

ORIGINAL

IN THE SUPREME COURT OF OHIO

WILLIAM ARNHOLT, et al., :
 :
 : Case No. 2011-1237
 :
 Plaintiffs -Appellees :
 :
 : On Appeal from the Licking County
 : Court of Appeals, Fifth Appellate
 vs. : District, Court of Appeals Case No.
 : 2010 CA 00091
 :
 JOHN CARLISLE :
 :
 :
 :
 Defendant-Appellant. :

**PLAINTIFFS/APPELLEES WILLIAM ARNHOLT AND JANIE GAIL ARNHOLT'S
MEMORANDUM IN RESPONSE TO DEFENDANT/APPELLANT'S MEMORANDUM
IN SUPPORT OF JURISDICTION**

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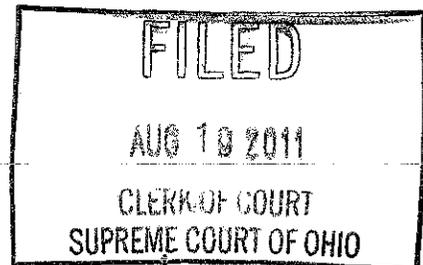


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I. This Case Does Not Present A Matter of Public and Great General Interest

Appellant's statement of why his appeal is a matter of public and great general interest essentially has two bases. First, he claims this Court needs to reaffirm that equities are not to be considered in adverse possession cases. Second, he contends this Court also needs to reaffirm that the elements of adverse possession must be strictly construed and proven by clear and convincing evidence. To present a matter of public and great general interest, a case must do more than simply call for the reiteration of existing law, particularly where the issues raised have been addressed just few years ago. The Appellant's call to reaffirm existing law falls woefully short of demonstrating any public and great general interest which merits a review of this case by this Court.

In support of his claim of a need to reaffirm existing law, Appellant cites the need to "reassure" those "clamoring" to abolish adverse possession. This need is spurious at best, because the purported "clamor" is more like a whisper from the end of a vacant hallway. Adverse possession is one of the first legal concepts taught to first-year law students in law school. It is a doctrine that has existed and been applied for hundreds of years and has a "venerable place in the regulation of the use and ownership of real property in Ohio." *Evanich v. Bridge* (2008), 119 Ohio St.3d 260, 263. The somewhat harsh result arising from the application of the doctrine is balanced by the requirements that it be proven by clear and convincing evidence and its elements strictly applied. The call by a single judge in a concurring opinion twenty-five years ago for the abrogation of adverse possession hardly supports the presence of the "clamor" suggested by the Appellant.

The Appellant seizes upon the recognition of the *Evanich* Court of the long standing history of adverse possession in Ohio jurisprudence as a sign that somehow *Evanich* relaxed the requirement that the doctrine be strictly applied. All that has to be done to dispel that notion is to review the *Evanich* syllabus, where this Court reiterated the requirement that all elements must be proven by

clear and convincing evidence. *Id.*, Syl. It can hardly be of a matter of public and great general interest to repeat again a statement of law that was clearly stated only three years ago. This is particularly true where the Court of Appeals clearly recognized and applied the clear and convincing evidence and strict application standards in affirming the jury's verdict below. (Ct. App. Dec., ¶17).

Appellant's attempt to characterize the decisions on certain issues by the Appellate Court as "equitable" is simply perplexing, and is of no support for the argument that this case is a matter of public or great general interest. Three of the four assignments of error raised by the Defendant below asserted that the jury verdict was against the manifest weight of the evidence. As such, the Court of Appeals had to review the trial record to determine if there was some competent, credible evidence going to all elements of the adverse possession claim. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, Syl. All of the purported "equitable" decisions of the Court of Appeals are simply its findings on whether there was some competent, credible evidence to support the jury's verdict that the Appellees adversely possessed the land at issue. Because the Appellate Court did not rule in the Appellant's favor, the Appellate Court's rulings on Appellant's manifest weight assignments of error are now unexplainably transformed into "equitable" decisions. This is nothing more than a labeling exercise by the Appellant in which he tries to create issues where none exist. Moreover, even if these decisions are equitable, which they are not, an error of this nature is not a matter of public and great general interest, as it is limited to the facts of this case.¹

Evanich was decided only three years ago. It reiterated and confirmed a rule of law concerning the adverse possession doctrine that dates back to 1866. It has only been cited eleven

¹ For example, Appellant's claims that the Court of Appeals erred in finding that Marie Arnholt's uses of the property while Mr. Arnholt was absent (i.e. her mowing, storing a variety of personal property and using a burn pit) supported the adverse possession claim. Even if Appellant is correct (which he is not), this is an alleged error concerning the interpretation of evidence in this case, and not a matter of public or great general interest.

times since it was issued. As recently as 2007 this Court has stated that the doctrine of adverse possession is disfavored. See *Houck v. Bd. of Park Commrs. of the Huron Cty. Park Dist.*, 116 Ohio St.3d 148, 2007 Ohio 5586. The very linchpin of Defendant's claim that this case is a matter of public and great general interest is entirely undermined by this Court's clear and unambiguous recent rulings on those points.

Moreover, Appellant incorrectly states that the Court of Appeals "extended" the ruling in *Evanich* that intent to possess is proved objectively. The intent to possess is the same for all possessors of the property at issue, whether the possessor is a single possessor of twenty-one years or one of a series of possessors. Whether a possessor is intervening or otherwise is a distinction without a difference. The objective nature of the proof of possession applies equally to both. And since *Evanich* was affirming a principal that had been the law of Ohio for more than 100 years, the Court of Appeals was hardly "extending" *Evanich* by applying the objective requirement to Marie Arnholt's possession in this case.

The interest in this case is limited to its parties, and is not in any way, shape or form a matter of public and great general interest. See *Williamson v. Rubick* (1960), 171 Ohio St. 253. This Court should decline jurisdiction of this appeal.

II. STATEMENT OF THE CASE AND FACTS

This is an appeal of the Fifth District's affirmation of a jury verdict awarding property (the "Adverse Possession Property") by adverse possession to Plaintiffs-Appellees William W. Arnholt ("Mr. Arnholt") and Janie Gail Arnholt ("Gail") (sometimes collectively referred to herein as the "Arnholts" or "Appellees"). The Arnholts initiated the action against Defendant-Appellant John Carlisle (hereinafter "Appellant") below by filing a complaint for adverse possession in the Licking County Common Pleas Court on May 21, 2008.

The jury in the trial below heard three days of testimony. This evidence led the jury, after being appropriately instructed as to the burden of proof required for clear and convincing evidence, to answer interrogatories indicating that each and every one of the elements of adverse possession were so proven. The jury reached in less than ninety minutes a unanimous verdict that the Arnholts had acquired the Adverse Possession Property through the doctrine of adverse possession.

On August 12, 2010, Appellant filed his Notice of Appeal, asserting four assignments of error, the majority of which attacked the jury's verdict as being against the manifest weight of the evidence. The Court of Appeals, after a careful and thoughtful analysis, unanimously affirmed the trial court. In so doing, the Court of Appeals correctly applied the clear and convincing standard and acknowledged that the doctrine of adverse possession is disfavored and its elements stringent. (Ct. App. Dec., ¶17).

Mr. Arnholt and his ex-wife Marie Arnholt purchased 5.8 acres located at 6961 Palmer Road ("6961 Palmer Road") in 1973. The Adverse Possession Property is a triangular shaped tract of property located just south and adjacent to the Arnholts' deeded property on 6961 Palmer Road. Since that purchase, Mr. Arnholt has always considered the southern boundary of his property as running along an old barbed wire farm fence that followed, and was just south of, the small stream located at the southern end of the 6961 Palmer Road property (the "Farm Fence").

Appellant's summary of the facts reads as if the Arnholts' evidence of adverse possession presented at the trial was terse and incomplete. To the contrary, the jury below was presented with overwhelming evidence concerning the treatment of the Adverse Possession Property from 1976 through the filing of the suit in 2008. The jury heard the testimony of the Arnholts and eight additional witnesses covering a time span from 1973 through 2008. The Arnholts introduced over 40 exhibits.

In 1976, Mr. Arnholt and his family moved into a house at 6961 Palmer Road that Mr. Arnholt began constructing in 1975. In 1976, in part to protect the stream banks from erosion, Mr. Arnholt began an eight to ten-year process of systematic planting of hardwood saplings around the stream, with focus on the south side of the stream. He testified when he began planting the trees the area around the stream was essentially devoid of trees except for a few large trees at the southern end of the property. The absence of many trees around the creek was corroborated by the testimony of Melvin Lewis, and Mr. Arnholt's sister, Carol Lewis. By Mr. Arnholt's conservative estimate, he planted approximately 150 trees on the Adverse Possession Property, with approximately 94 of those located on the south side of the creek.

After moving into the house in 1976, the Arnholts' immediately began maintaining and mowing the grass in the Adverse Possession Property back to the creek. This use continued from 1976 through 2008, and was corroborated by the testimony of at least seven witnesses.

Mr. Arnholt testified that as early as 1981, he tore down some old barns and the Pickerington Creamery, and kept the salvage material from those projects on the Adverse Possession Property. Appellant's characterization of this debris pile as "a few boards and bricks" is a gross misstatement of the record. The pile was several feet high, fifteen to twenty feet wide and over twenty feet long, and described by Mr. Arnholts ex-wife as his "personal junkyard." Several witnesses testified that large pile of construction debris was there from 1980 to 1998.

The record is replete with other open and obvious uses of the Adverse Possession Property by the Arnholts. Mr. Arnholt testified that he stored as many as eight or nine Volkswagen Beetles on the ~~Adverse Possession Property from the late 1970's until 1988.~~ He also shored up the banks of the stream with dry cinder blocks and broken drain tile in the late 1970s. The Arnholt children testified that when they were young they would play in the creek, and clean it out when it became clogged

with debris and fallen trees. Mr. Arnholt's son testified that he continued to clean out the creek until he left 6961 Palmer Road in 1994. From 1986 to 1990, Mr. Arnholt stored on the Adverse Possession Property a large stack of cinder blocks. While his son lived on the property from 1976 through 1994, the family used the burn pile located on the Adverse Possession Property about once a week.

Mr. Arnholt and Marie Arnholt divorced in 1993. While he remained a co-owner of his deeded property at 6961 Palmer Road, there was an approximate 30 month period after the divorce was finalized that Mr. Arnholt did not reside there. However, many of Mr. Arnholt's uses of the Adverse Possession Property continued while he was absent from that residence. Mr. Arnholt continued to store his massive pile of construction materials there and his trees planted up to seventeen years before continued to grow. His ex-wife and children's uses of the Adverse Possession Property continued as they mowed the grass, stored some kennel type structures and truck topper there, and continued to use the burn pile. Clearly, if Donald Householder, the person whose land was purchased by Appellant in foreclosure in 2008, would have visited the Adverse Possession Property while Mr. Arnholt was away, he would have noticed no difference in the use of the Adverse Possession Property behind the Arnholts' house.

The Appellees continued their adverse possession of the Adverse Possession Property when they returned in 1995. They continued to mow the grass to the creek. Mr. Arnholt began the construction of an outbuilding in 1996 which extended twenty feet onto the Adverse Possession Property which was completed in 1999. In 1997, the Arnholts constructed an earthen levy in the creek, and dug out a creek pond as well, in hopes of controlling the flow of water. Mr. Arnholt resumed planting trees on the Adverse Possession Property. None of the many and varied uses of the Adverse Possession Property were done with the permission of the record title holder Donald

Householder. That the Arnholts had unfurled the flag of ownership of their backyard was recognized by Mr. Arnholt's current neighbor of 12 years. When he was asked at trial if he understood what the dispute was between the Arnholts and Mr. Carlisle, Mr. Ferraro testified "the property that John Carlisle bought is in the backyard of Bill and Gail Arnholt" The jury obviously agreed. After reviewing the record to determine if there was some competent, credible evidence to support the jury's verdict, the Court of Appeals agreed as well.

III. Argument In Opposition to Appellant's Propositions of Law

A. Appellant's First Proposition of Law *restated*: Personal Property, Allegedly Owned by the Claimant, Placed on the Adverse Possession Property is Insufficient to Satisfy the Requirements of Adverse Possession when the Claimant is Absent For an Unreasonable Length of Time.

1. Appellant's First Proposition Of Law Should Be Rejected As It Is Unneeded, Too Restrictive And Is Inconsistent With Long Standing Law Concerning The Application Of The Elements Of Adverse Possession.

Appellant's First Proposition of Law should not be adopted for several reasons. First, the hard and fast rule espoused in this proposition ignores the basic premise that has been repeated by courts time and time again when considering adverse possession cases: that each case of adverse possession rests on its own peculiar facts. *See, e.g., Rodgers v. Pahoundis*, (2008), 178 Ohio App.3d 229, 242; *Bullion v. Gahm* (2005), 164 Ohio App.3d 344, 349. The "peculiar facts" in the instant case are a fact pattern that includes among other facts an adverse possession claimant ordered by a court to vacate his property during a portion of the adverse possession period. The trier of fact, in this case the jury, after being properly instructed, was allowed to consider all the peculiar facts of this case in determining whether the Arnholts had proven each element of adverse possession, including the continuous element. In reviewing an appeal in which the Appellant asserted that the jury's verdict was against the manifest weight of the evidence, the Court of Appeals searched the record to determine if there was some relevant, competent and credible evidence to support the

jury's verdict. (Ct. of App. Dec., ¶16) The Court of Appeals found sufficient evidence to support that "the jury could have at least properly concluded that tacking was proven during the thirty months in question." (Ct. of App. Dec., ¶21)

In its discussion of Appellant's second assignment of error, the Court of Appeals also noted that there was some competent, credible evidence of Mr. Arnholt's continued use of the Adverse Possession Property while absent to support the jury's verdict. (Ct. of App. Dec., ¶26) Appellant's claim that the Court of Appeals was attempting to "cure" a defect in the Arnholts' tacking argument is a blatant misstatement of the Court of Appeals' decision. In discussing Mr. Arnholt's use, the Court of Appeals was not curing a defect. Rather, it was merely recognizing that the record supported an alternative factual basis, Mr. Arnholt's use, for affirming the jury's verdict holding that the Arnholts had established the continuous element.

Neither did the Court of Appeals shift the burden of proof to Appellant in finding there was no evidence Mr. Arnholt abandoned his construction debris during his forced absence. It merely stated what competent, credible evidence was shown by the record. Indeed, Appellant invited that analysis by arguing in his Brief below that Mr. Arnholt abandoned the construction debris. The Court of Appeals' comment that "there is no demonstration in the record that [Mr. Arnholt] abandoned these materials" was merely a recognition that the record was replete with evidence that the construction debris was always Mr. Arnholt's, and that was not rebutted by the Appellant. (Ct. of App. Dec., ¶21) The Appellant is confusing the burden of proof with the burden of persuasion, the latter of which often shifts at trial.

Second, the Appellant tries without success to attack the continuous element, straining to argue Mr. Arnholt had to be personally present at 6961 Palmer Road to "possess" the Adverse Possession Property. Mr. Arnholt was not required live on the premises or even visit frequently the

Adverse Possession Property. Rather, he simply must occupy the land in the way the owner would occupy the same type of land. *See, e.g., Vanasdal v. Brinker* (1985), 27 Ohio App.3d 298, 299; *King v. Hazen*, 11th Dist. App. No. 2005-A-0031, 2006-Ohio-4823, ¶61. The uses for which the land is suited are taken into account. *Id.* at ¶61. Mr. Arnholt also need not be personally present at all times to satisfy the continuity element. *Id.* at ¶62. Occasional use of the land will be sufficient if such use is appropriate for the location of the land. *Dreslinski v. Bugary*, 11th Dist. App. No. 91-A-1639, 1992 Ohio App. Lexis 1248 at *3. Furthermore, to satisfy the continuous element, the use just must be “continuous enough to indicate prolonged and substantial use.” *Ault v. Prairie Farmers Co-operative Co.*, 6th Dist. App., No. WD-81-21, 1981 Ohio App. LEXIS 11382 at *6. The use of the property also must be sufficient to put the true owner on notice of the adverse possessor’s use of the land. *See, e.g., Hindall v. Martinez* (1990), 69 Ohio App.3d 580, 583.

The jury was presented with some competent and credible evidence that Mr. Arnholt’s use of the Adverse Possession Property continued while he was absent, and that evidence was sufficient to put Mr. Householder on notice of his use of the Adverse Possession Property. The trees he planted all over the Adverse Possession Property, particularly down by the stream beginning in 1976, continued to grow and thrive in his absence. What Marie Arnholt called his “personal junkyard” of open and obvious construction materials (which by 1993 had been there for as long as 12 years) remained there. The Court of Appeals found that these uses were some competent and credible evidence Mr. Arnholt’s continued use of rural land consistent with the “type of possession that an owner of such land would usually maintain.” 601 O.J.I. CV 601.03.4.

Third, Appellant’s contention that the Court of Appeals’ decision gives “equitable” treatment to the Arnholts is simply a desperate attempt to employ a rule where it has no relevance or application. There is nothing in the Court of Appeals’ decision that even remotely suggests that the

Court of Appeals did anything other than exercise the appropriate manner of review where the Appellant asserted that the jury verdict was against the manifest weight of the evidence. It reviewed the record to determine whether there was some competent and credible evidence to support the jury's verdict. Contrary to the Appellant's contention, nowhere in the Court of Appeals' decision is there any discussion whatsoever suggesting that the standard of proof applied was anything other than clear and convincing evidence. Neither is there any intimation that the Court of Appeals relaxed in any way the burden of proof required of the Arnholts, or ignored the adverse possession elements in an attempt to fashion an "equitable" result.

The Appellant's attempt to fashion a particular and narrow rule relating to a claimant's use of real property is unwarranted and will only serve to confuse a well-established area of law. The storage of personal property on real property has long been held to among "peculiar facts" that can support an adverse possession claim. *See, e.g., Kaufman v. Geisken Enterprises, Ltd.* (3rd Dist., 2003), 2003-Ohio-1027, ¶34 (parking cars, storing firewood, piling debris, placing burn barrels are all relevant uses of property for purposes of adverse possession). "Bright line" rules such as the one proposed by the Appellant should be avoided in adverse possession because whether a particular use of real property is relevant to intent to possess depends upon the location and setting of the real property. *Id.*, ¶32. A jury can decide, as it did here after being properly instructed, that the planting of trees and the storage of a huge pile of construction debris, can be uses real property sufficient to support adverse possession. It can also determine what is reasonable with respect to the length of time a person is out of possession of the claimed property in the context of the circumstances pertaining to that absence.² Insofar as adverse possession claims hinge on the totality of the peculiar

²The divorce decree upon which Appellant relies gave use of the marital residence to Marie Arnholt until their youngest child graduated from high school. After that the decree contemplated Mr.

facts presented in that case, there certainly is no need create narrow rules for particular uses, and how those uses fit into the adverse possession claim in that particular case. *Id.* (adverse possession claims should be judged on a case-by- case basis).

Contrary to the assertions of the Appellant, there is nothing about the Court of Appeals' decision which lessens in any way the requirement that the adverse possessor "unfurl his flag." Indeed, with respect to the two uses attacked by Appellant, by 1993 Mr. Arnholt's flag had been unfurled for at least 17 years. These uses continued in an open and obvious manner, and were in no way interrupted by his absence. And these trees and construction debris were not "placeholders." Rather, they were evidence of Mr. Arnholt's continued use of the Adverse Possession Property.

B. Appellant's Second Proposition of Law restated: The Adverse Possession Claimant Relying Upon the Doctrine of Tacking Must Establish That The "Tacked" Period of Possession Satisfies All The Requirements Of Adverse Possession by Clear and Convincing Evidence. Further, The Party Who Allegedly Possessed The Property During The Period To Be "Tacked" May Deny His Intent to Possess the Property.

1. Appellant's Second Proposition Of Law Should Be Rejected As Its First Sentence Merely Restates Adverse Possession Law Which Is Not In Dispute, It Is Internally Inconsistent, And It Misinterprets *Evanich v. Bridge*.

Appellant's second proposition of law is flawed for several reasons. First, with respect to the first sentence, it sets forth a rule of law that has never been in doubt and upon which no guidance or direction is needed. Second, the Court of Appeals applied all the elements of adverse possession when reviewing the record for evidence of tacking. Thus if the Court were to take this case it would be akin to an advisory opinion on an issue of concern to no one but the Appellant. Third, Appellant's argument concerning *Evanich* ignores its holding that the adverse possessor's intent to possess is proven objectively, and the long standing Ohio Supreme Court precedence on which that holding is

Arnholt buying out Marie Arnholt's interest, which the jury could have considered when deliberating on whether it was likely Mr. Arnholt would return to 6961 Palmer Road

based. Finally, Appellant's claim that the intent of a tacking occupier of the land should be proven differently than the adverse possessor that files suit is inconsistent with the first sentence of his proposition insofar as it applies a different standard to the tacking occupier than to the person claiming the property by adverse possession.

All parties to this case will no doubt agree that the scarce resources of this Court should not be devoted to determining legal questions on which there is no conflict or debate. Even though there is not an Ohio Supreme Court case which directly addresses the question of whether all the elements of adverse possession must be proven by clear and convincing evidence for the period of time a tacking party occupies the real property claimed by adverse possession, that is a proposition for which there is no legitimate debate. Appellant, while urging this court to adopt his second proposition of law, has failed to cite a single case in which any court in Ohio has applied the tacking doctrine and not required that all the elements of the adverse possession be met by the tacking possessor. Absent any dispute among the Ohio Courts, or question about the application of the tacking doctrine, there is simply no reason for this Court to take this case to make a statement about a doctrine that is well understood and correctly applied by Ohio courts.

More importantly, the Court of Appeals correctly stated and applied the tacking doctrine in its consideration of the appeal below. In its decision, the Court of Appeals noted that "it is well-established that in seeking to establish the necessary twenty-one year period, a party may add his own term of adverse use to *any period of adverse use* by a prior succeeding owner in privity with the current owner." (Ct. of App. Dec., ¶20) (emphasis added) The Court of Appeals had already addressed the necessity of proving all elements of adverse possession, so its statement here was simply a shorthand way to state that the elements of adverse possession must be proved for the tacking period. In discussing this tacking situation, the Court of Appeals focused on the Appellant's

attack of the continuous element. The Court of Appeals then found that there was some competent and credible evidence to support the jury's inferred determination that tacking existed as the use during this period remained consistent with the uses when Mr. Arnholt resided at 6961 Palmer Road. Because this case does not involve an appellate court stating that an adverse possessor does not need to prove all elements of adverse possession for the tacking occupant, the Appellant is essentially asking this Court for an advisory opinion, since the Court of Appeals did not violate the rule of law proposed by the Appellant.

Since *Evanich* was decided, Appellant has demonstrated a fundamental misunderstanding of *Evanich* and its holding that "in a claim for adverse possession, the intent to possess another's property is objective rather than subjective" *Evanich, supra*, at Syl. This is puzzling insofar as *Evanich* merely reasserts the law on this issue that has been followed in Ohio since as early as 1866. As noted by the *Evanich* court, "[i]nto the recesses of his mind, his motives or purposes, his guilt or innocence, no inquiry is made. It is for this obvious reason that *it is the visible and adverse possession, with an intention to possess, that constitutes its adverse character, not the remote views or belief of the possessor.*" *Id.* at 262, quoting *Yetzer v. Thoman* (1866), 17 Ohio St. 130, 133, quoting *French v. Pearce* (1831), 8 Conn. 439, 443 (emphasis added). In fact, the decision in *Evanich* was necessary only because of some confusion caused by this Court's "intent to claim title" language in *Grace v. Koch* (1998), 81 Ohio St.3d 577, 581.³

The Court of Appeals in addressing this issue also recognized that it is the objective evidence and not the subjective state of mind of the possessor which controls in an adverse possession case when it stated as follows:

³ Indeed, two of the three court of appeals cases cited by the Appellant in support of his argument that the subjective intent of a tacking possessor is relevant, *Morris v. Andros* (2004), 158 Ohio App.3d 396, *Video Shack v. Smith*, 7th Dist. App. No. 2001-CO-41, 2003-Ohio-5149, relied on the "intent to claim title" language in *Grace v. Koch*, *supra*, that was specifically rejected in *Evanich*.

This Court has recognized that Ohio law does not require proof of subjective purpose in a claim of adverse possession. See, e.g., *Goodin v. Sforza* (Dec. 6, 1989), Licking App. No. CA-3444, 1989 Ohio App. LEXIS 4801, 1989 WL 154646, citing *Yetzer v. Thoman* (1866), 17 Ohio St. 130. Also, when a boundary line is in dispute, it is not necessary to show knowledge or wrongful intent on the part of the adverse claimant.

(Ct. App. Dec., ¶25).

The Appellant's contention that the purported subjective intent of a tacking possessor is relevant in an adverse possession case flies in the face of over a century of jurisprudence in this issue. Additionally, an adoption of this proposition of law would alter the nature of the "adverse" element of adverse possession. Courts have held that any use of the land by another that is inconsistent with the rights of the record owner is adverse or hostile. *Kimball v. Anderson* (1932), 125 Ohio St. 241, 244. This obviously focuses on the objective evidence of possession, i.e., the land use, of the occupier. In this case, all of Marie Arnholt's uses of the adverse possession property while Mr. Arnholt was gone, i.e. mowing grass, using a burn pit, storing dog kennels and truck tops, were inconsistent with Mr. Householder's rights as the record title owner of the land. Appellant's proposition of law would now add to the "adverse" element that the possessor subjectively intend to claim title, an element that has never been required in Ohio courts and specifically rejected in *Evanich*.

Moreover, Appellant offers no rational explanation of why the intervening possessor's subjective state of mind should be relevant when the subjective state of mind of the person who actually filed suit is not. The relevant period is the twenty-one years of adverse possession of the property, not the time of filing suit. So the objective standard of assessing possession applies to all who possess the property, whether they are an intervening possessor or an adverse possessor who

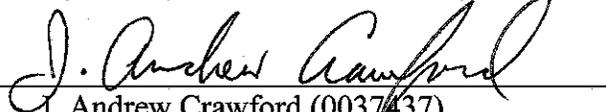
has been the only possessor for twenty-one years. The adoption of Appellant's internally inconsistent proposition of law would serve only to confuse rather than clarify the law in this area.

IV. Conclusion

This Court should not use its scarce resources to merely restate existing law over which there is no legitimate disagreement. The Appellant has been afforded the opportunity to thoroughly and ably present his case both in the trial court and the Court of Appeals. That his case has been rejected by the jury and affirmed on appeal may be of interest to him, but that does not make this case a matter of public and great general interest. For that reason, and of the other reasons set forth above, Appellees William Arnholt and Janie Gail Arnholt respectfully requests that (1) this Court decline to exercise its discretionary jurisdiction in this case, and (2) this appeal be dismissed.

Respectfully Submitted,

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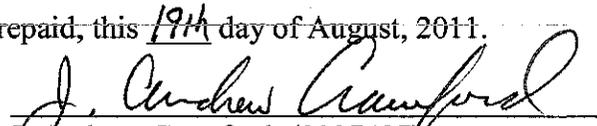
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CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and accurate copy of the foregoing was duly served upon David Q. Wigginton, 32 North Park Place, Newark, Ohio 43055, counsel for Defendant-Appellant, by ordinary U.S. Mail, postage prepaid, this 19th day of August, 2011.


J. Andrew Crawford (0037437)