However, a notice of appeal is to be liberally construed. *Id.* Here, Ruppert's notice of appeal relating to the February 27, 2017, order stated as follows: "Ruppert appeals from the judgment *** dated February 27, 2017, granting Defendants-Appellees', Craig Welz and Eric Welz ***, Motion to Dismiss Count II of Ruppert's Second Amended Complaint Pursuant to the Provisions of 735 ILCS 5/2-619 and its finding that 'an adverse claimant can file a complaint for adjudication of adverse possession and title and then conversely, in Count II of said Complaint, allege he already has legal title … this Court finds to be inconsistent.' " Even liberally construing the notice of appeal, it did not confer jurisdiction on us to review the denial of Ruppert's motion to dismiss the Welz brothers' counterclaims.

¶ 52 Moreover, even if we had jurisdiction to determine whether the trial court erred in denying Ruppert's motion to dismiss the Welz brothers' counterclaims, all of the counterclaims in existence at the time that Ruppert filed his motion to dismiss were voluntarily dismissed by the Welz brothers before Ruppert filed his notice of appeal. Thus, this issue is moot. See *Sadler v. Creekmur*, 354 Ill. App. 3d 1029, 1039-40 (2004)

(an issue is moot if the parties' interests and rights are no longer in controversy and the resolution of the issue will have no practical effect).

¶ 53 In summary, we reverse the trial court's dismissal of Ruppert's quiet title action and its *sua sponte* dismissal of Ruppert's adverse possession claim. We lack jurisdiction to review the trial court's denial of Ruppert's motion to dismiss the counterclaims. We remand for further proceedings consistent with the case law set forth in this decision.

¶ 54 Reversed and remanded.