

Adverse Possession Not Established - Kansas

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- by Erin Herbold-Swalwell

A recent Kansas Court of Appeals opinion highlighted some important concepts with respect to adverse possession in Kansas. Generally, an individual that possesses someone else's land in an *open and notorious fashion* with the *intent* to take it away from them may become the true property owner after the expiration of a statutory time period and after quieting title in a court of law.¹ Adverse possession is a common law concept, so the application of the rule varies from state-to-state. The reason for the rule is to cure potential or actual defects in real estate titles by limiting the time during which challenges to ownership and possession of land that would impact title can be filed.

Typically, there are five elements that must be satisfied to perfect title in the party claiming title to real estate via adverse possession:

- Actual possession of the property (physical use that changes the status of the land)
- Open and notorious use of the property (visible and apparent use)
- Exclusive use of the property (i.e., as opposed to the true owner using the property)
- Hostile (adverse) use of the property (i.e., lack of permission)

- Continuous use of the property (use as a true owner for the statutory period)

Some states have additional requirements than the five common ones noted above. For example, in a minority of states, a good faith belief of ownership is required – a claim of title or right. Some states may require the person trying to claim ownership via adverse possession to pay the property taxes on the subject property.

In Kansas, it is not enough to *annually or occasionally enter* unenclosed land, and the requirement of *exclusive possession* is not satisfied if occupancy of the land is shared by the owner or agents and tenants of the owner. Furthermore, if the true owner of the parcel enters the disputed property in an *open manner with the intent to exclude* the possessor, that entry will toll the 15-year statute of limitations in Kansas and put the adverse possessor on notice that the true owner means to repossess the land. That will have the effect of essentially ejecting the possessor.

In Kansas, the adverse possession statute does not contain a “hostility” requirement.² This is unlike most other states, including Iowa. Some states, like Indiana, North Dakota, and Montana, require the adverse

possessor to pay property taxes and assessments for a continuous period, but that's not a prerequisite for application of the rule in Kansas.

In the present case, the plaintiffs, a married couple, brought a quiet title action asserting ownership by adverse possession to a 48.5 acre parcel in Barton County, Kansas. After examining deeds, the plaintiffs ascertained that others held the deed to the parcel. At trial, the plaintiffs argued that they knowingly and adversely possessed the land for 15 years. The plaintiffs did not claim a good-faith belief that they actually owned the parcel.

At trial, several facts regarding the disputed land emerged through the testimony of the parties. The parcel was located adjacent to the acreage the plaintiffs purchased in 1988 and was situated behind a solid group of trees. The parcel was only accessible by foot or by small vehicle, such as an ATV. The plaintiffs began cutting and baling grass on the disputed land right away to prevent the grass from spreading onto the property they purchased. In 1993, the plaintiffs testified that they started disking and clearing some parts of the land and constructing fences to block access to the disputed parcel. They also testified that they began planting Sudan grass on the parcel around that time.

The defendants, on the other hand, testified that they entered the property in late 1993, but did not see any indication of no trespassing signs, new fencing, grass bales, farm equipment, or cultivation. At that time, the defendants decided to leave the disputed parcel as a wildlife habitat. Both the plaintiffs and defendants gave hunters permission to hunt the land periodically. The defendants even went target shooting with family on the land in 2001. At that time, the defendants testified that they did not see any

farm equipment and did not notice signs that the plaintiffs were in possession of the parcel. The defendants walked the property every year, continually paid the property taxes, enrolled the land with FSA as non-farmable land, and leased it for oil and gas purposes.

In 2003, and in subsequent years, the plaintiffs began planting wheat, alfalfa, and hay on the parcel. Finally, the defendants noticed the plaintiffs' presence on the property and confronted the plaintiffs. In 2004, the defendants sent the plaintiffs documentation and a copy of the deed indicating they were the true owners. The next year, the defendants put up "no trespassing" signs on the land and sent a certified letter to the plaintiffs requesting that they no longer trespass on the land. The letter did not stop the plaintiffs from claiming the land. The plaintiffs went as far as entering into an oil and gas lease for the disputed land and attempted to register it with FSA- they were told they did not own the land.

The plaintiffs filed suit in 2008 to quiet title under a theory of adverse possession for more than 15 years. The trial court denied the plaintiffs' claims and held that the occasional entries were not enough to establish continuous possession for the requisite time period. The plaintiffs appealed, but the Kansas Court of Appeals affirmed. According to the appellate court, the initial period of possession (from 1988-1993) was occasional and the defendants knew of the trespass. The plaintiffs' disking of the land, beginning in 1993, was an attempt to put the true owners on notice and make an open claim to ownership. However, the plaintiffs' possession was not exclusive, as required by the Kansas statute.³ The plaintiffs and defendants both used the

land and allowed others to use the land by hunting.

Most importantly, the plaintiffs were not able to establish continuous and uninterrupted possession for the requisite 15-year time period. At the most, the plaintiffs may have been able to establish adverse possession for 12 years (from 1991-2003). However, the defendants' 2003 certified letter to the plaintiffs tolled the statute of limitations. The defendants were able to enter the property and prove through "acts of dominion" that they intended to resume possession of the parcel and that the plaintiffs were mere trespassers. According to the appellate court, the plaintiffs had over three years to search the public records to locate any evidence that would establish their claim of adverse possession but failed to do so. *Crone v. Nuss, et al., No. 104,342, 2011 Kan. App. LEXIS 131 (Kan. Ct. App. Sept. 9, 2011)*.

¹ Roger A. McEowen, Principles of Agricultural Law, Agricultural Law Press, Fall 2011 Edition.

² *Buchanan v. Rediger*, 26 Kan. App. 2d 59, 975 P.2d 1235 (1999) (co-tenant who is granted what appears to be entire interest in property may hold it adverse to undisclosed co-tenants; claim of adverse possession based upon good faith belief of ownership of the disputed property for statutory period).

³ K.S.A. 60-503.