

4. When Plaintiffs purchased their property, they were told by the former owners that the boundary line was about fifteen feet from the edge of a structure on the property (which Plaintiffs subsequently converted into their house).
5. Since before Plaintiffs purchased their property and still to this day, a shallow ditch ran from the road in front of Plaintiffs' house, along the side and back to a creek at the rear of the property. The ditch is approximately ten feet from the edge of Plaintiffs' house. Plaintiffs assumed their boundary was on the far side of the ditch.
6. From the time they owned the property until sometime in 2007, Plaintiffs maintained the area between their house and the ditch, including the ditch itself, as part of their yard. Maintenance included mowing and removing weeds, leaves and debris. They also installed a small retaining wall adjacent to the house.
7. The Mahaffey's did not maintain the ditch area; when their property was mowed, only the area up to the ditch was included.
8. A survey was commissioned by Mr. Dulaney in 1994; that survey was performed by Daniel Vasallo and shows the actual boundary as described in the deeds as running about ten feet closer to the Plaintiffs' house than the ditch line which was treated by Plaintiffs as their boundary. The actual boundary runs very close to Plaintiffs' house and, in fact, the retaining wall extends past it. A survey performed by William Hilling in 2009 agrees with that of Mr. Vasallo; Defendants hold record title to the "disputed area".
9. After the survey and his purchase, Mr. Dulaney did not maintain the ditch area; when the property was mowed, only the area up to the ditch was included.

10. Although colored tape was placed on stakes and pins along the legal boundary during the 1994 survey, such was done while Plaintiffs were in Florida and they did not see the stakes or pins after their return. They continued to maintain the area and the Dulaney's did not mention the survey to them or ask that they cease from their maintenance of the area.
11. In 2007, Defendants placed landscaping timbers and "No trespassing" signs along the surveyed boundary line and otherwise made it known that they claimed the area which had previously been maintained by Plaintiffs.
12. In 1993, Plaintiffs transferred the property to "The Sagan Living Trust". Plaintiffs are trustees of that trust. The deed to the trust recites the identical description as is contained in the deed into the Plaintiffs and does not include the "disputed area."

DISCUSSION

As noted above, Plaintiffs claim the "disputed area", a strip of land approximately ten feet wide and two hundred feet long, by adverse possession. The law of adverse possession was recently thoroughly summarized by the Superior Court in Brennan v. Manchester Crossings, 708 A.2d 815,817-819 (Pa. Super. 1998) (citations omitted):

It is well settled that a party claiming title to real property by adverse possession must affirmatively prove that he or she had "actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land for twenty-one years." ... Each of these elements must exist, otherwise the possession will not confer title. ... "An adverse possessor must intend to hold the land for himself, and that intention must be made manifest by his acts ... He must keep his flag flying and present a hostile front to all adverse pretensions." ...

Broadly speaking, "actual possession" of land is dominion over the land; it is not equivalent to occupancy. ... There is no fixed rule,

however, by which the actual possession of real property by an adverse claimant may be determined in all cases. ... The determination of what constitutes actual possession of property for purposes of adverse possession depends on the facts of each case, and to a large extent on the character of the premises. ...

The words "visible and notorious possession," as applied to the adverse holding of land by a party without color of title, mean that the claim of ownership must be evidenced by conduct sufficient to place a reasonable person on notice that his or her land is being held by the claimant as his own. ...

To constitute distinct and exclusive possession for purposes of establishing title to real property by adverse possession, the claimant's possession need not be absolutely exclusive. Rather, it need only be a type of possession which would characterize an owner's use. For example, in Reed, the appellees, Robert and Audrey Reed, asserted title by adverse possession to a lot adjacent to their residence. The Reeds had maintained the lot by cutting the lawn and by planting and maintaining thereon various shrubbery and flowering plants. In affirming the trial court's determination that the Reeds had established title to the lot by adverse possession, Judge Wieand, writing for a unanimous court, opined:

Thus, the exclusive character of appellees' [the Reeds] possession was not destroyed because other persons occasionally passed unobserved over the lot. It was enough that appellees' possession was to the general exclusion of others and that they remonstrated with persons who attempted, without permission, to use the land.

Reed, 323 Pa. Super. at 556, 471 A.2d at 84 (citations omitted);

The word "hostile," as an element of adverse possession does not mean "ill will" or "hostility," but implies an assertion of ownership rights adverse to that of the true owner and all others. ... Simply stated, the possession must be "such as to import a denial of the owner's title." ... Furthermore, if all of the elements of adverse possession are established, the element of hostility is implied. ...

Finally, in order for adverse possession to ripen into title, it is necessary that such possession had been continuous and uninterrupted for the full statutory period. ... In this Commonwealth, as in most jurisdictions, the statutory period is twenty-one years. ... The law does not require that the claimant remain continuously on the land and perform acts of ownership from day to day. ... A temporary break or interruption, not of unreasonable duration, does not destroy the continuity of the adverse claimant's possession. ...

A review of various cases leads the Court to conclude that Plaintiffs' actions of mowing and maintenance of the disputed area as part of their yard was sufficient to constitute open and notorious "possession" of the property. *See e.g. Klos v. Molenda*, 513 A.2d 490 (Pa. Super. 1986), citing *Reed v. Wolyniec*, 471 A.2d 80 (Pa. Super. 1983) (use of land for lawn purposes and the continuous maintenance thereof in connection with a residence are sufficient to establish adverse possession). Further, such possession was exclusive as the evidence shows that from 1968 until 2007, only Plaintiffs maintained the area.¹ Finally, Plaintiffs possession from 1968 through 2007 more than fulfilled the requisite period.

Defendants contend nevertheless that since the current owner of the property, Plaintiffs as trustees of the Sagan Living Trust, have had possession of the property since only 1993, and since Plaintiffs as trustees cannot "tack on" the period during which Plaintiffs as individuals owned the property, the requisite period has not been fulfilled. In support of this position, Defendants cite *Moore v. Duran*, 687 A.2d 822 (Pa Super. 1996), wherein the Court found that without privity between them regarding the land, the new owner could not rely on the period of possession of the former owner, and that since the deed between them did not include the disputed parcel, it did not provide such privity. While it is true that in order for possession to be "tacked", there must be privity between the successive occupants of the property, *Fred E. Young, Inc. v. Brush Mt.*

Sportsmen's Ass'n, 697 A.2d 984 (Pa. Super. 1997), in the instant case, the Court finds privity between the Sagans and the Sagan Living Trust.

Black's Law Dictionary defines privity as "mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right." Here, Plaintiffs conveyed the property to a living trust and the trust holds the property for their benefit during their lifetime. Therefore, the interest of Plaintiffs and the trust are actually identical.²

Finally, Defendants argue that Plaintiffs should be barred by laches from pursuing their claim. A party asserting laches must show, first, a delay arising from the other party's failure to exercise due diligence, and second, prejudice from the delay. Kehoe v. Gilroy, 467 A.2d 1 (Pa. Super 1983). To show prejudice, a party must show that some change in the condition or relations of the parties occurred during the period the complainant unreasonably failed to act. Id. In the instant case, even were the Court to conclude that Plaintiffs were aware of the 1994 survey and its significance, and that their failure to bring the instant action until 2008 represents a lack of due diligence, Defendants have still failed to even allege, let alone prove, prejudice resulting from the delay.

Accordingly, the Court draws the following:

CONCLUSIONS OF LAW

1. Plaintiffs have acquired title to the property in dispute by adverse possession.

¹ Although Defendants presented testimony that Mr. Dulaney and Mr. Probst also mowed the ditch and the area around it, the Court credits Plaintiffs' testimony that they did not do so.

² The Court notes with interest the provisions of the realty transfer tax law which exempt from payment of the tax any transfer of realty to the trustee of a living trust by the settlor of the trust, 72 Pa.C.S. Section 8102-C.3(8.1), and treat a transfer from a living trust during the settlor's lifetime as if such transfer were made directly from the settlor to the grantee. 72 Pa.C.S. Section 8102-C.3(9).

2. The Sagan Living Trust is in privity with John and Fay Sagan and thus entitled to the benefit of the years of possession back to 1968.
3. Plaintiffs' claim is not barred by laches.

VERDICT

AND NOW, this 9th day of July 2010, for the foregoing reasons, judgment on the adverse possession claim is hereby entered in favor of Plaintiffs. Plaintiffs are awarded the strip of land from their deeded northern boundary up to and including the drainage ditch that runs along the northern edge of their property. Specifically, the Court adopts the attached survey³ and declares that the northern boundary of Plaintiffs' property is properly defined thereon.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Christian Frey, Esq.
Kristine Waltz, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

³ This survey is a portion of the survey prepared by William Hilling in 2009, and submitted as Plaintiffs' Exhibit 1.