IN THE SUPREME COURT OF OHIO

Christine McMullen

Appellee

v.

John A. Wyatt

Appellant

On Appeal from the Portage County Court of Appeals, Eleventh Appellate District

Supreme Court Case No. ___

Court of Appeals
Case No. 2022-P-0023

Memorandum in Support of Jurisdiction of Appellant John A. Wyatt

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EXPLANATION OF WHY THIS CASE PRESENTS A CONSTITUTIONAL QUESTION AND IS OF PUBLIC AND GREAT GENERAL INTEREST

Adverse possession is an old and settled doctrine in Ohio. However, "old and settled" does not mean correct, fair, or constitutional. This appeal concerns the ongoing viability of the adverse possession doctrine as it currently exists in Ohio, and Ohio courts' continuing failure to properly apply settled evidentiary standards and appropriately rigorous legal analysis in the face of a doctrine that infringes on a fundamental constitutional right of Ohio citizens.

As fully set forth below, this case is of public and great general interest and a constitutional issue as Ohio citizens' property rights continue to be trampled by an outdated, inequitable, and unconstitutional doctrine, combined with Ohio courts' lackluster, perfunctory, and often erroneous, application of that doctrine to cases across the State of Ohio. Any person in Ohio who owns real property, or hopes to own real property, is affected by the doctrine of adverse possession and has an interest in this case. Moreover, while many may scoff at this appeal and claim that Wyatt is "tilting at windmills" by attacking a doctrine that has been attacked before, Wyatt contends that an incorrect and unjust law does not become correct and just simply because it has never been held to be incorrect and unjust. It simply is incorrect and unjust, and remains so until a courageous court takes bold action.

STATEMENT OF THE CASE AND FACTS

Appellee Christine McMullen is the owner of the property located at 1804 Merrill Road, Kent, Ohio (the "McMullen Property"). T.d. 19, p.1. McMullen obtained the McMullen Property from her mother, Nancy Reed, in 2015. T.d. 19, p.1; T.d. 35, 11-16, 22-25. Nancy Reed obtained

the McMullen Property in 1998. *See e.g.*, T.d. 35, 26:7-10. McMullen has lived at the McMullen Property since November of 1998. T.d. 19, p.1.

Appellant John A. Wyatt owns an approximate 6.65-acre parcel of real property adjacent to the McMullen Property (the "Wyatt Property"). *See e.g.*, T.d. 35, 50:1-3, 61:8-11. The McMullen Property and the Wyatt Property share a common boundary. Wyatt, and specifically Wyatt's mother ("Mrs. Wyatt") obtained the Wyatt Property in 1993. *See e.g.*, T.d. 19, p.2. Wyatt became the title owner of the Wyatt Property in 2007. *See e.g.*, T.d. 19, p.3. Wyatt does not reside at the Wyatt Property.

Due to a long and convoluted deed history which is not relevant to this appeal, the house on the McMullen Property is located close the property line and the garage significantly encroaches on the Wyatt Property. *See e.g.*, T.d. 35, 64:9-11, 31:15-19. The garage existed in its present location at the time McMullen obtained the McMullen Property in 1998. *See e.g.*, T.d. 19, p.1. The encroaching portion of the garage is in a "pie-shaped" area approximately 17 feet at its widest and approximately 293 feet long, inclusive of approximately 0.102 acres (the "Disputed Property"). T.d. 19, p.2; T.d. 35, 19:5-7. In addition to the encroaching garage, McMullen historically used the Disputed Property for other activities, namely a driveway for ingress and egress, flowerbeds and birdhouses, and for outbuildings in addition to the garage. *See e.g.*, T.d. 19, p.2; T.d. 35, 48:17-25; 49:1-6.

McMullen used the Disputed Property for these purposes with Mrs. Wyatt's actual or tacit permission. In or about 2003, Mrs. Wyatt unequivocally revoked McMullen's permission to use the Disputed Property for ingress and egress. T.d. 35, 73:12-18; 74:1-4; T.d. 19, p.2. McMullen stopped that activity. T.d. 19, p.2. In 2006, Wyatt, on behalf of Mrs. Wyatt and as the beneficial owner of the Wyatt Property, verbally notified McMullen to remove "all" of the buildings on the

Disputed Property. T.d. 35, 65:7-25; 66:1-3; 91:1-6; T.d. 19, p.2. McMullen subsequently removed three buildings, but not the garage. T.d. 19, p.2. In 2008, Wyatt hired an attorney to send a letter to Nancy Reed (then still the owner of the McMullen Property) notifying her of the garage's encroachment and demanding "to have any building on his Brady Lake property removed." T.d. 86:18-22. *See also* Trial Exhibit 5; T.d. 19, p.3. Reference to "any buildings" on the Wyatt Property would necessarily include the "garage and a metal shed", as McMullen was aware that the garage encroached on the Wyatt Property. T.d. 35, 92:20-25; 31:15-19. Coincidentally, McMullen removed the metal shed shortly after Wyatt sent the letter but did not remove the garage. T.d. 35, 93:2-4; T.d. 19, p.2.

On June 19, 2020, McMullen filed the underlying lawsuit in the Portage County Court of Common Pleas. A bench trial was conducted before the Magistrate on July 13, 2021. Subsequently, the Trial Court determined that McMullen had established adverse possession by clear and convincing evidence, but was only entitled to an undetermined area of the Disputed Property immediately "around [McMullen's] garage" and not the entire Disputed Property. T.d. 19, p.5. Wyatt filed objections to the Magistrate's Decision. Ultimately, on March 30, 2022, the Trial Court entered a journal entry overruling Wyatt's objections and adopting the Magistrate's Decision.

Wyatt appealed the Trial Court's decision on April 29, 2022. After briefing and oral argument, the Eleventh District Court of Appeals affirmed the Trial Court's decision on November 21, 2022. In doing so, the Appellate Court determined that McMullen had presented a *prima facie* case of adverse possession, and that Wyatt had failed to establish that McMullen's use of the Disputed Property was permissive during any point of the 21-year adverse period.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

> **<u>Proposition of Law 1</u>: Ohio courts must be held to a higher standard when reviewing cases involving doctrines that infringe on citizens' constitutional rights.**

As this Court has repeatedly held, "Ohio has always considered the right of property to be a fundamental right." *Norwood v. Horney*, 2006-Ohio-3799, ¶38 (Ohio). In fact, private property rights are so fundamental that the Ohio Constitution twice refers to them in the Bill of Rights: (a) "All men … have certain inalienable rights, among which are those of … acquiring, possessing, and protecting property[.]" Art. I, Section 1; and (b) "Private property shall ever be held inviolate …" Art. I, Section 19. "There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces." *Norwood* at ¶38. Further:

> The right of private property is an original and fundamental right … the primary and only legitimate purpose of civil government, is accomplished by protecting man in his rights of … private property. The right of private property being, therefore, an original right, which it was one of the primary and most sacred objects of government to secure and protect …The fundamental principles set forth in the bill of rights in our constitution, declaring the inviolability of private property, * * * were evidently designed to protect the right of private property as one of the primary and original objects of civil society * * *."

(Quotations omitted). *Id*. at ¶36.

It is indisputable that the doctrine of adverse possession creates a State sanctioned legal tool to infringe on citizens' fundamental property rights. Accordingly, Ohio courts are required to tread carefully. *See Golubski v. US Plastic Equip., LLC*, 2015-Ohio-4239, ¶16 (11th Dist.) ("Because a successful claim of adverse possession results in the forfeiture of legal title of property without compensation, the doctrine is disfavored and the elements of such a claim are stringent.").

However, in practice, Ohio courts tend to not take its' obligation, or citizens' property rights, seriously. This trend is highlighted in the matter *sub judice*.

A party claiming title by adverse possession must prove all associated elements by clear and convincing evidence, the highest evidentiary standard in civil cases. *Grace v. Koch*, 81 Ohio St.3d 577, 581 (Ohio 1998). As this Court has held: "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts **a firm belief or conviction** as to the allegations sought to be established." (Emphasis added). *Cross v. Ledford*, 161 Ohio St. 469, 477 (Ohio 1954).

Wyatt's primary contention on appeal to the Eleventh District was that the Trial Court, based upon the evidence in the record, clearly did not require McMullen to prove every element, most notably the adversity element, by clear and convincing evidence. Based on the evidence adduced at trial, it is inconceivable, upon a *de novo* review, that a reviewing court could obtain a "firm belief or conviction" that McMullen adversely possessed the Disputed Property, without permission, for 21 years. Despite being the focal point of Wyatt's appeal, the focal point of any adverse possession analysis, and the focal point of a decision to infringe on Wyatt's property rights, the Appellate Court simply stated, in relevant part: "McMullen has used the garage … since … 1998 …Wyatt was aware of the encroachment …" and thus, "a prima facie case of adverse possession is established." Opinion, p.9. The Appellate Court summarily snuffed out Wyatt's constitutionally protected property rights in just three sentences. This is error for several reasons.

As an initial matter, the Appellate Court determined that Wyatt was aware of the encroachment because he had the property surveyed three times since 2007. *Id*. This fact, also determined by the Trial Court, is incorrect and refuted by the record.

Further, the record and the Trial Court's findings of fact support the existence of permission by Wyatt that was revoked in 2006 or 2008. Despite multiple erroneous factual determinations, the Trial Court determined that:

- The McMullen family used the .102 parcel for outbuildings, gardens, and driveway access to the back of their property.
- At some point, prior to the accumulation of 21 years, the Wyatt family revoked permission for the McMullen family to use the parcel as a driveway. They also demanded the outbuildings be removed.
- The McMullen family ceased using the parcel as a driveway. They also tore down/removed all of the outbuildings, except for the garage.
- Defendant's counsel sent a letter in 2008 informing the McMullen family about the encroachment.

The record supports these findings. As argued by Wyatt below, these findings <u>in and of themselves</u> demonstrate that: (a) Wyatt, at some point during the adverse period, gave McMullen permission to use the Disputed Property; and (b) Wyatt subsequently revoked that permission, including the garage. Further, the record reflects that McMullen complied with the revoked permission, except for the garage. Thus, even under the Appellate Court's analysis and based on the Trial Court's findings of fact, Wyatt established permission to use the Disputed Property by a preponderance of the evidence. More importantly, it is even more clear that McMullen did not prove the adversity element by clear and convincing evidence.

In affirming the Trial Court, the Appellate Court made a distinction between the uses of the Disputed Property and the encroachment of the garage. Opinion, p.9. However, this is a distinction without a difference. First, as discussed below, "permission" in adverse possession cases is rarely formally given. Thus, it is reasonable to infer that Wyatt's acknowledged permission to use the Disputed Property included the identified uses, the outbuildings, and the garage. Once Wyatt revoked that permission, a reasonable and good intentioned neighbor would

take that to mean all use of the property was revoked, including the garage. This is especially true in situations like this case, where Wyatt demanded in 2006 and 2008 that McMullen remove "any building on his Brady Lake property".[1] To act otherwise only serves to demonstrate that the adverse possessor has bad faith intent (defined below). Thus, in this case, the adverse period began to run in 2008 at latest, and 21 years had not elapsed in 2020 when McMullen filed the complaint.

Finally, and most importantly, the Appellate Court shifted the burden to Wyatt to establish that permission existed to negate the adversity element. While the case law cited by the Court appears to be accurate, this standard is an anathema to constitutional property rights. In Ohio, property rights are inviolate under the Ohio Constitution. Further, the stripping of a property owner's rights are supposed to be held to a higher standard of clear and convincing evidence. Yet, the current state of the law and Ohio courts' interpretation of same, permits an adverse possessor to simply establish that it actually occupied or used another person's property for 21 continuous years, and then shifts the burden to the property owner to prove the occupation or use was permitted. This is farcical.

The property owner has the incumbent constitutional rights of property ownership. Accordingly, all presumptions should, as a matter of law and policy, be made in favor of the property owner. If there are competing interests, testimony, or facts, courts should naturally defer to the property owner in the interest of protecting their property rights and enforcing the clear and convincing evidence standard. Under the heighted clear and convincing evidence standard, the adverse possessor should have to prove there was not permission as part of its *prima facie* case for the adversity element.

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[1] As set forth in Wyatt's appellate brief, McMullen denied that Wyatt told her to remove all buildings in 2006. Yet, at trial, Wyatt testified to, and presented, auditor's records showing 1 garage and 3 sheds in 2006 and only 1 garage in 2007. Is seems fairly elementary to deduce that these records corroborate that Wyatt demanded removal in 2006 and McMullen complied, in part.

Moreover, the permission aspect is the more difficult premise to establish. "Permission" in adverse possession cases is rarely formally given in writing. Normally, permission is given tacitly, by acquiescence or an unspoken "understanding". Thus, in order to protect their constitutional property rights, a property is left with the burden to prove permission by proving an oral or unspoken agreement between the parties that occurred 20 years ago. This is a tremendous and undue burden. There are countless evidentiary concerns, and moreover, all an adverse possessor need say to defeat the property owner is: "You never gave me permission". Which is exactly what McMullen did in this matter. And the Appellate Court approved without rigorous analysis.

Finally, to preserve the issue, Wyatt disputes the Appellate Court's conclusion that his argument based on the holding in *Landon v. Lee Motors*, 161 Ohio St. 82, 99-100 (Ohio 1954) (that evidence establishing "a basis for only a choice among different possibilities as to any issue in the case" does not even meet the preponderance standard) presumes that Wyatt's evidence was equally credible. Opinion, p. 10. *Landon's* holding does not require a credibility determination, and moreover does not concern itself with Wyatt's evidence. It applies to McMullen's evidence, and whether it proves the elements of adverse possession by clear and convincing evidence or merely establishes a choice among different possibilities regarding the adversity element. Regardless, Wyatt contends the evidence he submitted at trial regarding the adversity element and permission was at least equally credible, and thus would necessarily mean that McMullen failed to establish the adversity element by clear and convincing evidence.

Proposition of Law 2: Adverse possession is an outdated and impractical legal doctrine that constitutes a State sanctioned private infringement of citizens' fundamental privacy rights and, based on an intent element or lack thereof, rewards trespassers for either their unlawful conduct, blind ignorance, or mutual mistake.

The doctrine of adverse possession is an outdated and impractical legal doctrine that, as discussed *supra*, flippantly permits private citizens to violate what Ohio's constitution and courts

immemorial have clearly stated is, and should be, one of the most protected and fundamental right of Ohio citizens. In practice, as demonstrated by the Appellate Court's legal analysis, the analysis for adverse possession is often so overtly simplistic as to offend the sensibilities. That is, if Person A occupies or uses Person B's property, no matter how large or how small, continuously for 21 years, openly, and adversely, then Person A is sanctioned by Ohio law and its courts to infringe on Person B's property rights.[2] Do not pass go. Do not collect $200. What's worse, unlike a governmental taking, a private adverse possessor is not even required to pay the property owner just compensation. Where the Ohio constitution and its courts have claimed that the "primary and only legitimate purpose of civil government" is "protecting man in his rights of … private property" in practice, courts routinely fail to protect property rights at all when it comes to adverse possession. *Norwood* at ¶36. In fact, the very doctrine itself encourages and rewards unlawful conduct and mistake.

The best example of this general proposition is to consider the adversity element, and the sub-issue of whether adversity requires intent. This Court has held that the adversity element does not require "a showing of subjective intent, meaning that the party in possession intended to deprive the owner of the property in question." *Evanich v. Bridge*, 2008-Ohio-3820, ¶6 (Ohio). In *Evanich*, this Court held: "We have never held that a claimant must establish subjective intent to acquire title to real property" and that the "remote motives or purposes of the occupant" are irrelevant. *Id*. at ¶8. For purposes of this Memorandum, the intent to acquire title shall be referred to as "bad faith intent". The *Evanich* Court contrasted bad faith intent with the intent discussed in *Grace v. Koch* (1998), 81 Ohio St.3d 577, 692 N.E.2d 1009, that is, "intent to possess and exercise

[2] For purpose of this notice and jurisdictional memorandum, Wyatt will not delve into matters supporting this government sanctioned infringement – namely doctrines related to a party waiving or sleeping on their rights. Arguments for and against competing policy concerns are better reserved for full briefing and oral argument if this Court accepts this case for review.

control over a piece of property without the true owner's permission[.]" (Quotations omitted). *Evanich* at ¶12. For purposes of this Memorandum, the intent to possess and exercise control shall be referred to as "possessory intent". Put another way, this Court has recognized two types of intent as related to the adversity requirement: "taking intent" and "possessory intent".

Simply put, the dichotomy that is created whether Ohio law requires or does not require bad faith intent or merely possessory intent clearly establishes that adverse possession is bad doctrine, unworkable in practice, and that its ongoing application equates to Ohio courts turning a blind eye to, and sanctioning violations of, Ohio citizens' property rights.

Possessory Intent. As it currently stands, Ohio law requires only a demonstration of possessory intent to establish the element of adversity. As an initial matter, Wyatt notes that oftentimes, possessory intent, that is, Party A's intent to possess Party B's property without their permission, intrinsically constitutes bad faith intent. In many adverse possession cases, such as the case *sub judice*, the adverse possessor is aware that it is occupying and exercising control over another person's property without their permission. This in and of itself is bad faith intent, which should not be rewarded, as discussed *infra*. Further, in 2023, it is not unreasonable to say that the doctrine of adverse possession is widely known and understood as a method to obtain property. *See Aguayo v. Amaro*, 213 Cal. App. 4th 1102 (Cal: Court of Appeal, 2nd Appellate Dist., 3rd Div. 2013) (noting that party to the action claimed to be "in the 'business' of acquiring properties by adverse possession."). However, even if a layperson is not fully aware of the doctrine of adverse possession, most people know the age-old adage that "possession is nine-tenths of the law". In fact, the expression is so axiomatic that is applied as common law by courts throughout the country to demonstrate *prima facie* evidence of property ownership. In 2006, the Fourth Circuit stated, in relevant part:

> That possession is nine-tenths of the law is a truism hardly bearing repetition. Statements to this effect have existed almost as long as the common law itself … The importance of possession gave rise to the principle that [p]ossession of property is indicia of ownership, and a rebuttable presumption exists that those in possession of property are rightly in possession. The common law has long recognized that actual possession is, prima facie, evidence of a legal title in the possessor … This presumption has been a feature of American law almost since its inception. "Undoubtedly," noted the Supreme Court, "if a person be found in possession ... it is prima facie evidence of his ownership." Almost eighty years later, the Court reaffirmed, "If there be no evidence to the contrary, proof of possession, at least under a color of right, is sufficient proof of title."
>
> The presumption of possession is not confined to the early nineteenth century, nor is it confined to examples of early Americana. Rather, it applies across the law of personal property

(Quotations and citations omitted)(Alterations in original). *Willcox v. Stroup*, 467 F. 3d 409, 412-413 (4th Cir. 2006). Thus, a modern court's continued presumption that a person can intend to possess their neighbor's property, without permission, and without bad faith intent to acquire title, is outdated and willfully ignoring practical realities of modern life to the detriment of people's constitutional rights.

Notwithstanding this point, a situation where Person A intends to occupy and control Person B's property, without Person B's permission, and with no intent to acquire title, is still bad doctrine that is unworkable in practice and permits persons to violate citizens' constitutional rights with the blessing of the State. This situation describes a fact pattern where a neighbor unknowingly or unintentionally occupies the property without permission, and thus, can accurately be characterized as "possession by mistake". In this situation, the doctrine of adverse possession <u>rewards</u> ignorance or mistake at the expense of the true owner's property rights. Frankly, this does not make sense and is incongruent with other legal principles.

The law of contracts is illustrative of this point. "The doctrine of mutual mistake permits rescission of a contract when the parties' agreement is based upon a mutual mistake of either law

or fact." *Weber v. Budzar Industries, Inc*., 2005-Ohio-5278, ¶34 (11th Dist.), citing *State ex rel. Walker v. Lancaster City School Dist. Bd. of Edn*. (1997), 79 Ohio St.3d 216, 220. *See e.g., Reed v. Triton Servs., Inc*., 2019-Ohio-1587, ¶64 (12th Dist.)(citing *State ex rel. Walker v. Lancaster City School Dist. Bd. of Edn*.). Thus, Ohio law does not permit one party to a contract to forcibly benefit from a mutual mistake at the expense of the other party.

In the context of adverse possession, "possession by mistake", that is possession without bad faith intent, is akin to a mutual mistake of Party A and Party B. If Party A possesses Party B's property without bad faith intent, or unknowingly, and Party B is unaware of Party A's possession, there is a mutual mistake of facts and circumstances. Accordingly, it is unjust and contrary axiomatic principles of common law to permit Party A to benefit from the mutual mistake at the expense of Party B. This hold true across legal doctrines and is especially relevant in the case of rewarding Party A at the expense of Party B's fundamental constitutionally protected property rights.

Based on the foregoing, the current common law in Ohio that requires demonstrating possessory intent to establish the adversity element of adverse possession is contradictory to established common law principles and constitutes governmental sanction of violating property rights. Thus, objectively, the doctrine of adverse possession is outdated, unprincipled, and unworkable in practice.

<u>Bad Faith Intent</u>. As discussed, Ohio law does not require a showing of bad faith intent to establish adverse possession … nor should it. This is true for many reasons, but none more so than because if Ohio law required bad faith intent, it would reward bad faith trespassers for their trespass. Such a result would be absurd and is not countenanced anywhere else in the law. Further,

such a result would violate other deeply rooted principles of common law, most notably equitable doctrines and defenses such as unclean hands and equitable estoppel.

In the instant case, McMullen filed suit for "adverse possession" pursuant to R.C. 2305.04. However, R.C. 2305.04 does create a statutory right of action. It is a statute of limitations, solely mandating that an action "to recover the title to or possession of real property shall be brought within twenty-one years after the cause of action accrued[.]" Adverse possession, in and of itself, is not a legal action, it is a legal theory of ownership to be raised in a legal action, such as a quiet title action or other action for recovery of real property as set forth in R.C. 5303, et. seq. Thus, McMullen's cause of action in this case is more rightly deemed a quiet title action "brought by a person in possession of real property … against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest." R.C. 5303.01.

This is an important distinction, as customarily, actions to recover real property or secure an interest in real property are equitable in nature. *See e.g., WWSD, LLC v. Woods*, 2022-Ohio-952, ¶22 (10th Dist.) ("An action to quiet title is equitable in nature"); *Gasper v. Bank of America, NA*, 133 N.E.3d 1037, 2019-Ohio-1150, ¶31 (9th Dist.) ("Quiet title actions are … considered equitable in nature."); *Salameh v. Doumet*, 151 N.E.3d 83, 2019-Ohio-5391, ¶26 (5th Dist.) ("If Sister's action is simply one to quiet title, the action is equitable in nature."); *US Bank Nat. Association v. O'Malley*, 150 N.E.3d 532, 2019-Ohio-5340, ¶19 (8th Dist.) ("foreclosure proceeding is an in rem, equitable action … whereby the mortgagee attempts to secure its interest in the property."). Where an action is equitable in nature, equitable defenses such as unclean hands and equitable estoppel must be permitted to apply.

However, this precept openly conflicts with adverse possession's *de facto* character, which traditionally rewards trespassers and condones bad faith. The idea that an equitable claim may be

brought by a party in bad faith or with unclean hands offends all traditional notions of fair play and substantial justice. Further, it permits a bad actor to profit from their bad acts at the expense of party's constitutionally protected property rights. This circular logic cannot be the law of the land.

That said, a "supreme court not only has the right, but is entrusted with the duty to examine its former decisions and, when reconciliation is impossible, to discard its former errors." *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216, 2003-Ohio-5849, ¶43 (Ohio). Based on this duty, this Court held that:

> [A] prior decision of the Supreme Court may be overruled where (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it.

Galatis at ¶48. Wyatt posits that the doctrine of adverse possession, and this Court's decisions regarding same, including *Evanich* and *Grace*, are wrongly decided or that the modern common understanding of the adverse possession doctrine creates a presumption of bad faith intent; that the doctrine is, and has been, irreconcilable with the Ohio Constitution and other fundamental legal doctrines and principles; that in practice, the doctrine is unworkable due to its fundamentally unlawful nature and Ohio courts' near universal lack of rigorous analysis and general acquiescence to the adverse possessor; and that abandoning the adverse possession doctrine and associated current caselaw would not create undue hardship on those that have relied on it.

Accordingly, this Court must revisit the doctrine of adverse possession and either purge entirely from Ohio law or establish guardrails to protect the constitutional property rights of Ohio citizens. This Court has overruled precedent to protect freedom of contract under the Ohio Constitution. *See generally*, *Galatis*, *supra*. It should do the same to protect property rights truly

and fully under the Ohio Constitution. "It does no violence to the legal doctrine of *stare decisis* to right that which is clearly wrong. It serves no valid public purpose to allow incorrect opinions to remain in the body of our law." (Quotations omitted). *Galatis* at ¶60.

CONCLUSION

Based on the foregoing, this Court should hear this case and reverse because this matter presents a substantial constitutional question, is of public and great general interest, and affords this Court to take bold action to correct a longstanding wrong.

Respectfully submitted,

/s/ Joel A. Holt
Joel A. Holt (0080047)
Brouse McDowell LPA

Counsel for Appellant

CERTIFICATE OF SERVICE

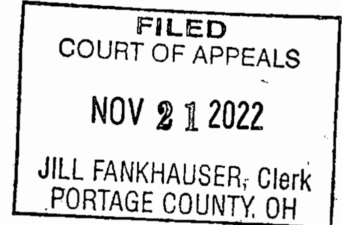
I certify that a copy of this *Memorandum in Support of Jurisdiction of Appellant John A. Wyatt* was sent by email to the counsel identified on the cover page on January 5, 2023.

/s/ Joel A. Holt
Joel A. Holt (0080047)
Brouse McDowell LPA

Counsel for Appellant

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY

CHRISTINE MCMULLEN, Plaintiff-Appellee, - vs - JOHN A. WYATT, Defendant-Appellant.	**CASE NO. 2022-P-0023** Civil Appeal from the Court of Common Pleas Trial Court No. 2020 CV 00398



OPINION

Decided: November 21, 2022
Judgment: Affirmed

Scott J. Flynn, Flynn Keith & Flynn, 214 South Water Street, P.O. Box 762, Kent, OH 44240 (For Plaintiff-Appellee).

Joel A. Holt, Ickes \ Holt, 4301 Darrow Road, Suite 1100, Stow, OH 44224 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, John A. Wyatt, appeals the judgment of the Portage County Court of Common Pleas, finding in favor of plaintiff-appellee, Christine McMullen, on her claim for adverse possession. For the following reasons, we affirm the decision of the court below.

{¶2} On June 19, 2020, McMullen filed a Complaint against Wyatt for Adverse Possession, Implied and Prescriptive Easements, and Private Nuisance.

{¶3} On August 7, 2020, Wyatt filed an Answer and Counterclaim for Trespass.

{¶4} On July 13, 2021, the matter was tried before a magistrate.

{¶5} On July 20, 2021, a Magistrate's Decision was issued. The magistrate made the following relevant findings of fact:

- Plaintiff Christine McMullen lives at 1804 Merrill Rd. Kent, OH with her husband.

- Plaintiff purchased the property from her mother in 2015.

- Plaintiff has lived at the property since November 1998.

- Plaintiff's residence includes an unattached garage.

- The garage is used daily as a separate living room for the McMullen family. The room contains a TV, wood-burner, furniture, and other accessories suitable for a recreation room/family room.

- The garage was built in 1901. Its location has never moved.

- Plaintiff has used the garage continuously for 21 years.

- Defendant has not used the garage or demanded access to the garage.

- Defendant did not institute a legal claim against Plaintiff in the 21 years from the time the garage was being used and possessed by the Plaintiff.

- The history of which parcel the garage resides on has a complicated past.

- At times, the property the garage has been deeded on resided at 1804 Merrill Rd.

- At other times, and currently, the land the garage resides on has been included in the legal description/deed of the neighboring property owned by the Defendant.

- In 1993, the property owned by Linda Dixon (which included the .102 acre parcel where the garage encroaches) was sold at sheriff's sale and deeded to the Wyatt family.

- The .102 acre parcel's dimensions are roughly 17'x293.05'[.]

- The McMullen family used the .102 parcel for outbuildings, gardens, and driveway access to the back of their property.

- At some point, prior to the accumulation of 21 years, the Wyatt family revoked permission for the McMullen family to use the parcel as a driveway. They also demanded the outbuildings be removed.[1]

- The McMullen family ceased using the parcel as a driveway. They also tore down/removed all of the outbuildings, except for the garage.

- The McMullen family stopped caring for the back part of the .102 parcel behind their home as well.

* * *

- Defendant has been the owner of his parcel since 2007.

- Defendant has had the property surveyed three times. Each survey showed the garage encroachment on his property.

- Defendant's counsel sent a letter in 2008 informing the McMullen family about the encroachment.

- Plaintiff's possession of the garage and garage curtilage has been open, continuous, notorious, and exclusive for more than 21 years.

{¶6} The magistrate found "by clear and convincing evidence that the Plaintiff has proved its adverse possession claim for the garage, but not the entire .102 acre strip of land." The plaintiff was awarded a 5' strip of land from Merrill Road to and around the part of the garage encroaching on Wyatt's parcel. All other claims were denied. The trial court adopted the Magistrate's Decision without modification on the day it was issued.

{¶7} On July 28, 2021, Wyatt filed Objections to Magistrate's Decision. Wyatt's stated objections were as follows: "Defendant hereby files his objections to the Magistrate's Decision filed herein on July 20, 2021, granting adverse possession to plaintiff."

1. According to Wyatt's testimony, his mother revoked her permission for the McMullens to use the property to access the rear of their property, i.e., as a driveway, in June of 2003. In a 2008 letter, referenced below, Wyatt (through counsel) advised the McMullens "to have any building on his Brady Lake property removed."

{¶8} On August 24, 2021, the trial court issued an Order and Journal Entry, advising Wyatt that, pursuant to Civil Rule 53(D)(3)(b)(ii), his "objection needs to be specific and state with particularity all grounds for objections," and that, pursuant to Civil Rule 53(D)(3)(a)(iii), "any objection to a factual finding * * * shall be supported by a transcript of all the evidence submitted to the magistrate." Wyatt would have 45 days from the date of the Order to file the transcript and could seek leave of court to supplement his objections.

{¶9} On September 22, 2021, Wyatt filed Amended Objections to Magistrate's Decision. The Amended Objections stated: "Defendant hereby files his amended objections to the Magistrate's Decision filed herein on July 20, 2021, in the following respect: The evidence failed to establish 21-years of open and notorious possession on the part of the plaintiff, and that said possession was adverse to the defendant."

{¶10} On October 8, 2021, the transcript of the hearing before the magistrate was filed.

{¶11} On March 30, 2022, the trial court issued a Journal Entry overruling Wyatt's Objections.

{¶12} On April 29, 2022, Wyatt filed a Notice of Appeal. On appeal, he raises the following assignment of error: "The final judgment is erroneous because it is against the manifest weight of the evidence, incorrectly applied the law of adverse possession, and failed to properly apply the clear and convincing evidence evidentiary standard."

{¶13} The usual standard of review for a trial court's adoption of a magistrate's decision is abuse of discretion. *Allen v. Allen*, 2022-Ohio-3198, __ N.E.3d __, ¶ 39 (11th Dist.). Under this deferential standard of review, the trial court's decision should be

affirmed "if there is some competent, credible evidence to support [it]," and regardless of whether "the reviewing court would have reached a different result." *Id.* at ¶ 40.

{¶14} Preliminarily, McMullen argues that Wyatt failed to comply with the requirement that "[a]n objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii). Therefore, the adoption of the magistrate's decision should be reviewed for plain error. Civ.R. 53(D)(3)(b)(iv) ("[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)"). McMullen maintains that to hold that Wyatt complied with the rule that objections should be specific and stated with particularity by asserting that the "evidence failed to establish" the elements of an adverse possession claim "would render Civ. R. 53(D) worthless." Brief of Appellee at 8.

{¶15} There is no strong consensus regarding the degree of specificity or particularity with which objections must be stated to satisfy Civil Rule 53(D)(3). The Staff Notes to Rule 53 provide that the form of objections must "be specific; a general objection is insufficient to preserve an issue for judicial consideration." "In interpreting this provision of Civ.R. 53, it has been held that a mere blanket objection to the magistrate's decision is insufficient to preserve an objection." *Lambert v. Lambert*, 11th Dist. Portage No. 2004-P-0057, 2005-Ohio-2259, ¶ 16. "When a party submits general objections that fail to provide legal or factual support, 'the trial court may affirm the magistrate's decision without considering the merits of the objection.'" (Citation omitted.) *Id.*; *compare Gordon v. Gordon*, 98 Ohio St.3d 334, 2003-Ohio-1069, 784 N.E.2d 1175, ¶ 14 ("[a] party who files premature objections runs the risk of not complying with this rule and of having the

objections overruled because they are not responsive to the grounds ultimately relied on by the magistrate"). *See Lambert* at ¶ 17 ("appellant filed general objections to the magistrate's decision and did not specifically raise the objection that the trial court [sic] erred in determining his gross income," and so "is precluded from raising [on appeal] any claim not raised in his objections to the magistrate's decision"); *Bass-Fineberg Leasing, Inc. v. Modern Auto Sales, Inc.*, 9th Dist. Medina No. 13CA0098-M, 2015-Ohio-46, ¶ 24 ("[w]here a party fails to raise an issue in its objections to a magistrate's decision, that issue is forfeited on appeal"); *In re Ingles*, 11th Dist. Trumbull No. 2003-T-0037, 2004-Ohio-5462, ¶ 24 ("[a]lthough appellant set forth specific objections to the magistrate's decision, he failed to support such objections with any factual or legal grounds," and so "his objections fail to comply with Civ.R. 53([D])(3)(b)"); *Wallace v. Willoughby*, 3d Dist. Shelby No. 17-10-15, 2011-Ohio-3008, ¶ 14 and 21 (objections stating "that the findings of fact; conclusions of law; discussion; and decision regarding the allocation of the residential parent of the Minor Children are not supported by the record of the case and law" did "not meet the specificity requirement set forth in Civ.R. 53(D)(3)(b)(ii), as they baldly assert an objection to the magistrate's findings of fact and conclusions of law"). *Compare Smith v. Bank of Am.*, 7th Dist. Mahoning No. 11-MA-169, 2013-Ohio-4321, ¶ 18 ("[e]ach of the five objections took issue with each of the five specific legal conclusions reached by the magistrate" and, "[w]hile * * * brief and not supported with any further argument or case law citations, they were nonetheless specific and stated with particularity the *grounds* for objection").

{¶16} Here, Wyatt's Amended Objections stated that the "evidence failed to establish 21-years of open and notorious possession on the part of the plaintiff, and that

said possession was adverse to the defendant," without any citation to the magistrate's factual findings, the record, or case law. This is essentially a general objection stating the elements of an adverse possession claim. On appeal, ~~however,~~ Wyatt does raise specific arguments: he claims that the use of the garage, like the driveway, the outbuildings, and other uses of the disputed property, was permissive. Thus, McMullen's use of the garage was neither adverse nor continuous. Wyatt additionally argues that the evidence supporting McMullen's claim does not meet the clear and convincing evidence standard but rather, at most, satisfies a preponderance of the evidence standard. Although minimal, Wyatt's objections were sufficient to preserve the arguments he raises on appeal. *Ramsey v. Pellicioni*, 7th Dist. Mahoning Nos. 14 MA 134 and 14 MA 135, 2016-Ohio-558, ¶ 13 ("although objections may be brief and not supported with further argument or case law citations, as long as they are specific and state the grounds for the objections they are adequate to preserve the issue for appeal").

{¶17} McMullen also argues that Wyatt's objections were not properly supported by a transcript of the hearing before the magistrate because "[t]he trial court, *sua sponte*, filed the trial transcript 80 days after Wyatt filed his Objections, and 16 days after Wyatt filed his "Amended Objections." Brief of Appellee at 9-10. On October 8, 2021, the hearing transcript was filed with the trial court although it is not evident, from the face of the record, by whom it was filed. We find the issue immaterial. The transcript was timely filed pursuant to the trial court's August 24 Order, i.e., within 45 days of the Order, and the court duly reviewed the transcript when ruling on the Amended Objections. We find no issue with the filing of the transcript in support of the objections.

{¶18} "It is well established in Ohio that to succeed in acquiring title by adverse possession, the claimant must show exclusive possession that is open, notorious, continuous, and adverse for 21 years." *Evanich v. Bridge*, 119 Ohio St.3d 260, 2008-Ohio-3820, 893 N.E.2d 481, ¶ 7. "[T]he legal requirement that possession be adverse is satisfied by clear and convincing evidence that for 21 years the claimant possessed property and treated it as the claimant's own." *Id.* at syllabus.

{¶19} "It is well established that a possession is not hostile or adverse if the entry is by permission of the owner, or the possession is continued by agreement; such an occupancy, consequently, confers no right." (Citation omitted.) *Golubski v. U.S. Plastic Equip., L.L.C.*, 11th Dist. Portage No. 2015-P-0001, 2015-Ohio-4239, ¶ 18; *Rodgers v. Pahoundis*, 178 Ohio App.3d 229, 2008-Ohio-4468, 897 N.E.2d 680, ¶ 41 (5th Dist.) ("[i]f a claimant's use of the disputed property is either by permission or accommodation for the owner, then it is not 'adverse,' for purposes of establishing adverse possession") (citation omitted). Once the party claiming title by adverse possession establishes a prima facie case of adverse use, the owner of the property in question has the burden of proving that such use was permissive. *Rodgers* at ¶ 42; *Andrews v. Passmore*, 2015-Ohio-2681, 38 N.E.3d 450, ¶ 12 (7th Dist.) ("[o]nce the occupier has set forth a prima facie case that the use may be adverse, the landowner must then prove the use was permissive by a preponderance of the evidence").

{¶20} As noted above, Wyatt's argument on appeal is that McMullen's use of the garage was permissive for at least part of the 21-year period in question, or, alternatively, that the evidence for McMullen's use being truly adverse does not meet the preponderance of the evidence standard. We find neither argument convincing. On the

contrary, the trial court's judgment is readily supported by competent and credible evidence.

{¶21} The encroachment of the garage onto Wyatt's property predates both Wyatt's and McMullen's ownership of their respective properties. McMullen has used the garage as a recreation/living room since the time of her occupancy of the property in 1998. Wyatt was aware of the encroachment having had the property surveyed three times since 2007. Thus, a prima facie case of adverse possession is established. The evidence that the use was permissive is minimal. Wyatt did not testify that he, or his mother who owned the property before him, ever gave their consent to the encroachment of the garage onto their property. McMullen testified that she never received such consent from the Wyatts. Any suggestion that Wyatt suffered the garage to encroach on his property as a "neighborly accommodation" to McMullen cannot be seriously maintained in light of the relationship between the parties.

{¶22} Wyatt bases the claim that the use of the garage was permissive on the existence of evidence that other uses of his property by McMullen, such as for a driveway, outbuildings, flowerbeds and birdhouses, may have been permissive. When Wyatt objected to these uses McMullen discontinued them. The nature of the encroachment of the garage onto his property, however, is not comparable to these other uses, which only began after McMullen's occupancy of her property. The garage's existence predated both parties' occupancy of their properties and, in any event, its use by McMullen was never discontinued. There is no error in the trial court's award of title to the garage and the five-foot strip around the property to McMullen.

{¶23} Finally, Wyatt contends that the magistrate failed to apply the preponderance of the evidence standard despite the profession that it found "by clear and convincing evidence that the Plaintiff has proved its adverse possession claim for the garage." He "contends that equally credible contradictory testimony does not in and of itself qualify as clear and convincing evidence." Specifically, "Wyatt * * * produced documentary evidence in the form of the August 2008 letter and the Auditor's public records to support his testimony that he revoked permission for all of the buildings on the Disputed Property, including the garage, in 2006 and/or 2008. Wyatt's evidence at trial discredited and reduced the probative value of McMullen's testimony to perhaps even below the preponderance standard, to 'a basis for only a choice among different possibilities' as to the adversity requirement of adverse possession." Brief of Appellant at 12, quoting *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82, 99, 118 N.E.2d 147 (1954).

{¶24} Wyatt's argument fails to convince. It presumes that his evidence of permissive use was equally credible, but the record does not support the presumption. McMullen testified directly that she had never been given permission by either Wyatt or his mother regarding the encroachment of the garage. Wyatt's evidence merely shows that it would be possible to infer, if the trier of fact were so inclined, that permission had been given at some point. More fundamentally, "[w]eight is not a question of mathematics, but depends on its *effect in inducing belief*." (Citation omitted.) *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). It is not enough to say that there is evidence to support either side of an issue. Even if Wyatt had presented direct evidence of McMullen's use being permissive, the magistrate could still have found the

clear and convincing evidence standard satisfied if McMullen's testimony were deemed to be significantly more credible than Wyatt's testimony.

{¶25} The sole assignment of error is without merit.

{¶26} For the foregoing reasons, the judgment of the Portage County Court of Common Pleas is affirmed. Costs to be taxed against the appellant.

THOMAS R. WRIGHT, P.J.,

MARY JANE TRAPP, J.,

concur.

STATE OF OHIO)
) SS.
COUNTY OF PORTAGE)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

CHRISTINE MCMULLEN,

Plaintiff-Appellee,

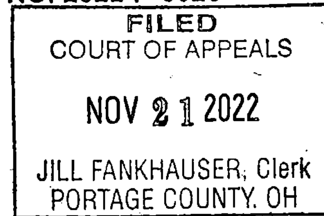
- vs -

JOHN A. WYATT,

Defendant-Appellant.

JUDGMENT ENTRY

CASE NO. 2022-P-0023



For the reasons stated in the Opinion of this court, the assignment of error is without merit. The order of this court is that the judgment of the Portage County Court of Common Pleas is affirmed. Costs to be taxed against appellant.

JUDGE MATT LYNCH

THOMAS R. WRIGHT, P.J.,

MARY JANE TRAPP, J.,

concur.

FILED
COURT OF COMMON PLEAS
JUL 20 2021
JILL FANKHAUSER, Clerk
PORTAGE COUNTY, OH

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

CHRISTINE MCMULLEN)
Plaintiff,)
vs.)
JOHN A. WYATT)
Defendant.)

CASE NO. 2020 CV 398

JUDGE BECKY L. DOHERTY

MAGISTRATE CHAD HAWKS

MAGISTRATE'S DECISION

This matter came before the Magistrate for a bench trial on July 13, 2021. Christine McMullin was present, represented by Attorney Scott Flynn. John Wyatt was present, represented by Attorney Thomas Sicuro.

Plaintiff brings the following actions against the Defendant: Adverse possession, prescriptive easement, and nuisance.

Defendant brings a counterclaim of trespass.

Findings of Fact

- Plaintiff Christine McMullen lives at 1804 Merrill Rd. Kent, OH with her husband.
- Plaintiff purchased the property from her mother in 2015.
- Plaintiff has lived at the property since November 1998.
- Plaintiff's residence includes an unattached garage.
- The garage is used daily as a separate living room for the McMullen family. The room contains a TV, wood-burner, furniture, and other accessories suitable for a recreation room/family room.
- The garage was built in 1901. Its location has never moved.
- Plaintiff has used the garage continuously for over 21 years.

- Defendant has not used the garage or demanded access to the garage.
- Defendant did not institute a legal claim against Plaintiff in the 21 years from the time the garage was being used and possessed by the Plaintiff.
- The history of which parcel the garage resides on has a complicated past. At times, the property the garage has been deeded on resided at 1804 Merrill Rd.
- At other times, and currently, the land the garage resides on has been included in the legal description/deed of the neighboring property owned by the Defendant.
- In 1993, the property owned by Linda Dixon (which included the .102 acre parcel where the garage encroaches) was sold at sheriff's sale and deeded to the Wyatt family.
- The .102 acre parcel's dimensions are roughly 17'x 293.05'
- The McMullen family used the .102 parcel for outbuildings, gardens, and driveway access to the back of their property.
- At some point, prior to the accumulation of 21 years, the Wyatt family revoked permission for the McMullen family to use the parcel as a driveway. They also demanded the outbuildings be removed.
- The McMullen family ceased using the parcel as a driveway. They also tore down/removed all of the outbuildings, except for the garage.
- The McMullen family stopped caring for the back part of the .102 parcel behind their home as well.
- Plaintiff claims that Defendant has been purposely leaving feces, dead fish, barrels with water to attract mosquitoes, and other noxious items by their property in an attempt to intimidate and cause them annoyance.
- Plaintiff admitted she cannot prove the Defendant is responsible for these actions.

- Defendant has been the owner of his parcel since 2007.
- Defendant has had the property surveyed three times. Each survey showed the garage encroachment on his property.
- Defendant's counsel sent a letter in 2008 informing the McMullen family about the encroachment.
- Plaintiff's possession of the garage and garage curtilage has been open, continuous, notorious, and exclusive for more than 21 years.

Conclusions of Law

Adverse Possession: "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 twenty-one years." *Turner v. Robinson*, 2017-Ohio-7228 (4th Dist.) citing *Grace v. Koch*, 81 Ohio St.3d 577, 581, 692 N.E.2d 1009 (1998). R.C. 2305.04 governs the statute of limitation for bringing a defense of such action requiring an action to be brought within 21 years after the cause of action accrued.

In this case, the Plaintiff and her family have used the garage and area immediately surrounding the garage openly, notoriously, continuously, and adversely for at least 21 years. The garage has been used exclusively by the individuals that resided at 1804 Merrill Rd. since 1901. This use has been notorious and adversely, for purposes of this case, since approximately November 1998. This is in excess of the 21-year period required and the Defendant never filed an action to challenge in court.

The Court finds by clear and convincing evidence that the Plaintiff has proved its adverse possession claim for the garage, but not the entire .102 acre strip of land. Judgment for Plaintiff.

Prescriptive Easement: A party claiming a prescriptive easement has the burden of proving a use of the property that is (1) open, (2) notorious, (3) adverse to the neighbor's property rights, (4) continuous, and (5) at least 21 years in duration. *J.F. Gioia, Inc. v. Cardinal Am. Corp.* (1985), 23 Ohio App.3d 33, 37, 23 OBR 76, 491 N.E.2d 325. The claimant has the burden of proving each element by clear and convincing evidence. *Coleman v. Penndel Co.* (1997), 123 Ohio App.3d 125, 130, 703 N.E.2d 821. Unlike a claim for adverse possession, a claim for a prescriptive easement does not require proof of exclusive possession of the property.

In light of the Court granting judgment in favor of the Plaintiff on their adverse possession claim, this cause of action is moot and therefore dismissed.

Nuisance: Nuisance alleges a tort "consisting of anything wrongfully done or permitted that unreasonably interferes with another in the enjoyment of his property. *Taylor v. Cincinnati*, 143 Ohio St. 426, 436 (1943). Under the common law, a private nuisance was defined as a defendant's action or inaction, which causes a substantial and unreasonable interference with the plaintiff's land or his use of it. Restatement (2nd) of Torts, §822. In order to bring a successful action against another for nuisance, "there must be real, material, and substantial injury." *Eller v. Koehler*, 68 Ohio St. 51, 66 (1903).

Plaintiff's claims for nuisance fail. Inadequate evidence was produced showing the non-trespassory invasions to be unreasonable and substantial. Further, Plaintiff admitted that she could not prove Defendant was the source of the noxious items. Accordingly, this cause of action is dismissed.

Trespass: "A common-law tort in trespass upon real property occurs when a person, without authority or privilege, physically invades or unlawfully enters the private premises of another whereby damages directly ensue, even though such damages may be insignificant." *Vineyard Fellowship v. Anderson*, 2015-Ohio-5083, 53 N.E.3d 910, (10th Dist.).

Defendant's claim for trespass fails. Plaintiff's "encroachment" ceased to be an encroachment once title vested with the Plaintiff via adverse possession. For a trespass claim to succeed, the party must be found to invade the property of another. Here, the Plaintiff was not trespassing, but merely using their property. Defendant's trespass claim is dismissed.

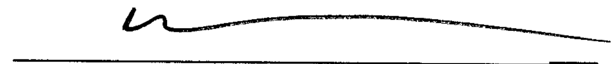
IT IS THEREFORE ORDERED that the title of the disputed area around Plaintiff's garage shall be transferred to Plaintiff. Plaintiff is hereby Ordered to provide the Court with a legal description of the property boundaries illustrated in Court's Exhibit A attached to this Decision. The Court will issue further Orders upon the filing of the legal description.

Costs to Defendant.

Pursuant to Civ. R. 53(D)(3)(a)(iii), a party shall not assign as error on appeal the Court's adoption of any factual finding or legal conclusion unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

The Clerk is directed to serve upon all parties notice of this decision and this date of entry upon the journal in accordance with Civ. R. 53, in the manner provided in Civ. R. 58.

SO ORDERED.



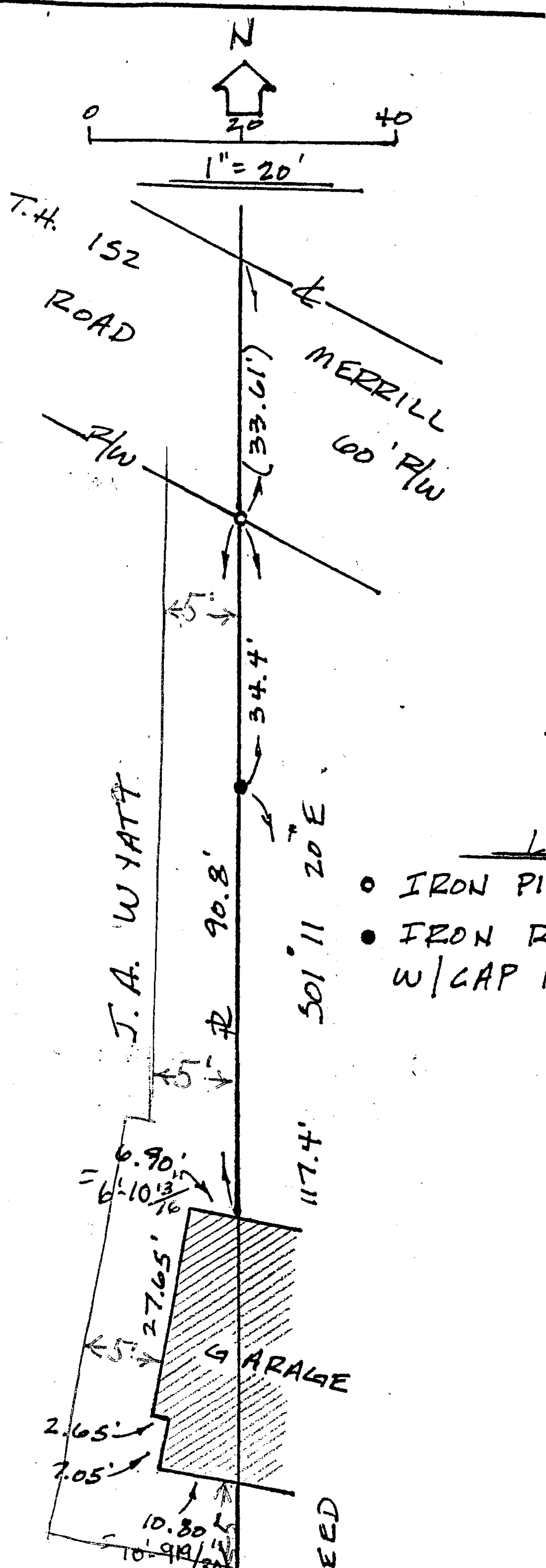
MAGISTRATE CHAD HAWKS

This Order or Decision was mailed by ordinary mail/fax/e-mail to attys/parties by the clerk on 7/20/2021

Jill Fankhauser, Clerk of Courts

By MG **Deputy Clerk**

Exhibit A



FILED
COURT OF COMMON PLEAS
MAR 30 2022
JILL FANKHAUSER, Clerk
PORTAGE COUNTY, OH

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

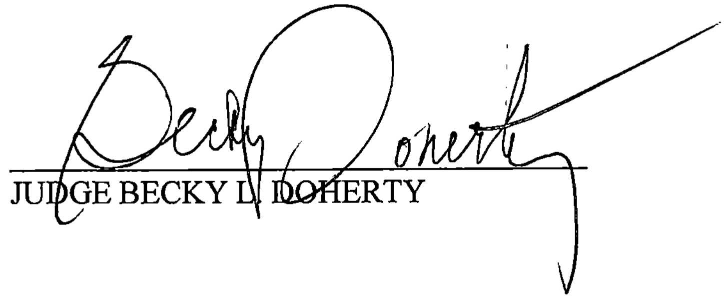
CHRISTINE MCMULLEN Plaintiff, vs. JOHN A. WYATT Defendant.	)	CASE NO. 2020 CV 398 JUDGE BECKY L. DOHERTY MAGISTRATE CHAD HAWKS **JOURNAL ENTRY**

This matter is before the Court on Defendant, John Wyatt's Objections to Magistrate's Decision. Defendant filed said Objections on July 28, 2021 and subsequently filed an Amended Objections to Magistrate's Decision on September 22, 2021.

The Court has undertaken an independent review as to the objected matters to ascertain whether the Magistrate has properly determined the factual issues and appropriately applied the law. Additionally, the Court has reviewed the pleadings, briefing, transcript of the hearing, as well as the relevant case law supplied by the parties, and finds the following: The Magistrate's Decision granting judgment to Plaintiff, Christine McMullen was proper, and Defendant's Objections are hereby overruled.

The Clerk shall serve all parties or counsel with a copy of this Order pursuant to Civil Rule 58(B).

IT IS SO ORDERED.



JUDGE BECKY L. DOHERTY