

The Union Cemetery Burial Society of North Smithfield v. John D. Foisy et al., No. 20-182 (May 10, 2023)

Holding:

The Rhode Island Supreme Court vacated the judgement from Superior Court and remanded the record back to Superior Court for further proceedings concerning the defendants’ adverse possession claim. The Court found the trial justice overlooked or misconstrued material evidence, and that the defendant satisfied the “open and notorious elements” of their adverse possession claim.

Link to Decision: <https://www.courts.ri.gov/Courts/SupremeCourt/SupremeOpinions/20-182.pdf>

Key Takeaways:

1. In order to obtain title by adverse possession, “*a claimant must prove actual, open, notorious, hostile, continuous, and exclusive use of [the] property under a claim of right for at least a period of ten years.*” Clark, 226 A.3d at 690 (quoting *DiPippo v. Sperling*, 63 A.3d 503, 508 (R.I. 2013))
2. The Court found the Defendant’s maintenance of fencing, frequent mowing, and receipt of Town violation notices regarding his storage of scrap metal on the subject encroachments provided clear and convincing evidence they satisfied the open and notorious elements of their adverse possession claim.
3. The Court vacated the judgment and remanded the record to the Superior Court for further proceedings concerning the hostile and exclusive elements of the defendants’ adverse possession claim.

Facts:

The Union Cemetery Burial Society of North Smithfield (Plaintiff) argued John D. Foisy et al. (Defendant) encroached and trespassed on its property and prepared a survey which depicted two encroachments. The subject property in North Smithfield is Lot 142 of Assessor’s Plat 9, of which a portion is claimed to be owned by abutters who own Lot 132 on Assessor’s Plat 9.

On August 22, 2018, Plaintiff filed a motion for a permanent injunction, asserting that its property was protected by G.L. 1956 34-7-9. Defendants filed a counterclaim for adverse possession, asserting they had title to encroachments.

On October 21, 2019, the trial justice decided that the Defendants failed to satisfy the burden of showing that they had an actual, open, notorious, hostile, continuous, an exclusive use of the disputed portions under a claim of right for a ten-year period prior to 2012.

Analysis:

1. Open and Notorious

The defendants cited evidence of three Town notices of violation to their address (in 1981, 1997, and 2000), not the plaintiff’s address, requesting them to remove scrap metal from their yard as evidence of their open and notorious ownership of that area of land.

The Court agreed, stating they were convinced that the defendants satisfied the requirement that the property must be used in “*a manner consistent with how other owners of [similar property] typically would use such land, and whether these uses took place in a manner calculated to attract attention, thus placing the world on constructive notice of [their] adverse claim.*” *Tavares v. Beck*, 814 A.2d 346, 354 (R.I. 2003).

The Court decided that the defendant’s testimony established that the storage of scrap metal in the encroachment had been used throughout his life constituted “*clear and convincing evidence that the use by the defendants and their predecessor in title of the northern encroachment more than adequately satisfied the open and notorious criteria.*”

2. Clearly Defined Area

Plaintiffs argued that the Defendants failed to identify “*a clearly defined portion having been continuously possessed.*”

The Court noted that both parties jointly filed a statement of uncontested facts, where both parties expressly defined and agreed to the boundaries of the encroachments under dispute. Therefore, the Court decided that the Plaintiff is no longer free to contend the encroachments were not adequately established.

****All information contained on this website and the newsletter associated therewith are intended solely for informational purposes and in no way should be interpreted as providing legal advice.***