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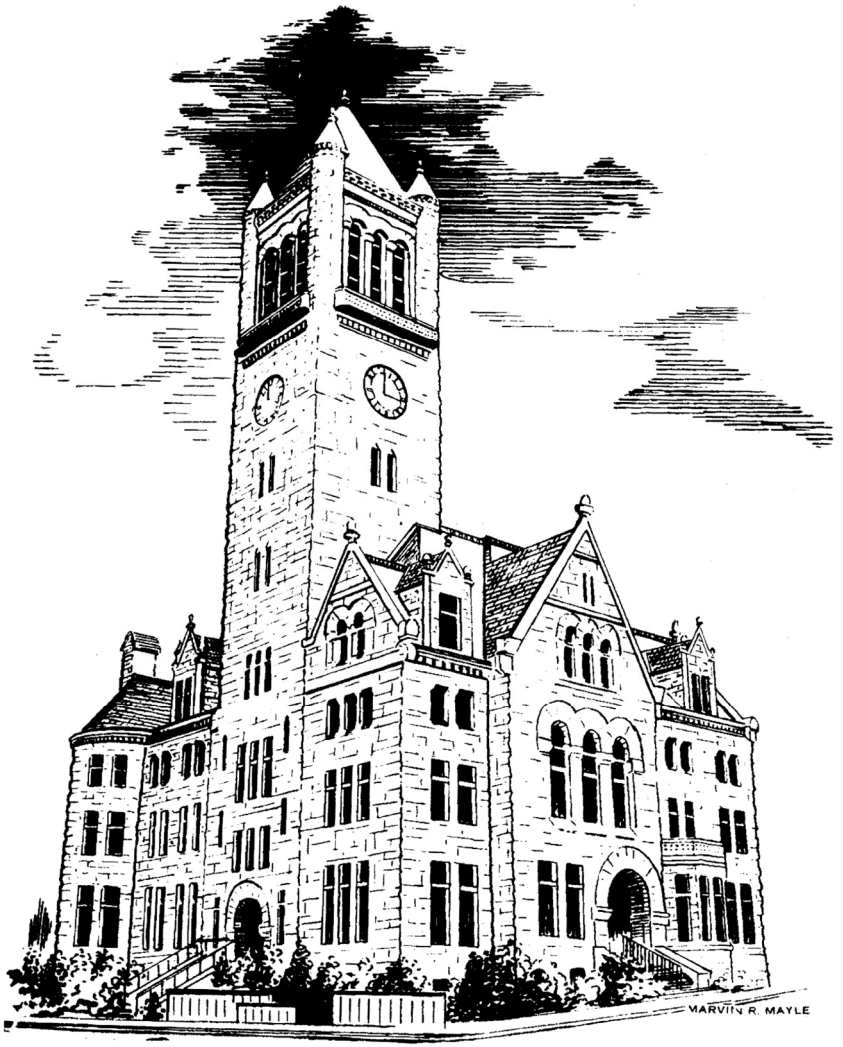

FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser.

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Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

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Attorney: Gary J. Frankhouser

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c/o 749 North Church Street
Mt. Pleasant, PA 15666
Attorney: Paul Toohey

LEGAL NOTICES

NOTICE

Notice is hereby given pursuant to the Provisions of Act of Assembly No. 295, approved December 16, 1982, known as the Fictitious Names Act, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on April 29, 2019, a Certificate to conduct business in Fayette County, Pennsylvania, under the assumed or fictitious name, style or designation of Almost Home Recovery House, with its principal place of business at 21 Franklin Street, Uniontown, Fayette County, PA 15401. The name and address of the entity interested in the said business is Patricia A. Kelly, 185 Myers Road, McClellandtown, PA 15458.

Gary J. Frankhouser, Esquire
DAVIS & DAVIS
107 East Main Street
Uniontown, PA 15401

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 2085 of 2022
JUDGE LINDA R. CORDARO

IN RE: 2012 CHEVROLET MALIBU
VIN 1G1ZC5E00CF200844

TO: SHIRLEY ANN MISENKO,
her heirs, successors and assigns, generally,

You are hereby notified that Mary Beth's Towing, LLC, the Petitioner has filed a Petition at the above number and term in the above-mentioned court in an action to involuntary transfer a vehicle title wherein it is alleged that she is the owner in possession of a 2010 Chevrolet Malibu having a VIN No: 1G1ZC5E00CF200844.

Title to the above-described vehicle lists Shirley Ann Misenko as the record owner on said vehicle.

Said Petition sets forth that the Petitioner is the owner of the above-described vehicle. The Petition was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said vehicle and to transfer the title to Petitioner.

You are hereby notified that a hearing has been scheduled for **March 22, 2023 at 9:30 a.m. in Courtroom No. 3** of the Fayette County Courthouse in Uniontown, Fayette County, Pennsylvania to terminate your rights to the above captioned vehicle. If you do not attend, the hearing will go on without you and the Judge will render a final decision in your absence.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GOT TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PENNSYLVANIA BAR ASSOCIATION
PENNSYLVANIA LAWYER REFERRAL
100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
1-800-932-0311

By Jason F. Adams, Esq.
Adams Law Offices, P.C.
55 E. Church Street
Uniontown, PA 15401

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID STUMPO, Plaintiff, vs. EDWARD CAMP, JR. and ANDREA J. cAMP, husband and wife, and DENNIS A. MARTIN, JR. and SUSAN R. MARTIN, husband and wife, Defendants.	: : : : : : : : : No. 78 of 2021, G.D. : Honorable Nancy D. Vernon

OPINION PURSUANT TO 1925(a)

VERNON, J. January 30, 2023

Before the Court is the Appeal of Plaintiff David Stumpo to the Order of this Court, dated November 28, 2022, whereby this Court denied Plaintiff's Motion for Post-Trial Relief.

On January 13, 2021, Plaintiff Stumpo filed a Complaint for Declaratory Judgment, Quiet Title, Ejectment and Damages for Trespass against all Defendants. Defendants Edward Camp. Jr. and Andrea J. Camp filed an Answer, New Matter, and Counterclaim. Plaintiff Stumpo then discontinued the action as to Defendants Dennis A. Martin Jr. and Susan R. Martin.

Following nonjury trial, the Court entered judgment in favor of the Camps and dismissed both Stumpo's Complaint and the Camps' Counterclaim for Ejectment. By Order dated November 23, 2022, the Court denied Plaintiff's Motion for Post-Trial Relief.

Thereafter, Stumpo filed the instant appeal alleging:

1. The Court failed to consider the doctrine of acquiescence. Plaintiff's boundary had been established by all of the affected property owners since 1985, for 35 years before this suit was filed. Defendants, Camp, a "johnnie-come-lately" to the party, asserted no ownership in Plaintiff's land in question for the period from 2012 after they bought the house. They did not order the survey in question, nor did they present any testimony of any legally recognizable adverse use of the driveway. Plaintiff built the driveway 35 years ago.

2. The Court ignored that there are substantial errors in Defendant's property descriptions between the deed descriptions and the survey. Clearly mistakes were made in the past, but all of the property owners for the last 35 years acquiesced to the property lines.

3. The Court placed more weight on the survey than existing monuments, a survey

pin, a shed and a driveway, all of which had been in place for 35 years.

4. The Court incorrectly did not apply the doctrine of adverse possession.

5.The Court incorrectly ignored Plaintiff's unopposed testimony that he used a then existing, and still existing, survey marker that had been shown to him by his grantor as the boundary line to construct his driveway in 1985. The testimony of a long-time property owner carries a greater weight than a surveyor when monuments are involved, particularly after 35 years.

STATEMENT OF FACTS

Plaintiff David Stumpo testified that he lives at 453 Jefferson Street, Mount Braddock and that he instituted this action because Defendant Camps "got their property surveyed and [... they are] taking my property." N.T., 10/31/2022, at 4-5. Stumpo bought his property on May 7, 1986, with his brother, and then on February 26, 2019, he received his brother's interest. See, Exhibits 1 and 2. Stumpo has lived there continuously since 1986. N.T., 10/31/2022, at 6. When he purchased the property, the prior owner walked the property line with him and showed where the pegs and markers were located. Id. Stumpo testified that one peg remains on the corner of his property next to a big oak tree in the front of his house. Id. Stumpo installed a driveway and electric power to the property. Id. at 7.

Stumpo admitted into evidence a drawing by West Penn Power Co. dated October 23, 1985, for the purpose of showing there was a drawing of a driveway on his property in 1985. Id. at 10; see, Exhibit 3. He testified that when he installed the driveway that he believed the driveway to be on his property based upon the survey markers at the time. Id. at 11.

At Exhibit 4, Stumpo admitted into evidence eight pictures of the properties that were taken from Jefferson Street by the Camps. The gray house belongs to the Camps and the newer looking fence that is depicted was installed by them about two years ago after the survey was performed. Id. at 11-12. The telephone or power pole is depicted in the photographs and had been installed in the 1980s by West Penn Power Co. Id. at 13. The third photograph in this series depicts a pin installed because of the recent survey. Id. at 14. Stumpo's blue house is pictured in the fourth photograph, and he described an orange pin next to the oak tree in the front in the fifth photo. Id. at 15. The sixth picture depicts a red tool shed that Stumpo built in 1986 and has been in the same place since then. Id. at 15. In the seventh picture, Andrea J. Camp is holding a bucket that Stumpo placed over an orange survey marker pin. Id. at 16. According to Stumpo, the surveyor placed the pin on his property behind his shed. Id. A garden is depicted in the eighth photograph that Stumpo testified is actually on his property and had been placed in his yard thirty years ago with continuous gardening occurring since then. Id. at 17. Stumpo considers the grass depicted in the eighth photograph to be his property and testified that he has maintained it since he resided there. Id.

In Exhibit 5, Stumpo admitted two more photographs showing his boundary marker and he testified "[i]t's where my property line runs [...] up along the road." Id. at 19-20. According to Stumpo, the marker has been in that position since he bought the property, and it has a flag on it. Id. at 20.

Stumpo admitted a survey prepared by Fayette Engineering Company dated February 20, 2020. See, Exhibit 6. Stumpo testified that the survey depicts his house as

"Mobile Home" at the top of the survey and a "T-post Fd. 42.' on line" notation depicts the location of the post he referred to earlier. Id. at 20-21. Stumpo testified that he has continuously used his driveway since he moved in and denied that anybody else used it other than his family and West Penn Power. Id. at 21. Upon only his testimony, Stumpo rested.

Under cross-examination, Stumpo admitted the Fayette Engineering Survey depicts his shed mostly on the Camps' property. Id. at 23. Stumpo admitted that he did not have a survey conducted. Id. at 23-24. Stumpo denied that the Camps or their predecessors ever used his "private driveway." Id. at 23-24. Stumpo further admitted that what he claims to be his private driveway is depicted on the survey instead lying on the Camps' property. Id. at 24. Stumpo testified that the Camps had a second survey performed recently by Polestar but he did not review it. Id. at 25. Stumpo handwrote a letter to the Camps which stated in its entirety:

> Mr Mrs Camp
>
> I will buy your corner property, from a garden to my shed. I bought my property from Lancaster in 1985. He and I walked the line. For what I thought was my property line for 35 years. He was wrong x were property line was. I paid $500.00 acre. Everyone Homesteaded up here more less back in day.
>
> Hope we can come to a agreement
> David Stumpo

See, Exhibit A.

Stumpo testified that he disagrees with the surveys because he knows where his boundary line and peg was located, and he knows what his predecessor told him about the property boundary. Id. at 28. Stumpo further testified that the Camps only began parking behind their house and using the driveway over the last two years since receiving the survey. Id. at 29. Stumpo is claiming that the entirety of the driveway and the fence to the left of the driveway are all on his property. Id. at 30.

Andrea Camp testified that she has resided with her husband at 459 Jefferson Street for ten years and admitted as Exhibit B her vesting deed showing their purchase on January 27, 2012. Id. at 31-32. Andrea Camp testified that Fayette Engineering prepared a survey for her neighbor, Mr. Martin, and that she received a copy. Id. at 33. Based on the survey, the Camps erected a fence on either side of the driveway, leaving the driveway open and passable. Id. at 33-34. Andrea Camp testified that they have used the driveway for as long as they have lived there to access her house, that she has always driven into the back of her home to park. Id. at 34. The Camps admitted the same photographs as Stumpo, having been the photographers of the pictures. Id., see Exhibit C. The photographs show what appear to be two gravel driveways accessing the Camps' house. Id. Andrea Camp testified that she uses the driveway to the left to park behind her house – being the driveway that Stumpo claims is his private driveway. Id. at 34-35. Andrea Camp testified that she has been using that roadway since 2012. Id. at 36. The Camps purchased the property from Edward Camp Jr.'s uncle, Gary Martin. Id. Andrea Camp testified that when they visited family prior to purchasing the property that they used the same disputed driveway for access. Id. at 36-37. Andrea Camp testified that they have never blocked Stumpo's use of the driveway. Id. at 37.

Andrea Camp further testified that they had a second survey performed by Polestar

Engineering and that both the Fayette Engineering and Polestar Engineering surveys depict the disputed driveway as being on the Camps' property. Id. at 37-38. Andrea Camp testified that they are not seeking to exclude Stumpo from using the driveway or requiring him to move the shed or garden off their property, rather they want to be declared the owners of the land and be permitted to keep their fence in place. Id. at 38-39.

Upon questioning by the Court as to the nature of Stumpo's assertion of ownership of the disputed property, Plaintiff's counsel stated that Plaintiff did not need a survey, that Defendants' surveys are inaccurate in his opinion, and that Plaintiff is basing his ownership on the marker that has been in place for thirty (30) years. Id. at 43. Plaintiff's counsel argued that the Fayette Engineering survey placed the marker on the wrong property line and that Plaintiff "assumed [the marker] was his property corner." Id. at 44 -45. The Court specifically asked Plaintiff's counsel, "[...] what is your assertion of ownership of the property?" To which Plaintiff's counsel responded, "Well we own it." The Court then inquired whether Plaintiff was claiming adverse possession, to which counsel did not respond affirmatively rather repeating his opinion that the surveys are inaccurate, that Plaintiff has owned it for thirty years, Plaintiff has "possessed it, [...] taken care of it, everything's fine. We just want it to go back to the way it was." Id. at 43.

Russell B. Mechling, III testified on behalf of the Camps and was recognized by the Court as an expert in the field of surveying. Id. at 47-50. Mechling testified that he was able to mark the driveway on the survey by reviewing deeds back through 1977 where he found the Camps' parcel being created. Id. at 51-52. He then went into the field to find whatever evidence he could of prior surveys and markings. Id. at 52. Mechling located iron rails on the eastern side of the Camp and Martin properties. Id. at 53. Mechling testified that he has worked in this area of Jefferson Street before for neighbors on the other side of Stumpo's property and that he "ended up matching on the ground comparing using the width of their property in the previous descriptions in the Hager survey established that line being to the West of the driveway in question that runs back into Stumpo's mobile home." Id. at 54-55. Mechling testified that the disputed driveway is a long driveway coming off Jefferson Street, going past the Camp house, into Stumpo's property, and that it lies on the Camps' parcel. Id. at 55-57. Similarly, Mechling testified that Stumpo's shed lies primarily on the Camps' property as well. Id. at 57.

Mechling was questioned about the "t-post" found on his survey and explained that it was a marker along the line between the Camps and RIDEC, Inc. but "absolutely not meant to ever be conceived as a corner marker" for Stumpo's parcel. Id. at 58. According to Mechling, the t-post that Stumpo claimed as a corner marker was over forty feet off from what the deeds described and would be closer for a corner with the RIDEC property rather than Camp boundary.

Under cross-examination, Mechling testified that Stumpo does not have a common corner between what would now be the RIDEC and Camp properties. Id. at 60. Plaintiff's counsel inquired whether the descriptions in the original deeds being one or two hundred years old could have failed to use minutes or seconds to get straight degrees or whether variations existed among property corners or calls. Mechling responded that different terminology is used currently compared to old deeds but that "we can arrive at the same conclusion from the descriptions." Id. at 61. Mechling also testified that "at times" variations between the "old days and what they do now" could result in survey discrepancies that have to be reconciled. Id.

Plaintiff's counsel inquired and Mechling agreed that the Camp deed description describes both the northern boundary and the southern boundary as 572.5 feet, but that

is impossible given the fact that the property is not a rectangle. Id. at 62. Mechling corrected this by taking approximately fifty feet out of the southern boundary call. Id. at 62 -63. Mechling explained that the iron rail he located he identified as a marker from a prior Hager survey. Id. at 63. Regarding the Stumpo property, Mechling testified that Stumpo's deed description does not close rather that his bearings go along Jefferson Street and neatly conform to the shape and curve of Jefferson Street as it traverses north showing the calls run along a prior West Penn railway. Id. at 66. This boundary is four straight lines that conform to the curve but do not close. Id. at 66-67. Mechling testified that neither the Stumpo nor the Camp deeds mathematically close. Id. at 67.

Plaintiff's counsel inquired about the distinction between magnetic north using a compass and true north and the changes in the field of surveying over time. Mechling explained that many deeds of adjoining properties do not have the same common bearing due to magnetic declinations but based on the deed descriptions saying along a certain property line that the survey can realize the meaning to be the same line. Id. at 68. Mechling agreed that surveyors use monuments when referenced in the deeds. Id. Mechling also admitted that if the degrees of the line are off it could result in error. Id. at 68-69.

Joseph O. Elwell, Jr. is a licensed surveyor for Polestar, a surveying and engineering company, and testified on behalf of the Camps. Id. at 70-71. The Court recognized Elwell as an expert in the field of surveying. Id. at 71. Elwell conducted a field survey on behalf of the Camps. See, Exhibit E. Elwell testified that the gravel driveway traverses Stumpo's and Martin's property a short distance and then the remainder is across the Camps' land. Id. at 75-76. The shed owned by Stumpo is mostly on the Camp property. Id. at 76. Elwell testified that the t-post Stumpo claims as a corner pin is forty-two feet down the line from the actual corner and basically marks the line, not the corner. Id. at 77. Elwell located the Stumpo corner pin right behind the shed. Id. Under cross-examination, Elwell testified that he located Mechling's pins and relied on those to render his survey. Id. at 78.

DISCUSSION

Plaintiff instituted the within action by Complaint with counts of Quiet Title, Declaratory Judgment, Ejectment, and Damages for Trespass. At the Quiet Title and Declaratory Judgment counts, Plaintiff requested that the Court confirm his ownership of property as set forth in his deed with two tracts of land to include his driveway. At the Declaratory Judgment, Quiet Title, and Ejectment actions, Plaintiff requests this Court to confirm that Defendants do not have the right to use his driveway and to require Defendants to remove their fence. At the fourth count, Plaintiff seeks Damages for Trespass. Throughout the Complaint, Plaintiff alleges fee simple ownership of the disputed tracts by virtue of his deeds. Plaintiff did not plead adverse possession or any other mechanism of ownership outside of fee simple ownership by deed.

Plaintiff's first and second allegations of error are intertwined and will be addressed together:

> 1. The Court failed to consider the doctrine of acquiescence. Plaintiff's boundary had been established by all of the affected property owners since 1985, for 35 years before this suit was filed. Defendants, Camp, a "johnnie-come-lately" to the party, asserted no ownership in Plaintiff's land in question for the period from 2012 after they bought the house. They did not order the survey in question, nor did they present any testimony of any legally recognizable adverse use of the driveway. Plaintiff built the driveway 35 years ago.

2. The Court ignored that there are substantial errors in Defendant's property descriptions between the deed descriptions and the survey. Clearly mistakes were made in the past, but all of the property owners for the last 35 years acquiesced to the property lines.

See, Plaintiff's Concise Statement of Issues.

This Superior Court of Pennsylvania has summarized the law regarding the doctrine of consentable boundary lines as follows:

> The establishment of a boundary line by acquiescence for the statutory period of twenty-one years has long been recognized in Pennsylvania to quiet title and discourage vexatious litigation. Based upon a rule of repose sometimes known as the doctrine of consentable line, the existence of such a boundary may be proved either by dispute and compromise between the parties or recognition and acquiescence by one party of the right and title of the other.

Moore v. Moore, 921 A.2d 1, 4-5 (Pa.Super. 2007). The doctrine "is a form of estoppel, whereby once a consentable line has been clearly established, the line becomes binding under application of the doctrine of estoppel after twenty-one years." Long Run Timber Co. v. Dep't of Conservation & Nat. Res., 145 A.3d 1217, 1233 (Pa.Cmwlth. 2016). "[W]hen a consentable line is established, the land behind such a line becomes the property of each neighbor regardless of what the deed specifies. In essence, each neighbor gains marketable title to that land behind the line, some of which may not have been theirs under their deeds." Soderberg v. Weisel, 687 A.2d 839, 843 (Pa.Super. 1997).

A determination of a consentable line by acquiescence requires a finding 1) that each party has claimed the land on his side of the line as his own and 2) that he or she has occupied the land on his side of the line for a continuous period of 21 years. Zeglin v. Gahagen, 812 A.2d 558, 561 (Pa. 2002). In other words, in order for a legal boundary to be established by acquiescence, "[i]t must ... appear that for the requisite twenty-one years a line was recognized and acquiesced in as a boundary by adjoining landowners." Plauchak v. Boling, 653 A.2d 671, 676 (Pa.Super. 1995) (quoting Inn Le'Daerda, Inc. v. Davis, 360 A.2d 209, 215-16 (Pa. Super. 1976)). Since "the finding of a consentable line depends upon possession rather than ownership, proof of the passage of sufficient time may be shown by tacking the current claimant's tenancy to that of his predecessor." Moore, supra at 5.

"Acquiescence," in the context of a dispute over real property, "denotes passive conduct on the part of the lawful owner consisting of failure on his part to assert his paramount rights or interests against the hostile claims of the adverse user." Zeglin, supra at 562. "A consentable line by recognition and acquiescence is typically established by a fence, hedgerow, tree line, or some other physical boundary by which each party abides." Long Run Timber Co., supra at 1234.

Plaintiff's attempted application of a boundary by acquiescence is legally erroneous. First, Plaintiff did not plead ownership of the disputed driveway by acquiescence, nor did he present any evidence of this theory at trial. Plaintiff raised acquiescence for the first time on appeal. Granting ownership of the driveway to Plaintiff based on a boundary line by acquiescence would belie the allegations of his Complaint and the only evidence presented at trial being that he is the fee-simple owner of the driveway. Second, Plaintiff presented no evidence to support the driveway being a boundary by acquiescence. The only credible evidence presented to this Court regarding ownership of the disputed parcel is the testimony and exhibits of two expert surveyors who agreed the disputed driveway lies on the Camps' property. Stumpo's lay opinion that he be-

lieved the driveway to be on his own property is without any legal significance. Stumpo wholly failed to refute the Camps' expert evidence. Stumpo is not the lawful owner of the disputed portion of the driveway. Further still, the Camps have resided on the property since January 2012, and the Court heard no evidence regarding their predecessor in title's use of the disputed driveway, thus Stumpo cannot meet the requisite that the boundary was consented to by his neighbors for a continuous period of twenty-one years.

As to his other allegations, it is without moment that the Fayette Engineering survey was "ordered" by an adjoining landowner. The knowledge garnered from the survey was the impetus for the Camps to claim ownership of the disputed driveway and erect a fence on their own lot. Stumpo's idiom describing the Camps as "johnnie-come-lately" is also mislaid as the Camps acted forthwith after their receipt of the Fayette Engineering Survey and the burden rested solely on Stumpo as plaintiff. The Camps did not bear the burden of proof and were not required, as alleged by Plaintiff, to "present any testimony of any legally recognizable adverse use of the driveway." Stumpo failed to prove his ownership of the driveway and the Court determined that the driveway belongs to the Camps. The Court did not ignore the survey errors, rather the surveyor explained "we can arrive at the same conclusion from the descriptions" and "at times" variations between the "old days and what they do now" could result in survey discrepancies that have to be reconciled. However, Plaintiff presented no evidence to refute the expert testimony of two surveyors nor did he sufficiently discredit the testimony of the Camps' surveyors. The Court heard no credible evidence that errors were committed in either survey. Plaintiff's counsel's lay opinion does not constitute evidence.

In his third allegation of error, Stumpo alleges that the Court placed more weight on the survey than existing monuments, a survey pin, a shed, and a driveway, all of which had been in place for 35 years. The Court recognizes that Stumpo placed the shed and driveway many years ago on lands that he considered his own. However, this does not change the fact that the land never belonged to Stumpo. The only existing monument presented by Stumpo was an old survey pin that he claims to be his corner pin. Stumpo's lay opinion was credibly refuted by the expert testimony of two surveyors who agreed that the old survey pin denoted a line along the boundary and not a corner marker. "The question of where a boundary line actually is located is a question for the trier of fact." Schimp v. Allaman, 659 A.2d 1032, 1034 (Pa. Super. 1995).

Stumpo next alleged that the "Court incorrectly did not apply the doctrine of adverse possession." In his Complaint, Stumpo did not plead title by adverse possession, and at trial, Stumpo presented scant evidence of adverse possession. Throughout the course of this action Stumpo has maintained ownership of the disputed driveway solely by fee simple title ownership.

At the outset, we note that in Pennsylvania, sufficient factual averments must be pleaded in a complaint to sustain a cause of action. "Pennsylvania is a fact-pleading state; a complaint must not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but the complaint must also formulate the issues by summarizing those facts essential to support the claim." Lerner v. Lerner, 954 A.2d 1229, 1235 (Pa.Super.2008). Plaintiff made no claim for adverse possession in his Complaint and, the theory of adverse possession, raised for the first time on appeal, is in direct conflict with the allegations of his Complaint that he owned the disputed parcel.

A person who claims title by adverse possession must prove actual, continuous, exclusive, open and notorious, and hostile possession of land for 21 years. Baylor v. Soska, 658 A.2d 743,744 (Pa. 1995). Each of these elements must exist; otherwise the

possession will not confer title. The burden of proving adverse possession rests upon the claimant by credible, clear, and definitive proof. Stevenson v. Stein, 195 A.2d 268, 270 (Pa. 1963). The credible testimony of Andrea Camp was that she has used the driveway since they purchased the property and even before then when visiting family. The Camps have permitted Stumpo the use the driveway for access throughout their ownership. Stumpo has failed to prove his use of the driveway is exclusive or hostile or without the permission of the true owners, the Camps or their predecessors, resulting in his failure to prove he adversely possessed the driveway.

In his final "Hail Mary" allegation of error, Stumpo alleges that "[t]he testimony of a long-time property owner carries a greater weight than a surveyor when monuments are involved, particularly after 35 years" and that "[t]he Court incorrectly ignored Plaintiff's unopposed testimony that he used a then existing, and still existing, survey marker that had been shown to him by his grantor as the boundary line to construct his driveway in 1985." Stumpo can provide no legal citation that his own lay opinion as a property owner should have weighed more than two surveyors admitted as expert witnesses and the Court finds this issue to be wholly without merit. Tellingly, Stumpo wrote to the Camps offering to purchase the driveway from them and admitting that his predecessor was wrong about the boundary line thereby also acknowledging the Camps' rightful ownership.

When reviewing the decision of a trial court in a non-jury trial, the appellate court must determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed an error of law. The Ridings at Whitpain Homeowners Association v. Schiller, 811 A.2d 1111, 1113 n. 2 (Pa.Cmwlth. 2002). In order to prevail in his actions to quiet title and ejectment, Stumpo bore the burden to establish his title by a fair preponderance of the evidence. Long Run Timber Co., supra. The Court has found that Stumpo failed to meet his burden and properly dismissed his causes of action.

Wherefore, it is respectfully submitted that this appeal is without merit and should be denied.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, February 15th from 12:00 p.m. to 1:30 p.m.**
- Location: **Courtroom No. 3 of the Fayette County Courthouse**
- Discussion topics: **The Nuts & Bolts & Rewards of Dependency Court**
- Presenters: **Honorable Linda R. Cordaro and Ewing D. Newcomer, Esquire**

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA
- $5 fee for attendance without CLE Credit
- $15 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2017
- $5 fee for attendance with CLE Credit

Non-members of the FCBA
- $15 fee for attendance without CLE Credit
- $40 fee for attendance with CLE Credit

** All fees to be paid at the door **
A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or email to cindy@fcbar.org on or before Monday, February 13th.