

Opinion Outlines Adverse Possession Law in Texas

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Recently, the Amarillo Court of Appeals issued an opinion that outlines the law of adverse possession in Texas. In *Wells v. Johnson*, the Court analyzed an adverse possession claim with regard to ranch land used for grazing cattle and hunting and set forth the standards applicable in these situations. Although lengthy and complex, landowners should be aware of the law of adverse possession in order to protect their interests.

Factual Background

This case involves a 527 acre piece of property located in Hardeman County, Texas, just south of the Red River. The Wells family purchased the property in 1951 and held title to it in their name. Mr. Johnson, however, claims that he acquired title to the property pursuant to adverse possession by himself and his predecessors in interest.

Mrs. Wells testified that after purchasing the land in 1951, the family ran heifers on the disputed property, worked cattle each year on the property, and sowed grass to improve grazing conditions in 1953-54. In 1985, the Wells family leased their land for grazing and have continued to do so ever since. Additionally, beginning in 1992, the Wells family leased the land to hunters during deer and turkey season. Mrs. Wells testified she continually paid taxes on the property. Several neighboring landowners and hunting lessees testified that they never saw other people's cattle on the disputed property.

Mr. Moore, a predecessor in interest to Mr. Johnson, testified that his father owned the land directly north of the disputed property on the Oklahoma side of the river. Mr. Moore claimed that his father built the wash fence, built several windmills, cleaned wells, sowed grass, and ran cattle on the disputed property 6-9 months out of the year in the 1960s through the 1980's. In the early 1990's, the Moore family stopped using the disputed property. The property was sold to several people in the next few years, all of whom claim to have run cattle for a few months each year on the disputed property. Mr. Johnson received title to the land in 2004. Both Mr. Moore and Mr. Johnson claimed that Mr. Wells told them he had no interest in "the place" during conversations during the 1990's and 2000's.

Once Mr. Johnson purchased the property in 2004, he built new fences, added roads and culverts, cleared timber, planted a wheat field, and cleared brush. He used the property for hunting purposes and visited every weekend during hunting season. They did not live on the property. Mr. Johnson claims that he paid property taxes since 2004.

Trial Court Verdict

In 2007, Mrs. Wells filed a trespass to try title action, claiming that Mr. Johnson unlawfully entered and claimed possession of her property. Mr. Johnson counterclaimed that he acquired title to the property by adverse possession.

A trial jury found in favor of Mr. Johnson and the court entered a judgment decreeing him to be the rightful owner of the property. Specifically, the jury found that Mr. Johnson met the requirements of the 10 year statute of limitations and 25 year statute of limitations requiring use, cultivation and enjoyment of the property (discussed below).

The Wells family appealed, arguing the evidence was legally and factually insufficient to support the verdict.

Texas Adverse Possession Law

Adverse possession operates to give title of real property owned by another to the adverse possessor if certain conditions are met and if the rightful owner does not file suit in a timely fashion.

In order to acquire title to property by adverse possession, a party must prove six elements by preponderance of the evidence: (1) visible appropriation and possession of the property; (2) that is open and notorious; (3) that is peaceable; (4) under a claim of right; (5) that is adverse and hostile to the claim of the owner; and (6) that is consistent and continuous for the duration of the statutory period.

Under Texas law, there are five different types of adverse possession, each having different requirements and a different statutory period under the Texas Civil Practice and Remedies Code:

Three year statute of limitations (16.024). Actions brought to recover property held by another in peaceable and adverse possession under title or color of title must be brought no later than 3 years after the action accrues.

Five year statute of limitations (16.025). Actions to recover real property held in peaceable and adverse possession by another who cultivates, uses and enjoys the property, pays applicable taxes on the property, and claims the property under a duly registered deed must be filed within 5 years after the action accrues.

Ten year statute of limitations (16.026). A person must bring suit within 10 years of accrual of the claim to recover property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.

Twenty-five year statute of limitations (16.027). A person, even under legal disability, must bring suit within 25 years of accrual of the claim to recover property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.

Twenty-five year statute of limitations (16.028). A person, even under legal disability, must bring suit within 25 years of accrual of the claim to recover property held in peaceable and adverse possession by another who holds the property in good faith and under a deed or other instrument purporting to convey the property that is recorded in the county.

Court's Decision

The Court of Appeals reversed the jury verdict and held that the property at issue is rightfully owned by the Wells family. On appeal, the court considered only the ten-year and twenty-five year statute of limitations periods involving use, cultivation and enjoyment of the property. The court found that Mr. Johnson failed to prove visible appropriation and possession of the property as well as failing to show consistent and continuous use. Mr. Johnson argued that because the property was fenced and was used for grazing cattle for years, this element was met. The court disagreed.

Visible Appropriation and Possession

"While the fencing of land has long been recognized as visible appropriation of the property enclosed, use of the land for grazing cattle, along with other related uses, is insufficient to establish title by adverse possession where the disputed land was incidentally enclosed by a casual fence." Instead, if the disputed property is range land and the adverse claimant seeks to rely on the grazing of cattle to show adverse use, the claimant must show that the property was "designedly enclosed" by a fence. Numerous court decisions have held that where the fence existed prior to adverse possession, the mere grazing of cattle, hunting, growing crops, repairing the fence, cutting hay, and building deer blinds is not enough to prove adverse possession. Instead, the claimant would have to show a substantial modification of a fence or erection of a new fence in order to be considered a designed enclosure.

Here, there was no evidence that Mr. Johnson or his predecessors ever substantially modified the bordering fences. Further, there was no exclusive possession of the property by Mr. Johnson or his predecessors, because the Wells family and lessees also used the disputed property without interference and there was testimony from neighbors and lessees that no other cattle were seen on the disputed property. These facts fail to show visible appropriation and possession.

Consistent and Continuous Use

Under Texas law, this element requires proof that use was consistent, continuous and uninterrupted by temporary vacancy.

Here, the evidence established there were significant periods of time where no cattle were grazing the disputed property. Instead, testimony by Mr. Johnson and his predecessors showed they grazed cattle there only a few months out of the year. This evidence was insufficient to support an award of adverse possession.

What Can We Learn?

Although this case is factually complex, and the various statutes of adverse possession can be somewhat confusing, it is important that Texas landowners be aware of adverse possession.

First, landowners need to understand the concept of adverse possession and be aware that they could lose title to their property in the event another person is able to meet the required elements.

Second, landowners should be proactive in preventing adverse possession claims. They should frequently inspect their property for any suspicious activity. Anytime a landowner notices another person on his or

her property, or notices fences or improvements being erected or repaired, or finds that another person has been paying taxes on the landowner's property, the landowner should be concerned and seek legal counsel immediately. Failure to act could result in the landowner losing title to his or her property to the adverse possessor.

Finally, persons seeking to acquire title of range land by adverse possession should be aware of this case and the heightened level of activity required in order to acquire title by adverse possession when dealing with grazing cattle on range land. Mere grazing of cattle, seeding grass, and erecting improvements may not be enough to claim adverse possession of the land.