

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT JACKSON

**ACHSA HORNE,**

Plaintiff/Appellant,

**VS.**

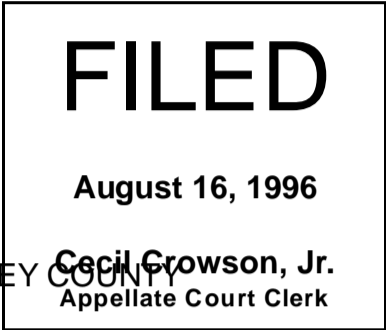
**FRANK WARMATH and wife,  
THERESA WARMATH,**

Defendants/Appellees.

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**Weakley Chancery No. 12830**

**Appeal No. 02A01-9509-CH-00201**



APPEAL FROM THE CHANCERY COURT OF WEAKLEY COUNTY  
AT DRESDEN, TENNESSEE  
THE HONORABLE DAVID G. HAYES, JUDGE

**H. MAX SPEIGHT**

Martin, Tennessee  
Attorney for Plaintiff/Appellant

**MARK F. GALLIEN**

**MARK F. GALLIEN, P.C.**  
Martin, Tennessee  
Attorney for Defendants/Appellees

**AFFIRMED**

**ALAN E. HIGHERS, J.**

**CONCUR:**

**HOLLY KIRBY LILLARD, J.**

**HEWITT P. TOMLIN, JR., SR. J.**

In this boundary line dispute, the trial court held that defendants acquired title to the

subject property by adverse possession. Plaintiff has appealed and argues that the evidence preponderates against the trial court's determination in this regard. We find plaintiff's contentions to be without merit; therefore, we affirm the judgment of the trial court.

Plaintiff, Achsa Horne, brought this petition against defendants, Frank and Theresa Warmath, to establish the boundary line of her property. The property in dispute is a twenty or twenty-two foot strip of land located on the east side of plaintiff's property.

The following facts are undisputed. Plaintiff received title to the disputed strip of land through a deed that has been of record since 1936. The Warmaths' deed, which has been of record since 1952, also includes the disputed strip of land in its property description. Since 1952, the Warmaths have treated the land as their own. For approximately forty-two years, the Warmaths have paid taxes on the property, mowed the grass on the property, and maintained a garden on the property. Additionally, the Warmaths have placed various structures on the property through the years, including a fence, two storage sheds, and a doghouse.

Plaintiff stated that during the 60 years that she has resided on the property adjacent to the Warmaths' property, she neither knew nor cared where her property lines were located. She testified that the Warmaths never sought her permission to use the disputed strip of land, that she had never given them her permission to use such land, and that she had never objected to their use of the land.

Both of the parties hired a surveyor to ascertain the location of their respective boundary lines. Plaintiff's surveyor, Robert L. Nichols, concluded that the Warmaths had encroached upon the plaintiff's property. He conceded, however, that it was apparent that the Warmaths had used the disputed strip as part of their yard for some time. The Warmath's surveyor was Jim Crocker, who also testified that the Warmaths had used the disputed property.

Following a hearing, the trial court found that the Warmaths derived color of title from their warranty deed recorded in 1952, and that their possession of the land in question had been actual, visible, and exclusive. Accordingly, the trial court held that the Warmaths had established title to the property by adverse possession. Additionally, the trial court found that the Crocker survey accurately established the boundary line between the parties.

Our review of the trial court's findings of fact in this matter are *de novo* upon the record, accompanied by a presumption of correctness, unless the evidence preponderates otherwise. T.R.A.P. 13(d). After a review of the record, we find that the evidence does not preponderate against the trial court's finding that the Crocker survey accurately depicts the boundary line between the parties. Further, we do not find that the evidence preponderates against the trial court's determination that the Warmaths acquired title to the subject property through adverse possession.

T.C.A. § 28-2-105 provides:

**Adverse possession--Assurance of title.--** Any person holding any real estate or land of any kind or any legal or equitable interest therein, and such person and those through whom he claims having been in adverse possession of same for seven (7) years, where said real estate is held and claimed by him or those through whom he claims by a conveyance, devise, grant, a decree of a court of record, or other assurance of title purporting to convey an estate in fee, and such conveyance, devise, grant, or other assurance of title, has been recorded in the register's office of the county in which the land lies for a period of thirty (30) years or more or such decree entered on the minutes of such court for a period of thirty (30) years or more, is vested with an absolute and indefeasible title to such real estate or interest therein.

T.C.A. § 28-2-105 (1980).

One claiming title through adverse possession has the burden to prove that his possession has been open, notorious, continuous, actual, and visible. Panter v. Miller, 698 S.W.2d 634 (Tenn. App. 1988). Each of these elements is a factual determination to be resolved by the trier of fact.

Possession of land to be visible and notorious must be such as

gives to the true owner reasonable notice of its existence. The rightful owner must have actual knowledge of the adverse claim, or it must be so open and accompanied by such circumstances of notoriety as that he will be presumed to have notice of it.

1 TENN. JUR. *Adverse Possession* § 12 (1982).

In the present case, the record suggests that plaintiff had actual notice of the Warmaths' use of the land. In addition, the Warmaths' activities on the land and the structures placed thereon were "so open and accompanied by such circumstances of notoriety" that plaintiff was imputed with notice.

The requirement that the possession be adverse or hostile to the true owner simply means that "a claimant must intend to appropriate the land for his use and exercise control over it as an owner...." Koster v. Ogle, No. 137, 1988 WL 74238, at \*3 (Tenn. App. July 19, 1988). It is our opinion that the Warmaths have exercised this type of control over the property.

The Warmaths obtained color of title through their deed that was recorded in 1952. Since that time, the Warmaths have been in actual, open, and continuous possession of the property. Thus, the facts of this case fall squarely within the parameters of T.C.A. § 28-2-105, and, by virtue of this provision, the Warmaths are vested with an absolute and indefeasible title to the property.

Accordingly, we affirm the judgment of the trial court. Costs on appeal are taxed to plaintiff, for which execution may issue if necessary.

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HIGHERS, J.

CONCUR:

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LILLARD, J.

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TOMLIN, Sr. J.