

OHIO COURT OF APPEALS, THIRD APPELLATE DISTRICT

Gallaher v. Gelske

2022-Ohio-3097 (Ohio Ct. App. 2022) · No. 7-22-02 · Decided September 6, 2022

SUMMARY

The Ohio Third District Court of Appeals affirmed summary judgment in favor of Francis and Kelly Gelske in a dispute over ownership and possession of a portion of real property. The court held that the Gallahers could not establish the 21-year statutory period for adverse possession because their predecessors’ use of the property was permissive and therefore could not be tacked.

CASE DETAILS

COURT	Ohio Court of Appeals, Third Appellate District
WRITING FOR THE COURT	Per curiam; Zimmerman, P.J.; Miller, J.; Shaw, J.
JURISDICTION	Ohio
DECIDED	September 6, 2022
DOCKET	7-22-02
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Gallahers appealed the trial court's dismissal of their declaratory-judgment claim to quiet title and their claim for injunctive relief, as well as the trial court's grant of summary judgment to the Gelskes on their quiet-title and ejectment claims.
STANDARD OF REVIEW	Summary-judgment decisions are reviewed de novo. Summary judgment is proper when there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can reach only a conclusion adverse to the nonmoving party when the evidence is viewed in that party's favor.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Timothy Gallaher, Deanna Gallaher v. Francis Gelske, Kelly Gelske

TOPICS

- adverse possession
- quiet title
- ejectment
- summary judgment
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court properly granted the Gelskes summary judgment on their quiet-title and ejectment claims and denied the Gallahers' cross-motion.
2. Whether the Gallahers established a genuine issue of material fact regarding the 21-year statutory period required for adverse possession, including whether their parents' use of the property was adverse rather than permissive.

HOLDINGS

1. The Gallahers could not establish the statutory period for adverse possession because the undisputed evidence showed that their parents' use of the property was permissive. Consequently, the parents' use could not be tacked to the Gallahers' use as adverse possession.
2. The trial court properly granted summary judgment in favor of the Gelskes on their quiet-title and ejectment claims and denied the Gallahers' motion for summary judgment.

KEY QUOTATIONS

“The Supreme Court of Ohio has held that in order to acquire title by adverse possession, a party must prove, by clear and convincing evidence, exclusive possession and open, notorious, continuous, and adverse use for a period of 21 years.” (§ 12)

“In order to tack adverse uses, it must be established that (a) the parties and their predecessor are in privity, (b) the property was sequentially and continuously used, (c) the property was used in the same or similar manner, and (d) that the use was open, notorious, and adverse to the titleholder’s interest.” (§ 15)

FACTUAL BACKGROUND

The Gallahers purchased their parents' property in Henry County, Ohio, in 2017 and used a portion of the adjacent property owned by the Gelskes. The Gelskes purchased their property from Timothy Woodyard in 2020, and Woodyard had owned it since 1986. The Gallahers claimed that they and their parents had acquired the disputed property by adverse possession, but Woodyard testified without contradiction that he permitted the Gallahers' parents to mow approximately ten feet of his property to square off their backyard and control weeds.

PROCEDURAL HISTORY

The Gallahers filed a complaint seeking declaratory relief to quiet title based on adverse possession and injunctive relief. The Gelskes answered and counterclaimed for quiet title and ejectment, then moved for summary judgment. The Henry County Court of Common Pleas granted summary judgment to the Gelskes and denied the Gallahers' cross-motion. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Doe v. Shaffer, 90 Ohio St.3d 388, 390 (2000)
- ISHA, Inc. v. Risser, 2013-Ohio-2149, ¶ 25 (Ohio Ct. App. 3d Dist.)
- Costner Consulting Co. v. U.S. Bancorp, 195 Ohio App. 3d 477, 2011-Ohio-3822, ¶ 10 (Ohio Ct. App. 10th Dist.)
- State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn., 69 Ohio St.3d 217, 219 (1994)
- Carnes v. Siferd, 2011-Ohio-4467, ¶ 13 (Ohio Ct. App. 3d Dist.)
- Dresher v. Burt, 75 Ohio St.3d 280, 292 (1996)
- Turner v. Turner, 67 Ohio St.3d 337, 340 (1993)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-252, 106 S.Ct. 2505, 2510, 2507 (1986)
- Anderson v. Village of Alger, 1999-Ohio-777 (Ohio Ct. App. 3d Dist.)
- Montieth v. Twin Falls United Methodist Church, Inc., 68 Ohio App.2d 219, 224 (Ohio Ct. App. 9th Dist. 1980)
- Ohio Dept. of Adm. Serv. v. Morrow, 67 Ohio App.3d 225, 234 (Ohio Ct. App. 4th Dist. 1990)
- McNeely v. Langan, 22 Ohio St. 32, 37 (1871)
- Grace v. Koch, 81 Ohio St.3d 577 (1998)
- Cross v. Ledford, 161 Ohio St. 469 (1954)
- Thompson v. Hayslip, 74 Ohio App.3d 829, 832 (Ohio Ct. App. 4th Dist. 1991)
- Pennsylvania R. Co. v. Donovan, 111 Ohio St. 341, 349-350 (1924)
- Zipf v. Dalgarn, 114 Ohio St. 291, 296 (1926)

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