IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 20, 2014 Session

RANDALL W. SUMMERS v. JIMMY STUBBLEFIELD

Appeal from the Chancery Court for Franklin County
No. 13208 Thomas W. Graham, Judge

No. M2014-00425-COA-R3-CV - Filed March 17, 2015

At issue is the ownership of property along the boundary of two large tracts of mountain land in Franklin County, Tennessee. After Plaintiff commenced this action seeking to establish the boundary line, Defendant asserted that he owned the property by adverse possession; Defendant additionally asserted that Plaintiff was barred by Tenn. Code Ann. § 28-2-110 from asserting any affirmative claim to the property because Plaintiff had not paid property taxes on the property in dispute for 20 years. The trial court found that Plaintiff had not paid taxes on the disputed property for 20 years and, based on this finding of fact, ruled that Tenn. Code Ann. § 28-2-110 barred Plaintiff from asserting an affirmative claim to the property. Nevertheless, the court also ruled that Plaintiff was entitled to defend his title against Defendant's claim of ownership. Following a bench trial, the court concluded that Defendant failed to prove by clear and convincing evidence that he and his predecessors in interest obtained title to the property by adverse possession and ruled that Plaintiff owned the property. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

Clinton H. Swafford, Winchester, Tennessee, for the appellant, Jimmy Stubblefield.

Tracy C. Wooden and Warren J. Yemm, II, Chattanooga, Tennessee, for the appellee, Randall Wayne Summers.

OPINION

In 1951, Jake Summers owned two adjacent tracts of land: a 186-acre tract known as "Sparks Farm," and a 125-acre tract known as "Jackson Place."[1] The boundary between the properties was marked by paint or cut-marks called "blazes" made in trees. In 1952, Jake Summers conveyed Sparks Farm to Jim Summers. Several months later, Jim Summers conveyed Sparks Farm to Walter Stubblefield and his wife, Bettie. In 1972, Jake Summers conveyed Jackson Place to David Summers.

In 1991, David Summers, the plaintiff's predecessor in interest, filed suit seeking to quiet title to Jackson Place and set the boundary line between Jackson Place and Sparks Farm. Walter and Bettie Stubblefield, the defendant's predecessor in interest, asserted that the action was barred by Tenn. Code Ann. § 28-2-110 because David Summers and his predecessors had failed to pay taxes on the property for more than 20 years. They also asserted that they owned Jackson Place based on theories of statutory and common law adverse possession. The litigation languished for more than a decade. During this time, Randall Wayne Summers ("Plaintiff") purchased the property at issue from David Summers and was substituted as the sole plaintiff. Jimmy Stubblefield ("Defendant") was substituted as the sole defendant. In 2007, the trial court allowed Defendant to harvest timber on the disputed tract. The proceeds of the sale of the timber were held in escrow until final determination of the suit.[2]

In 2012, the trial court bifurcated the trial of this matter. The first phase concerned the application of Tenn. Code Ann. § 28-2-110, and the second phase concerned the ownership of the property itself.[3] At the first phase of trial, the trial court admitted into evidence copies

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[1] The amounts of acreage are taken from the deeds describing each property. The actual acreage differs from the amounts listed in the deeds. For simplicity, we will refer to each tract of land by name or by the acreage as described in the relevant deeds.

[2] This litigation calls to mind the adage popularized by Robert Frost "good fences make good neighbors." *See* Robert Frost, *Mending Wall*, NORTH OF BOSTON (1914). Although this phrase is commonly employed to support the idea that neighbors have the best relationships with each other when there are strong, definite boundaries between them, the narrator in Frost's poem questions both the truth of the phrase and the need for a wall, hinting that fences and divisions themselves may create conflict where there is none. *See id.*; John M. DeStafano III, *On Literature as Legal Authority*, 49 Ariz. L. Rev. 521, 540 (2007). Given that this litigation has lasted for more than 20 years, upset what appear to be otherwise-friendly neighbors, and concerned a common border that could have benefitted from a more-definite boundary, both uses of the phrase seem appropriate here.

[3] In 2010, the trial court granted Plaintiff partial summary judgment concerning the applicability of (continued...)

of tax records indicating that Jackson Place had not always been assessed at 125 acres. Instead, it was assessed at only 25 acres from 1952 to 1965 and at 21 acres from 1967 to 1991. While five years of tax records were missing, Phillip Hayes, former Property Tax Assessor for Franklin County, testified that Jackson Place was almost certainly assessed at 21 acres during those years because that assessment remained consistent for the time periods both before and after the missing years.[4]

The trial court found that Plaintiff and his predecessors did not pay taxes on the full 125 acres of the disputed tract from 1967 to 1991 because Jackson Place was only assessed at 21 acres during that period. Because Plaintiff had not paid taxes on the full acreage of the tract, the trial court held that Plaintiff was barred from litigating the boundary line dispute pursuant to Tenn. Code Ann. § 28-2-110.[5] However, the trial court also ruled that Tenn. Code Ann. § 28-2-110 did not prohibit Plaintiff from defending his title against the claims of ownership that Defendant had raised.

The second phase of trial took place in January 2014 and concerned the parties' competing claims of ownership and the distribution of the proceeds from the timber harvesting. The trial court first sought to establish the boundaries of the land at issue so that it could determine which acts of possession were related to Jackson Place as opposed to the other surrounding property. Surveyor Michael A. Barry testified that he had made a survey

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[3](...continued)
Tenn. Code Ann. § 28-2-110, holding that the statute did not apply because the tax records for Franklin County were unreliable for determining whether Plaintiff had paid taxes for 20 years. Two years later, in its order bifurcating the matter, the trial court revised its decision granting summary judgment to Plaintiff because the applicability of Tenn. Code Ann. § 28-2-110 was "premature and not fully litigated." On appeal, Plaintiff argues that he was entitled to summary judgment on this issue and that the trial court erred when it revised its order. We will not address these arguments directly because the applicability of Tenn. Code Ann. § 28-2-110 is more properly considered in the context of the trial court's findings of fact and conclusions of law on this issue. Additionally, our ultimate holding in this case renders these arguments moot.

[4] The missing years were 1974, 1975, 1979, 1980, and 1981. Mr. Hayes testified that the property tax records for Franklin County have been moved several times over the years and some records may have been lost or damaged during one of those moves.

[5] The trial court noted that Tenn. Code Ann. § 28-2-110 did not prevent Plaintiff from bringing an action to recover an interest in the 21 acres of property for which he had paid taxes. However, because no description of these 21 acres existed, it was impossible for the trial court to establish a boundary line for that area without violating Tenn. Code Ann. § 28-2-110.

of Jackson Place based on the relevant deeds and his inspection of the property, and his survey was entered into evidence. The trial court also heard testimony from Mr. Hayes that a 1990 tax map of the property placed Jackson Place inside of Sparks Farm.[6]

Both Plaintiff and Defendant testified about their activities on the property prior to the lawsuit. Defendant testified that he had driven on the property, cut wood from it for use in construction on other properties or as firewood, painted one of its boundary lines, and told various hunters to leave the property. Plaintiff testified that he had painted the boundary lines of the property and hunted there without any objection.

The trial court stated that Defendant's statutory claims of ownership failed because Defendant did not have the assurance of title required to invoke those provisions. The trial court also found that Defendant did not present enough evidence to establish common law adverse possession by clear and convincing evidence, but at best showed "only sporadic individual acts of possession." The trial court held that Plaintiff was the owner of the tract and the best depiction of the land described in Plaintiff's deed was from the survey of Michael A. Barry. Defendant appealed.

ANALYSIS

The issues on appeal fall into two categories: the applicability and meaning of Tenn. Code Ann. § 28-2-110 and the validity of Defendant's claims of ownership. We will first address the issues regarding Tenn. Code Ann. § 28-2-110.

I. TENN. CODE ANN. § 28-2-110

Tennessee Code Annotated § 28-2-110(a) reads in pertinent part:

> Any person having any claim to real estate or land of any kind, or to any legal or equitable interest therein, the same having been subject to assessment for state and county taxes, who and those through whom such person claims have failed to have the same assessed and to pay any state and county taxes thereon for a period of more than twenty (20) years, shall be forever barred from bringing any action in law or in equity to recover the same, or to recover any rents or profits therefrom in any of the courts of this state.

[6] Mr. Hayes testified that in 1990 he used the deeds to Jackson Place and the surrounding properties to change the tax map because Jake Summers claimed that those maps depicted Jackson Place in an incorrect location. After 1990, the land at issue was designated "in conflict" and assessed to both parties at 125 acres because both parties claimed they owned it.

At the conclusion of phase one of trial, the trial court found that Plaintiff and his predecessors had failed to prove that they paid taxes on the entire 125 acres of the tract in question for over 20 years. Based on this finding of fact, the trial court concluded that Tenn. Code Ann. § 28-2-110 barred Plaintiff from asserting an affirmative claim to the property in dispute. Nevertheless, the trial court concluded that Tenn. Code Ann. § 28-2-110 did not prevent Plaintiff from defending his title against Defendant's claims of ownership, notwithstanding the fact he could not prove that he paid taxes on the entire 125 acre tract for 20 years.

Plaintiff argues on appeal that Tenn. Code Ann. § 28-2-110 does not apply because there is not sufficient proof that he failed to pay taxes for 20 continuous years.[7] Defendant contends that Tenn. Code Ann. § 28-2-110 applies and prevents Plaintiff both from litigating the boundary dispute and from defending his title. We will first review the trial court's finding that the evidence is insufficient to establish that Plaintiff paid taxes on the entire 125 acre tract for the requisite period of time.

A. The Sufficiency of the Evidence

In cases tried without a jury, the trial court's findings of fact are presumed to be correct unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Hughes v. Metro. Gov't of Nashville and Davidson Cnty.*, 340 S.W.3d 352, 359-60 (Tenn. 2011). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Foust v. Metcalf*, 338 S.W.3d 457, 462 (Tenn. Ct. App. 2010). The trial court's conclusions of law are reviewed de novo without a presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

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[7] Plaintiff does not directly challenge the trial court's findings of fact after the first phase of trial. Instead, he challenges the trial court's decision to set aside the interlocutory order granting him partial summary judgment. More specifically, Plaintiff insists Tenn. Code Ann. § 28-2-110 does not apply because he demonstrated that Defendant could not prove that he failed to pay taxes for more than 20 years; thus, he was entitled to summary judgment on that issue. We have determined this ruling is not reviewable on appeal because, following a full evidentiary hearing, the trial court found that Defendant had established all the elements necessary for the application of Tenn. Code Ann. § 28-2-110, and our courts have repeatedly held that "when the trial court's denial of a motion for summary judgment is predicated upon the existence of a genuine issue as to a material fact, the overruling of that motion is not reviewable on appeal when subsequently there has been a judgment rendered after a trial on the merits."*Arrow Elecs. v. Adecco Employment Servs., Inc.*, 195 S.W.3d 646, 650 (Tenn. Ct. App. 2005) (citations omitted); *see also Wagner v. Fleming*, 139 S.W.3d 295, 304 (Tenn. Ct. App. 2004); *Klosterman Dev. Corp. v. Outlaw Aircraft Sales, Inc.*, 102 S.W.3d 621, 636 (Tenn. Ct. App. 2002) (other citations omitted). Therefore, Plaintiff's contention that the trial court erred in denying his motion for partial summary judgment is moot. For this reason, we limit our review of the applicability of Tenn. Code Ann. § 28-2-110 to whether the evidence preponderates against the trial court's finding.

Tenn. Code Ann. § 28-2-110 applies when a person or his predecessors in interest have not paid property taxes for 20 continuous years. *See id.*; *Burress v. Woodward*, 665 S.W.2d 707, 709 (Tenn. 1984); *Alexander v. Patrick*, 656 S.W.2d 376, 377 (Tenn. Ct. App. 1983). As we explained in *Alexander*, Tenn. Code Ann. § 28-2-110 will bar any affirmative action when "one claiming an interest in real property or his predecessor in title has *failed to have assessed and to pay taxes on the claimed property* for at least twenty continuous years[.]" *Alexander*, 656 S.W.2d at 377 (emphasis added); *see also Burress*, 665 S.W.2d at 709. Moreover, the party that invokes Tenn. Code Ann. § 28-2-110 "must clearly show that the other party failed to pay taxes" for 20 years. *Jack v. Dillehay*, 194 S.W.3d 441, 450 (Tenn. Ct. App. 2005) (quoting *Bone v. Loggins*, 652 S.W.2d 758, 761 (Tenn. Ct. App. 1982)).

When tax records are disorganized or inconsistent, a party may not be able to establish that another failed to pay taxes for a continuous 20-year period. *See Bone v. Loggins*, 652 S.W.2d 759, 761 (Tenn. Ct. App. 1982). In *Bone*, the tax records contained inconsistencies regarding size of the tract at issue as well as the names and locations of the adjoining landowners. *Id.* at 762. These inconsistencies made it impossible to determine whether the tax records described were related to the tract at issue. *Id.* This court found that the tax records were "disordered," in "a state of disarray," and did not conclusively show that taxes had not been paid. *Id.* at 761-62.

Here, although five years of tax records are missing, Mr. Hayes testified that Jackson Place was almost certainly assessed at 21 acres during those five years. Moreover, despite the fact that some tax records are missing, there is no dispute that all of the available records show that Jackson Place was assessed at 21 acres from 1967 to 1991, yet the deeds for Jackson Place describe the property as "containing 125 acres, more or less." Therefore, Defendant proved that Plaintiff did not pay taxes on all of the claimed property pursuant to a proper assessment for 20 continuous years.

Based on this and other evidence in the record, we have concluded that the evidence supports the trial court's finding that Plaintiff failed to have assessed and to pay taxes on the claimed property for at least 20 continuous years. *See Alexander*, 656 S.W.2d at 377; *see also Burress*, 665 S.W.2d at 709. The tax records that are in the record and the testimony from Mr. Hayes and others do not support another finding of fact with greater convincing effect.

We, therefore, affirm the trial court's conclusion that Tenn. Code Ann. § 28-2-110 applies.

B. THE EFFECT OF TENN. CODE ANN. § 28-2-110

The trial court concluded that Tenn. Code Ann. § 28-2-110 did not prevent Plaintiff from defending his title against Defendant's claims of ownership. Defendant contends this was error. Having concluded that the trial court correctly construed the statute, we affirm this ruling.

Issues of statutory construction are questions of law that we review de novo with no presumption of correctness. *Brundage v. Cumberland Cnty.*, 357 S.W.3d 361, 364 (Tenn. 2011). Our role in construing a statute is to ascertain and give the fullest possible effect to its purpose without restricting its coverage or expanding its intended scope. *Id.* To ascertain intent, we begin with the statutory text and focus on the natural and ordinary meaning of the language in the context of the entire statute. *Cnty. of Shelby v. Tompkins*, 241 S.W.3d 500, 505-06 (Tenn. Ct. App. 2007).

By its terms, the prohibition contained in Tenn. Code Ann. § 28-2-110 applies to any person "bringing any action" to recover an interest in property when that person or her predecessors in interest have failed to pay property taxes for more than 20 years. Tenn. Code Ann. § 28-2-110. The most natural interpretation of the phrase "bringing an action" is that it refers to the initiation of legal proceedings. *See Black's Law Dictionary* 174 (9th ed. 2010) (defining "bring an action" as "[t]o sue; institute legal proceedings"). While the statute expressly mentions bringing or initiating a lawsuit, it does not mention defending against or responding to a lawsuit initiated by another. *See* Tenn. Code Ann. § 28-2-110. Based on its text, the statute prohibits a party from instituting an action rather than responding to or defending against a legal proceeding instituted by another. *See id.*

Prior case law supports this interpretation. Tenn. Code Ann. § 28-2-110 is a statute of limitations, and as such it neither affects title nor destroys rights. *Burress*, 665 S.W.2d at 709. Instead, it restricts the property holder's right to bring suit because of her failure to pay taxes for 20 years. *See id.* Failure to pay taxes for 20 years does not automatically cause a party to be ejected. *Id.* (quoting *Layne v. Baggenstoss*, 640 S.W.2d 1, 3 (Tenn. Ct. App. 1982)). The party still has the opportunity to mount a defense and respond to another's claims of ownership. *See id.*

This interpretation of Tenn. Code Ann. § 28-2-110 applies equally to both independent actions and counterclaims filed by another party. If a defendant files a counter-action as opposed to a simple defense, a plaintiff will not be barred from defending himself as a counter-defendant. *Catlett v. Whaley*, 731 S.W.2d 544, 546 (Tenn. Ct. App. 1987). This remains true even if the defendant did not label the relief sought as a counterclaim, but asked for the court to declare him the lawful owner of the disputed property in direct contradiction

to the relief sought by the plaintiff. *Rogers v. Young*, No. C.A.02A019604CH00081, 1997 WL 401958, at *3 (Tenn. Ct. App. July 17, 1997).

In *Rogers*, the plaintiff claimed that he owned the property in dispute, while the defendants claimed both that the plaintiff's suit was barred by Tenn. Code Ann. § 28-2-110 and that they had obtained title by adverse possession. *Id.* at *2. This Court held that, even though the defendants did not label their answer as such, it was "clearly in the nature of a counter-claim" because they sought affirmative relief by asking to be declared the legal owners of the property. *Id.* Because the defendants sought legal title in direct contradiction to the relief sought by the plaintiff, the plaintiff was entitled to a determination of ownership. *Id.* at *2-4.

Like the defendants in *Rogers*, Defendant claimed that he owned the property and requested affirmative relief. *See id.* at *3-4. As noted above, Tenn. Code Ann. § 28-2-110 does not prevent a party from defending its title against claims such as these. *See Catlett*, 731 S.W.2d at 546; *Burress*, 665 S.W.2d at 709. Because Defendant asked the trial court to declare him the rightful owner of the disputed property, Plaintiff was entitled to defend his title against these claims, Tenn. Code Ann. § 28-2-110 notwithstanding.

For the foregoing reasons, we affirm the trial court's ruling that Plaintiff was entitled to defend his title.

II. DEFENDANT'S CLAIMS OF OWNERSHIP

Defendant's claims of ownership were based on statutory and common law theories. The trial court ruled in favor of Plaintiff on each claim. Defendant contends this was error.

We review the trial court's findings of fact de novo, with a presumption of correctness unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Hughes*, 340 S.W.3d at 359-60. The trial court's conclusions of law are reviewed de novo without a presumption of correctness. *Ganzevoort*, 949 S.W.2d at 296.

A. STATUTORY ADVERSE POSSESSION AND PAYMENT OF TAXES

Defendant bases his statutory claims on two statutes, Tenn. Code Ann. §§ 28-2-105 and 28-2-109. Both sections require that the person claiming ownership have some "assurance of title" recorded in the register's office of the county in which the land lies. *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 376 (Tenn. 2007); *Jack*, 194 S.W.3d at 452. Finding there was no evidence of a deed or assurance of title naming Defendant or any of his predecessors, the trial court ruled in favor of Plaintiff on Defendant's statutory claims.

The period required for adverse possession under Tenn. Code Ann. § 28-2-105 is seven years where the adverse possessor has "assurance of title" that has been recorded for 30 years. *See* Tenn. Code Ann. § 28-2-105. Alternatively, Tenn. Code Ann. § 28-2-109 provides that a party is presumed to be the legal owner of real property when it has paid taxes on the property for 20 years and has "assurance of title" recorded in the appropriate office for more than 20 years. *See* Tenn. Code Ann. § 28-2-109.

Assurance of title is "something in writing which at face value, professes to pass title but which does not do it, either for want of title in the person making it or from the defective mode of the conveyance that is used." *Cumulus*, 226 S.W.3d at 376 n.3 (quoting 10 THOMPSON ON REAL PROPERTY § 87.12, at 145). Deeds may serve as assurance of title, but they must contain a description of the disputed property. *See Lemm v. Adams*, 955 S.W.2d 70, 73 n.1 (Tenn. Ct. App. 1997) ("[P]ossession does not appear to have been under color of title because his deed did not contain a description of the disputed strip of property."); *Blankenship v. Blankenship*, 658 S.W.2d 125, 127 (Tenn. Ct. App. 1983) (finding no assurance of title because the deed introduced by the defendant did not appear to include the disputed acreage). In contrast, tax maps cannot be used to establish boundary lines or assurance of title. *State ex rel Summers v. Whetsell*, No. E2005-01426-COA-R3-CV, 2006 WL 1408403, at *3 (Tenn. Ct. App. May 22, 2006); *see Cumulus*, 226 S.W.3d at 381.

The parties stipulated that one chain of title existed for Jackson Place and another chain of title existed for Sparks Farm; however, Defendant could not identify a deed or specific instrument of record that gave him title to Jackson Place. He could only point to statements he had heard from relatives over the years. While Defendant's brief makes reference to the deed conveying Sparks Farm to Walter and Bettie Stubblefield, that deed does not contain a description of Jackson Place. Instead, it notes that the 186-acre tract was bounded "on the East by Jackson," indicating that Jackson Place was outside of the boundaries of Sparks Farm, and that the two are different parcels. Therefore, the deed relied upon by Defendant does not establish assurance of title.

The 1990 tax map also cannot serve as Defendant's assurance of title. While it may place one tract of land inside the other, the tax map cannot be used to establish boundary lines or color of title. *See Cumulus*, 226 S.W.3d at 381. Tax maps do not "on their face profess to pass title" and, thus, cannot be assurance of title. *See id.* at 376 n.3.

For the above reasons, we have concluded that the evidence does not preponderate against the trial court's finding that Defendant does not have the requisite assurance of title to invoke Tenn. Code Ann. §§ 28-2-105 or 28-2-109.

B. COMMON LAW ADVERSE POSSESSION

The trial court found that Defendant had established "only sporadic individual acts of possession" with respect to the property in question and that Defendant had not established adverse possession.

Whether a party has adversely possessed another's property is a question of fact. *Cumulus*, 226 S.W.3d at 377; *see Wilson v. Price*, 195 S.W.3d 661, 666 (Tenn. Ct. App. 2005). The party claiming ownership by adverse possession bears the burden of proving the required elements by clear and convincing evidence. *Cumulus*, 226 S.W.3d at 377. Evidence of adverse possession is strictly construed, and every presumption must be in favor of the holder of legal title. *Foust*, 338 S.W.3d at 466 (citing *Moore v. Brannan*, 304 S.W.2d 660, 667 (Tenn. Ct. App. 1957)). To establish adverse possession, a party without assurance of title must show that his or her possession has been exclusive, adverse, continuous, open, and notorious for a period of 20 years. *Cumulus*, 226 S.W.3d at 376-77.

The degree of proof necessary to establish the requirements of adverse possession depends on the nature and character of the land in question. *Catlett*, 731 S.W.2d at 546; *see Panter v. Miller*, 698 S.W.2d 634, 636 (Tenn. Ct. App. 1985). When the land at issue is "inaccessible mountain land," a party is not necessarily required to build a fence around that land or devote it to farming. *Panter*, 698 S.W.2d at 636. Instead, a party may show ownership of such land by marking trees, painting boundary lines, putting up signs, or bulldozing and clearcutting around its claimed property. *See id.* However, acts like the taking of firewood and hunting are more indicative of an intent to trespass than an intent to seize and hold the land, even if the land is remote and mountainous. *See Heaton v. Steffen*, No. E2008-01564-COA-R3-CV, 2009 WL 2633050, at *5 (Tenn. Ct. App. Aug. 27, 2009) (citing *McCammon v. Meredith,* 830 S.W.2d 577, 580 (Tenn. Ct. App. 1991)).

Defendant's only evidence of adverse possession in regard to Jackson Place is that: Defendant cut firewood and wood for use in fences and barns located on other property; Defendant drove on the property from time to time; Defendant painted one of the boundary lines; Defendant told people to leave when he saw them on the property; and Defendant denied some hunters permission to hunt on the property.[8] However, Plaintiff also testified

[8] Defendant also seems to base a portion of his argument on the 1990 tax map, which places Jackson Place (the 125-acre tract) inside of Sparks Farm (the 186-acre tract). Defendant seems to suggest that his family's use and ownership of Sparks Farm and his other contiguous properties should be sufficient to satisfy the requirements of adverse possession for Jackson Place because the tax map depicts them as one parcel. Under this argument, acts of possession with respect to Defendant's other property would be "imputed" to Jackson Place. However, tax maps cannot be used to establish the acreage or boundaries of a piece of land. (continued...)

that his predecessors painted most, if not all of the boundary lines, and that he and his predecessors had used the property for hunting and timbering without any objection.

While the land in question is mountainous and may not be susceptible to uses like farming, the evidence does not preponderate against the trial court's determination that Defendant did not establish adverse possession. In the 20 years prior to this lawsuit, Defendant did not bulldoze or "clearcut" around this property. He did not put up signs prior to this lawsuit. He apparently painted one of this property's boundary lines, but Plaintiff appears to have painted all the others.

Realizing that evidence of adverse possession is strictly construed, and every presumption must be in favor of the holder of legal title, *see Foust*, 338 S.W.3d at 466; *see also Moore*, 304 S.W.2d at 667, the evidence in this record does not preponderate against the trial court's findings on the claim of adverse possession under the common law.

For the foregoing reasons, we therefore affirm the trial court's ruling that Plaintiff is the owner of the property in dispute and is entitled to the proceeds from all timber cut on the property.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Defendant, Jimmy Stubblefield.

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FRANK G. CLEMENT, JR., JUDGE

[8](...continued)
See Cumulus, 226 S.W.3d at 381. The deeds and the parties' stipulated chains of title describe two separate tracts of land. Thus, acts of possession with respect to Sparks Farm or other property Defendant owns do not demonstrate that Defendant adversely possessed Jackson Place.