

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

In Re:)	
)	
DONALD K. KNOBLETT and)	
NANCY S. KNOBLETT,)	
)	
Debtors.)	
)	
MARATHON OIL COMPANY,)	
)	
Appellant,)	
)	
vs.)	97-CV-4083-JPG
)	
DONALD K. KNOBLETT, NANCY)	BK 94-30477
KNOBLETT, FARMER STATE BANK)	
OF PALESTINE, FS CREDIT and)	ADV. 96-3311
BOB KEARNEY, Trustee,)	
)	
Appellees.)	

MEMORANDUM AND ORDER

Gilbert, Chief Judge:

Before this Court is an appeal by Marathon Oil Company ("Marathon") of the Order by the United States Bankruptcy Court for the Southern District of Illinois in bankruptcy case no. 94-30477, dated February 13, 1997. That decision denied Marathon's claims that it had acquired title to property owned by the debtors, Donald and Nancy Knoblett ("The Knobletts"), through adverse possession and granted the Knobletts' motion for directed verdict at the close of Marathon's case in chief

The Knobletts filed a voluntary Chapter 12 bankruptcy petition and are currently operating as debtors in possession of land pursuant to their confirmed Chapter 12 plan. Marathon filed its four count complaint to establish ownership of the land appropriately with the bankruptcy court under 28 U.S.C. § 157 (1997). Likewise, the bankruptcy court's order was entered in a case or proceeding referred to the bankruptcy judge under that same section. Thus, this Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. § 158 (1997).

The parties requested oral argument. However, because the facts and legal arguments of this case are well-presented in the parties' briefs, the Court finds that oral argument is unnecessary pursuant

to Bankruptcy Rule 8012.¹

I. Facts

The facts contained in the record are essentially undisputed. Plaintiff, Marathon Oil Company, brought suit to quiet title to a 7.09 acre tract of land located in Crawford County, Illinois. The disputed property is landlocked without access from any common road. The nearest road is Route 33 that runs along the south side of a 20 acre tract of land containing a fenced-in gavel pit that is undisputedly owned by Marathon. The Marathon property lies directly south of the property in question. On the north side of the disputed property is an impassable drainage ditch and, beyond that, is land that the Knobletts have farmed for several years. A neighbor owns land on the west side of the disputed property, and to the east lies more wetlands.

On September 26, 1947, the Ohio Oil Company acquired a 27.09 acre tract of land located in Crawford County, Illinois, which included the smaller tract of land now in question. Subsequently, the Ohio Oil Company merged with Marathon Oil Company. Since the date of the acquisition, Marathon has controlled all direct access to the property, has maintained a roadway that runs across the property, has periodically mowed portions of the disputed tract, has repaired a nearby levee to protect the property, and has constructed and maintained a water pipeline and power lines that run across the property. Marathon has also paid property taxes on the south 20 acres, and on an undetermined parcel of land directly to the north of it, since 1947. Finally, Marathon produced various plat books at trial that showed it, not the Knobletts, as the owner of the property in question.

The Knobletts also lay claim to a portion of the tract purchased by Ohio Oil, and Marathon does not dispute that the Knobletts have the superior chain of title. Donald Knoblett testified that he

¹ Rule 8012 provides:

Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed.

Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issues or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

purchased a 7.09 acre tract of land (the disputed property) in 1978, and that he and his predecessors in interest had paid real estate taxes on it throughout the time that Marathon claims ownership. He further testified that he entered the disputed property three or four times per year.

This dispute arose after Marathon began making improvements on the disputed property. In June, 1996, Marathon drilled a water well 75 feet deep without objection from the Knobletts. But, after noticing that Marathon began more construction on the disputed property in October 1996, Mr. Knoblett posted "No Trespassing" signs on the land and removed the keys from Marathon's construction equipment.

Subsequent to learning of the Knobletts' claim to the property, Marathon initiated this action by filing its complaint with the United States Bankruptcy Court for the Southern District of Illinois. Marathon alleged that it acted under color of title and openly possessed the disputed 7.09 acre tract since 1947. R. 1 at 2. In Count I, Marathon claims ownership of the land through Illinois' 20 year adverse possession statute, 735 Ill. Comp. Stat. 5/13-101 (West 1996).² *Id.* In Count II, it also claims ownership of the land through Illinois' 7 year adverse possession statute, 735 Ill. Comp. Stat. 5/13-109 (West 1996).³ *Id.*

The Knobletts denied these allegations in their answer and asserted three affirmative defenses. R. 7 at 1. First, the Knobletts alleged that since they listed the disputed property in their bankruptcy schedule, Marathon should be bound by the Confirmed Chapter 12 plan. Second, the Knobletts

² Section 13-101 provides:

No person shall commence an action for the recovery of lands, nor make an entry thereon, unless within 20 years after the right to bring such action or make such entry first accrued, or within 20 years after he, she or those from, by, or under whom he or she claims, have acquired title or possession of the premises, except as provided in Section 13-102 through 13-122 of this Act.

³Section 13-109 provides:

Every person in the actual possession of lands or tenements, under claim and color of title, made in good faith, and who for 7 successive years continues in such possession, and also, during such time, pays all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of such lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, legacy or descent, before such 7 years have expired, and who continue such possession, and continue to pay the taxes as above set forth so as to complete the possession and payment of taxes for the term above set forth, are entitled to the benefit of this section.

argued that they had "a superior chain of title over Marathon Oil with respect to the property at issue."⁴ R.7 at 9. Finally, they argued that Marathon was not in exclusive possession of the land and therefore did not meet the elements of adverse possession under either Section 13-101 or 13-109.

A hearing was held before Bankruptcy Judge Fines, who determined that Marathon failed to prove all of the elements necessary to establish a claim of adverse possession and granted the Knobletts' motion for directed verdict at the close of Marathon's evidence. R. 13 at 3. This appeal followed.

II. Analysis

In a bankruptcy appeal, the bankruptcy court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses." Bankruptcy Rule 8013; *see also In re Lloyd*, 37 F.3d 271, 274 (7th Cir. 1994). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1967). Where questions of law are concerned, however, the district court will review the bankruptcy court's ruling *de novo*. *In re Voelker*, 42 F.3d 1050, 1051 (7th Cir. 1994).

Appellate review of orders from bankruptcy and district courts is governed by essentially the same legal standard. Thus, where the bankruptcy court directs a verdict pursuant to Bankruptcy Rule 7052, as in this case, the legal standard for review of Judgment on Partial Findings in Fed. R. Civ. P. 52(c) is applicable. Like Bankruptcy Rule 8013, Fed. R. Civ. P. 52 requires that the court's factual determinations be reviewed under the clearly erroneous standard. FED. R. CIV. P. 52(a) & (c); *Zeige Distributing Company, Inc. v. All Kitchens, Inc.*, 63 F. 3d 609, 612 (7th Cir. 1995). This Court may not re-judge the credibility of the witnesses, and may reverse only if, after reviewing the record, it is left with the firm belief that the bankruptcy court made a mistake. *Tyson v. Jones &*

⁴It is important to note that Marathon does not dispute that the Knobletts have the superior chain of title. After the Knobletts pleaded this fact in their answer and affirmative defenses, Marathon did not deny the fact.

Laughlin Steel Corp., 958 F.2d 756, 759- 60 (7th Cir. 1992); *Zeige*, 63 F.3d at 613. This Court must affirm if the bankruptcy court's determination of the facts is plausible in light of the record in its entirety. *Id.*

The question presented to this Court is not one of fact, but rather one regarding the application of historical facts to existing law. This equates to a mixed question of law and fact. For years, this circuit has adhered to the notion that mixed questions should be given the same deference that questions of fact receive. *United States v. Baldwin*, 60 F. 3d 363, 365 (7 th Cir. 1995). This is no longer proper since the Supreme Court's decision in *Ornelas v. United States*, ---U.S. ----, 116 S. Ct. 1657 (1996), where the Court determined that reviewing courts must consider de novo the mixed question of whether probable cause or reasonable suspicion exists to support a warrantless search under the Fourth Amendment. *Ornelas*, --- U.S. at ---- - ----, 116 S. Ct. at 1662-63. The Supreme Court explained its approach by stating that, “[t]he first part of the analysis involves only a determination of historical facts, but the second is a mixed question of law and fact: ‘[T]he historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.’” *Ornelas*, --- U.S. at ---, 116 S.Ct. at 1663 (*quoting Pullman-Standard v. Swint*, 456 U.S. 273, 289, n. 19, 102 S.Ct. 1781, 1791, n. 19 (1982)). Adopting this notion and extending it beyond the Fourth Amendment, the Seventh Circuit stated that "*Ornelas* cannot be limited, in a principled manner, to that single area of jurisdiction." *United States v. Alton Mills*, 1997 WL 450074, *1 (7th Cir. Aug. 8, 1997). That court explained that the application of adjudicative facts to a legal standard "presents the same need for uniformity of meaning and consistency of application that the Supreme Court had encountered in *Ornelas*." 1997 WL 450074, *2. *The Alton Mills Court* cautioned, however, that "the findings of historical fact and the reasonable inferences that the trier of fact draws from those findings are matters on which [the appellate courts) owe deference." *Id.* Accordingly, this Court will apply a clearly erroneous standard to the determinations of historical fact and inferences drawn therefrom, but will apply a de novo standard to mixed questions of law and fact, including the Bankruptcy Court's application of those facts to the settled law.

The foregoing recitation of the facts is substantially undisputed, and the Bankruptcy Court's determination of those facts was obviously not violative of the clearly erroneous standard. Regarding the application of those facts to the law, the Bankruptcy Judge explicitly stated that his decision was based primarily on "the uncontroverted testimony of the Debtor/Defendant Donald K. Knoblett that he had personally been on the tract of land in question three or four times a year since the date when he originally purchased the subject real estate." R. 13 at 3. Ultimately, the issue that must be decided by this Court asks whether that conduct alone is sufficient to defeat a claim of adverse possession by Marathon. It is.

The law in Illinois regarding adverse possession is very well settled as the Supreme Court of Illinois has ruled on the issue several times. For adverse possession to be proved under either statute, it is essential that five elements of possession exist concurrently for the statutory period. The adverse possessor must possess the disputed land in a manner that is "(1) continuous, (2) hostile or adverse, (3) actual, (4) open, notorious, and exclusive. . . , [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). The seven year statute requires, in addition to the previously listed five elements, that the adverse possessor pay property taxes on the disputed tract during the time of possession. Whether these elements are met remains a heavy burden on the plaintiff to demonstrate. "Presumptions are in favor of the title owner, and the burden of proof upon the adverse possessor requires that each element be proved by clear and unequivocal evidence." *Id.* Hence, an adverse possessor has a steep hill to climb in order to establish a prima facie case under either the 20-year statute or the 7-year statute.

The bankruptcy judge in this case found that Marathon failed to establish that: 1) it was in actual possession of the disputed property; 2) its possession of the disputed property was adverse to the interests of the Knobletts; and 3) its possession of the disputed property was exclusive. Although it is true that any one of the foregoing findings would be fatal to an adverse possessor, this Court will review each of those challenged determinations separately.

A. Actual Possession

Whether actual possession of property exists depends on the nature of the property in question

and the uses to which it is adaptable. *Walter v. Jones*, 15 Ill. 2d 220, 225, 154 N.E. 2d 250, 252-53 (1958). "The possession is not required to be more full than the character of the land admits." *Id.* The standard against which possession is tested requires sufficient acts by the adverse possessor that "will indicate to persons residing in the immediate neighborhood who has the exclusive management and control of the land." *Id.* Without explanation, the bankruptcy judge found that Marathon lacked actual possession.

Neither party to this action demonstrated acts of exclusive management and control of the disputed property. However, it is apparent from the record that Marathon exhibited many signs of control. Marathon presented evidence that the only access to the property from Route 33 required the keys to gates that Marathon controlled. Marathon also demonstrated its control through maintenance and construction of certain items on the disputed property. Moreover, Marathon produced plat books for the area that listed it as the owner of the land, not the Knobletts. The standard by which this Court is bound requires that possession be sufficient so as to leave no question in the minds of residents in the neighborhood who is in control of the land. *Walter*, 15 Ill. 2d at 225, 154 N.E. 2d at 252-53. As the plat books clearly demonstrate, the residents of this neighborhood believed Marathon to be the owner and controller of the disputed property. Unlike the Bankruptcy Judge, this Court feels that Marathon met its burden of proving actual possession. As will be demonstrated, however, concurrent possession with the rightful owner is insufficient for a claim of adverse possession.

B. Adverse Interest

Adverse possession, as the name artfully indicates, requires that any possession of the disputed property be adverse or hostile to that of the actual owner. Simply put, casual physical acts tending to show a claim of ownership do not constitute adverse possession, and permissive possession, even if long continued, does not confer title on the person in possession. *Chicago & N. W. Ry v. Kennedy*, 344 Ill. 309, 317-318, 176 N.E. 269 (1931); *Nitterauer v. Pulley*, 401 Ill. 494, 503, 82 N.E. 2d 643 (1948). Further, Illinois courts have stated that the controlling factor in determining if possession is hostile is whether the exercise of acts of ownership is incompatible with that of the record owner and all others. *Joiner*, 85 Ill. 2d at 81, 421 N.E.2d at 174.

Marathon argues that it has retained the disputed property adversely to the Knobletts, and their predecessors, since 1947. Marathon summarized its acts by stating that it

conducted a survey of the disputed property, erected utility poles on the disputed property, installed water pipelines under the disputed property, and erected a fence which effectively restricted access to the disputed property--all of which occurred in the 1940s. In addition, Marathon mowed those areas of the disputed property which were mowable.

Marathon concedes that the majority of its acts took place long before the Knobletts purchased the property in question. The evidence indicates that Marathon mowed the property in question during the 1980's and made other improvements to the property in 1996. Few people would object to another mowing their lawn and thereby saving that landowner the accompanying trouble. But to say that one could mow a lawn for twenty years and then claim title to it would be absurd. Although the landowner may be greatly appreciative, that appreciation would not extend to the point that he would be willing to give up title to his land.

Likewise, few people would tolerate the construction of a pipeline on their property. Mr. Knoblett once again acted no differently than the Court would expect other landowners to respond. Once serious construction began and was noticed, Mr. Knoblett took action to notify Marathon of his displeasure with their actions on his land. It appears to the Court that any acts by Marathon prior to October, 1996, were permitted, or not seen, by Mr. Knoblett. But, once those acts crossed the line of allowable use, Mr. Knoblett put his foot down and asserted his ownership of the disputed property. As such, any use by Marathon was permissive until after October, 1996. Although it is true that possession is not required to be more full than the character of the land permits, it is likewise true that the character of the land will dictate the lengths to which a person is willing to permit certain uses. The doctrine of adverse possession is to be taken very strictly and cannot be made out by implication or inference. *Cagle v. Valter*, 20 Ill. 2d 589, 592, 170 N.E. 2d 593, 595 (1960). "The presumptions are all in favor of the true owner, and the proof, in order to overcome such presumptions, must be strict, clear and unequivocal." *Id.* Marathon simply has not presented the necessary proof to overcome the presumptions against it on this element of adverse possession.

C. Exclusive Control

Even if Marathon had established all of the other necessary elements for adverse possession, it did not establish that its control of the land was exclusive for the limitations period. For possession to be exclusive, the claimant must demonstrate that he alone was in possession. "It is impossible that two persons or corporations should each be in the actual, exclusive, and hostile possession of one and the same premises at one and the same time, and, when there is an actual possession and occupancy by one, there is no place ... for a constructive and hostile possession by another." *Chicago & N. W. Ry. Co. v. Kennedy*, 344 Ill. 309, 318, 176 N.E. 269, 272 (Ill. 1931). In short, Marathon was not in exclusive possession of the disputed land.

Marathon argues that *Hauer v. Van Straaten Chemical Co.*, 415 Ill. 268, 112 N.E. 2d 623 (1953), should be "quite instructive" on the issue of exclusive possession. In *Hauer*, the Illinois Supreme Court held that a plaintiff had met his burden of producing evidence on each element regarding the ultimate issue of adverse possession. Specifically, the court noted that a fence separated the land in question from that of the true title holder. The court also noted that a plat book indicated the fence line as the border and that no one had disputed that boundary for a period of 30 years.

Marathon argues that the situation at hand is very similar to the situation faced in *Hauer*. Specifically, Marathon notes that the drainage ditch served as a clear boundary in this case much like the fence line in *Hauer*. Likewise, according to Marathon, both cases included plat books that were recorded inaccurately, but not corrected by the true owner.

Marathon omits two important points. First, two boundaries surround the disputed property at the north and south ends. Along the north side nearest the Knobletts' land lies the drainage ditch, and along the south is Marathon's fence. In 1948, the Illinois Supreme Court decided a boundary dispute in *Nitterauer v. Pulley*, 401 Ill. 494, 82 N.E. 2d 643 (Ill. 1948). Therein, the court stated that a fence between two boundaries would imply that the boundary between them was known, but "a natural drainage depression at or near the true line between two lots does not" constitute the boundary line. *Pulley*, 401 Ill. at 502, 82 N.E. 2d at 648. For Marathon to argue that the drainage ditch, not the fence, is the actual boundary between the two properties is contrary to established Illinois law, and rightfully so. A person does not lose possession of a portion of their property simply because a natural

drainage ditch separates a small tract from the remainder. If that were the case, any land intersected by a drainage ditch would be subject to a potential claim of adverse possession by a bordering land owner.

Second, unlike in *Hauer*, the Knobletts testified that they have continued to use their land periodically throughout their ownership. Marathon argues that it erected a fence, and, when coupled with the natural boundary of the drainage ditch, no one other than Marathon employees could access the land. This, however, did not prevent Mr. Knoblett from accessing the disputed property by other means. He testified that he had entered the property three or four times annually by crossing the "impassable drainage ditch" or by crossing his neighbor's land. Hearing Transcript at 14, 23. Moreover, one of Marathon's employees testified that the land was accessible from the west and possibly from the Knobletts' property. He also testified that significant indications of hunting on the land existed, including deer stands, shotgun shells, and areas for bird dogs to run. Hearing Transcript at 78-80. Regardless of how Mr. Knoblett entered the property, such passage demonstrates that the disputed property was not in the exclusive management and control of Marathon. Where two parties are in concurrent possession of the land, the presumption in favor of the true title holder cannot be overcome.

III. Conclusion

For adverse possession to be proved, it must be demonstrated, through clear and unequivocal proof, that the adverse possessor had (1) continuous, (2) hostile or adverse, (3) actual, (4) open, notorious, and exclusive possession of the disputed land (5) under claim of title inconsistent with that of the true owner. All presumptions are in favor of the title holder and against the interests of the adverse possessor. This Court has determined for the foregoing reasons that, although Marathon may have been in possession of the property under the appropriate standard, such possession was neither adverse nor exclusive. For the foregoing reasons, the decision by Bankruptcy Judge Fines is **AFFIRMED**.

IT IS SO ORDERED.

DATED: October 15, 1997

/s/ J. PHIL GILBERT
CHIEF JUDGE