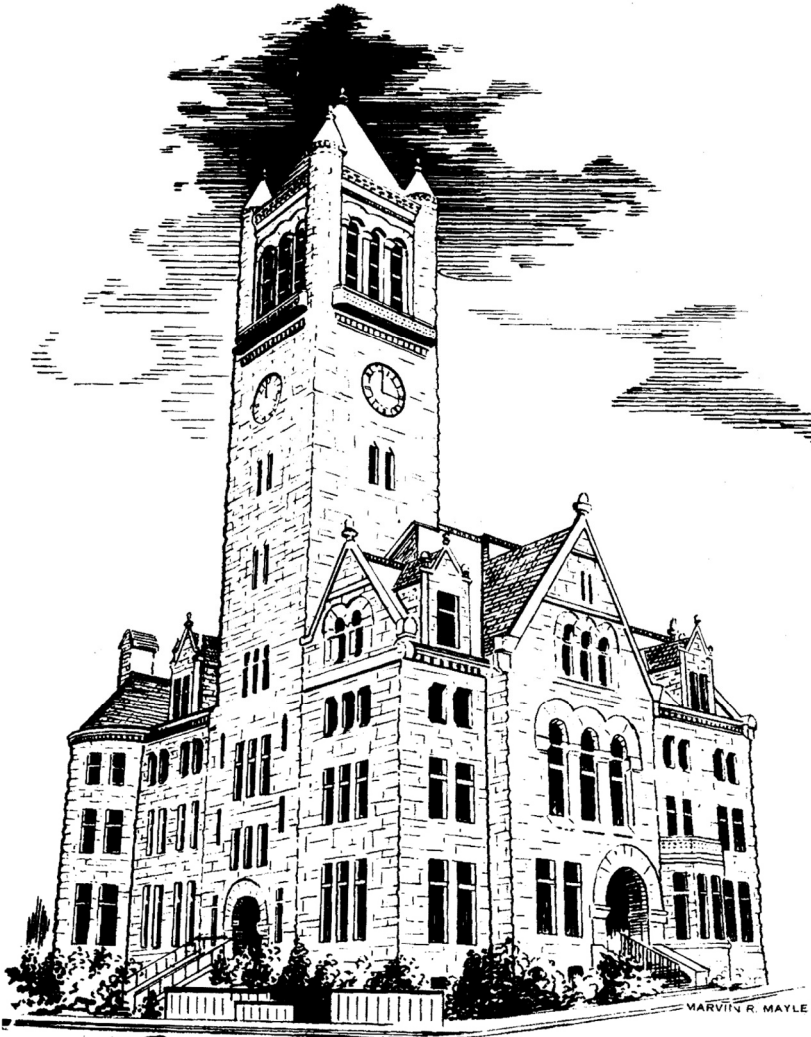


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ESTATE NOTICES

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

JOSEPH ANTOON, late of North Union Township, Fayette County, PA ⁽³⁾

Executrix: Barbara Antoon
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96 East Main Street
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Attorney: Simon B. John

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Attorney: Richard A. Husband

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c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

ROBIN E. LEE, a/k/a ROBIN ELLEN LEE, late of Smithfield, Fayette County, PA ⁽³⁾

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107 East Main Street
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MARTHA LYNN THOMAS SMITH, a/k/a MARTHA T. SMITH, a/k/a MARTHA THOMAS SMITH, late of Perry Township, Fayette County, PA (3)
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Attorney: Mark M. Mehalov

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Co-Administrators: Logan VanSickle and Shelby VanSickle
 c/o 39 Francis Street
 Uniontown, PA 15401
Attorney: Jack R. Heneks, Jr.

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Co-Administrators CTA: John W. Cole, Jr. and Emma D. Cole
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 Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

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Attorney: James Higinbotham

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Attorney: Richard A. Husband

Second Publication

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 Rostraver Two, PA 15012
 c/o 1747 Rostraver Road
 Belle Vernon, PA 15012
Attorney: Megan Kerns

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 254 Chickee Lane
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 c/o France, Lint & Associates, P.C.
 308 Fallowfield Avenue
 Charleroi, PA 15022
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LOLA M. CHESS, late of Uniontown, Fayette County, PA (2)
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 107 East Main Street
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First Publication

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Attorney: Gary Monaghan

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Greensburg, PA 15601
Attorney: Marilyn M. Gaut

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Attorney: Timothy J. Witt

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Uniontown, PA 15401
Attorney: James Higinbotham

THOMAS J. SMITH, a/k/a THOMAS SMITH, late of Dunbar Township, Fayette County, PA (1)

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208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

LEGAL NOTICES

TO: CLAUDIA LORIAUX, MARGARET WHITTAKER, THEIR HEIRS AND ASSIGNS:

You are hereby notified that The 3 J Group filed their Complaint at No. 1431 of 2021, G.D., in the Court of Common Pleas of Fayette County, Pennsylvania, in an Action to Quiet Title wherein it is alleged that they are the owner in possession of a certain tract of land situate in the Borough of Point Marion, Fayette County, Pennsylvania, more particularly bounded and described as follows:

ALL that certain lot of ground designated as Lots 14 and 15 in the Cupelli Addition to Point Marion recorded in Plan Book Volume 1, page 187-1/2, situate in the Borough of Point Marion, Fayette County, Pennsylvania, bounded and described as follows:

Each lot fronting 42 feet on Cupelli Street and extending easternly at a uniform width, a distance of 66-3/10 feet, bounded on the North by Lot No. 13 and on the South by Lot No. 16.

EXCEPTING AND RESERVING thereout and therefrom, however, a tract of land fronting 30 feet on the Eastern side of Cupelli Street, running back for a distance of 66.3 feet along Lot No. 16 in said Plan. Being part of Lot No. 15 in said Plan conveyed to Charles E. Kelley and Maxine C. Kelley, his wife, by deed of Claudia Loriaux, a widow, dated April 14, 1952, and recorded in the Recorder's Office of Fayette County, Pennsylvania, in Deed Book 756, page 132.

The Complaint asks the Court to decree that title to said real estate is in the plaintiff and to enjoin the defendants and their heirs and assigns, from setting up any title to said real

estate and from impeaching, denying, or in any way attacking the plaintiff's title to the same.

You are hereby notified that you have been sued in court. If you wish to defend against the claims set forth in the Complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER (OR CANNOT AFFORD ONE), GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW (TO FIND OUT WHERE YOU CAN GET LEGAL HELP). THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
TELEPHONE (800) 692-7375**

Vincent J. Roskovensky, II
Attorney for Plaintiff

NOTICE OF ACTION IN MORTGAGE FORECLOSURE - COURT OF COMMON PLEAS - FAYETTE COUNTY, PA - NO. 2010 OF 2019 CD - CIVIL ACTION - LAW - U.S. Bank, National Association as Trustee for the Pennsylvania Housing Finance Agency, Plaintiff vs. Christopher M. Fitzgerald, Defendant - To: Christopher M. Fitzgerald, Defendant: You are hereby notified that on 9/17/19, Plaintiff, U.S. Bank, National Association as Trustee for the Pennsylvania Housing Finance Agency, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend against you in the Court of Common Pleas of Fayette County, PA, docketed to No. 2010 OF 2019 CD, wherein Plaintiff seeks to foreclose its mortgage securing your property located at 409 Davidson Avenue, Connellsville, PA 15425, whereupon your property would be sold by the Sheriff of Fayette County. You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you. NOTICE - You have been sued in Court. If you wish to defend, you must enter a written appearance personally or by an attorney and file your defenses or objections in writing with the Court. You are warned that if you fail to do so, the case may proceed without you and a Judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE. PA Lawyer Referral Service, PA Bar Assn., 100 South St., P.O. Box 186, Harrisburg, PA 17108, 800.692.7375. Leon P. Haller, Atty. for Plaintiff, 1719 N. Front St., Harrisburg, PA 17102, 717.234.4178

NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, in Harrisburg, on the 24th day of August 2021, for the purpose of obtaining a Certificate of Incorporation for a regular corporation, which was organized under the Business Corporation Law of the Commonwealth of Pennsylvania approved December 21, 1988, Act 177. The name of the corporation is Tall Oaks Campground, Inc.

ERIC ELIA BONONI, ESQUIRE
20 NORTH PENNSYLVANIA AVENUE
GREENSBURG, PA 15601
(724) 832-2499

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY,
PENNSYLVANIA

CIVIL DIVISION

THE WILLIAM F. AIKEN LIVING TRUST	:	
formerly WILLIAM F. AIKEN and	:	
JUDITH B. AIKEN,	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
DANIEL B. FISHER and LINDA K. FISHER,	:	
their heirs, successors, and assigns,	:	No. 3429 of 2010, G. D.
Defendants.	:	Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J.

August 3, 2021

Before the Court is an Action in Ejectment and to Quiet Title filed by Plaintiff, The William F. Aiken Living Trust formerly William F. Aiken and Judith B. Aiken (“Aiken”). By way of New Matter, Defendants Daniel B. Fisher and Linda K. Fisher (Fishers) claimed title to the disputed parcel by adverse possession.

Procedural History

On December 20, 2010, the Aikens filed a Complaint in Ejectment and in Quiet Title. By Answer and New Matter, filed January 21, 2011, Defendants Daniel B. Fisher and Linda K. Fisher claimed ownership of the disputed parcel by adverse possession. By Order of Court dated August 10, 2015, the William F. Aiken Living Trust was substituted as Plaintiff for William F. Aiken and Judith B. Aiken. A nonjury trial was held before this Court from which the Court issues the within Opinion in support of a finding of adverse possession by Defendants Daniel B. Fisher and Linda K. Fisher.

Facts

The Court held a two-day bench trial at which the following testimony and evidence was presented. The Fishers own, by deed, approximately 3.35 acres bordered by Farmington Ohio-pyle Road on the front and lands owned by the Aiken Trust on the other three sides.

In support of its ejectment and quiet title actions, Aiken first called Carrie Morrison, custodian for Wharton Township, as a witness and admitted into evidence an Application for Zoning Certificate in 1998 for a residential addition and an Application for Zoning Permit in 2007 for a barn, both requested by Defendant Daniel Fisher. N.T. at 7-8; see, Exhibits 10 and 11. Aiken also admitted the county tax record of Daniel B. Fisher and Linda K. Fisher for Parcel Id 42-16-0106, located at 211 Farmington Ohio-pyle Road, Farmington, Pennsylvania, showing 3.3500 acres. Id. at 9; see, Exhibit 6.

Aiken next called Defendant’s surveyor, Joseph Destro, to testify under cross-examination. Id. at 12. Aiken requested Destro to mark the deed line of the Fishers’ deed on Exhibit 14 using

red ink. Id. at 14. Destro explained that the Fishers' lines of adverse possession were placed by him as a result of his retracement survey of the Fishers' deed from which he established evidence of ownership. Id. at 25. The lines placed by Destro formed the basis of the property claimed by the Fishers pursuant to their Statement of Adverse Possession, dated July 1, 2010, recorded at Book 3127, Page 160. See, Exhibit 8.

Aiken inquired of Destro about the physical nature of the property in question, to which he responded there was no fence or tree line, rather there were rock planters placed on the area. Id. at 17. Destro testified that the rocks were there in 2010 and had looked to be there for a long time. Id. at 18. Destro described "that someone took care of that area wanting to beautify it sort of." Id. Plaintiff's counsel marked an area in green on Exhibit 14 representing behind the Fishers' lane and rear property boundary. Id. at 20. Destro described the "green" marked area to be plantings that were not natural or indigenous to the area, planters, and river or smooth stones. Id. Destro described the "parking/work area" as "beaten down area partially graveled [...] typically see where people park [...]." Id. at 21. Destro testified that cars, including his own, were parked on the "parking/work area" and that the area was gravel or stone paved. Id. at 21-22. Plaintiff's counsel marked the gravel or stone portion with brown ink. Id. at 22.

Under cross-examination, Destro explained that his survey included both deed lines and possession lines, meaning he plotted the metes and bounds description of the Fishers' deed and then he plotted the area that the Fishers' actually possessed outside of their deed lines. Id. at 30. Destro testified that, as a surveyor, he can give no opinion as to the owner of the land encompassed by the possession lines – whether that is the Aiken's or Fishers' property is the ultimate determination of this Court. Id. at 30.

Under questioning about the parameters of the parking/work area, Destro testified that the use of this property was not "rigid in any sense" and could be used for parking cars, loading materials, and working with the Fishers' business. Id. at 32.

Destro testified under questioning from Fishers' counsel that the north easterly side of the possession lines had trees that were planted, not necessarily indigenous to the area, and that the parking/work area had evidence of the landscaping business that the Fishers operate including mulch, trees, and shrubs. Id. at 38-39. Along the south westerly boundary line of the Fishers were planters and a manicured lawn area. Id. at 39. The stones that surround the planting area were described as between eight and sixteen-inch stones that were laid in a pattern as a border for plantings to beautify the property. Id. at 40.

David Diamond testified for Plaintiff Aiken as a land surveying manager for K-2 Engineering and was recognized by the Court as an expert in registered land surveying. Id. at 42-43. Diamond prepared a survey for the William F. Aiken Trust on March 26, 2015. See, Exhibit 5. Diamond first referenced the Gosnell survey from August 1969 and the record deed from 1982, recorded at Deed Book Volume 1311, Page 21, from Pittsburgh National Bank, Executor of the Last Will and Testament of Janet R. Bygate, deceased, to William F. Aiken and Judith B. Aiken, his wife, to locate the bearings. Id. at 42-44. See, Exhibits 1 and 2. William F. Aiken and Judith B. Aiken were the initial Plaintiffs in this action and the immediate predecessor in title to the William F. Aiken Living Trust. Id. at 45. Diamond also reviewed the Statement of Adverse Possession filed by Daniel B. Fisher and Linda K. Fisher, dated July 1, 2010, recorded at Book 3127, Page 160, and the Beaver Creek Survey of Joseph F. Destro prepared for the Fishers. Id. at 45. See, Exhibits 8 and 14. Diamond further reviewed the survey of the Janet Bygate estate prepared by Fayette Engineering in July 1974. Id. at 46. See, Exhibit 7. Diamond testified that he visited the property twenty times. Id. at 47.

Plaintiff's counsel reviewed with Diamond a series of Google Earth photographs that were not admitted into evidence. Id. at 48-53. The Google Earth photos show mature growth of trees consistent with Destro's testimony. Id. at 52. Diamond testified that there is a tree canopy on the

Google Earth photos and there is no definition to any boundary. Id. at 53. Plaintiff's counsel showed Diamond Google Earth photos from April 1993 and April 1994. Id. at 54. Plaintiff's counsel questioned whether Diamond could discern any evidence of possession along the western boundary of the property from these photos to which Diamond responded, "No." Id. at 54. Diamond testified that in 1993 from the Google Earth photograph that he could not see any disturbed work area, anything disturbed behind the shed line, or any parking clearance. Id. at 55-56. Again, the Google Earth 2008 photo does not indicate any parking with the parking area to appear first in the 2012 Google Earth photograph. Id. at 57.

Plaintiff's expert, Diamond, agreed with Defendant's expert, Destro, as to the property line location of the deeded property to the Fishers. Id. at 58. When Diamond surveyed in 2015, he testified that he did not observe stone planters to the east or west of the property. Id. at 58-59. Diamond noted a small encroachment for parking to the east of the Fisher parcel but did not observe any man-made structures. Id. at 60. Diamond testified in the northeast corner the area appeared more groomed and the grass was cut. Id. at 60.

Diamond testified that the documents of record in Fayette County did not support the lines of possession claimed by the Fishers. Id. at 61. Diamond's surveys identified these areas as encroachment by the Fishers. Id. at 62-64. See, Exhibits 4 and 5.

Under cross-examination, Diamond admitted that the 2012 Google Earth photograph shows four cars parked in the parking area and that the photo is not detailed enough to show the rock planters. Id. at 64-65. Reviewing the 2006 and 2008 photos, Diamond admitted the work area had "been disturbed" but he would not know who caused the change – Aikens or Fishers. Id. at 66-67. In questioning the 1994 Google Earth photograph, Defendants' counsel asked whether Diamond could identify the "indentation", to which he replied, "How am I going to know what it is in 1994?" Id. at 74. In the northeast corner, in July 2015, Diamond noted landscape, shrub, rocks, and mulch, and in the back he saw "debris, dirt, mounds, and logs." Id. at 75. Diamond testified under defense counsel questioning that 0.16 acres were cut grass or manicured lawn, the mulched area was separate from the cut grass, and that dirt mounds and logs were noted on the area in dispute. Id. at 80-81. Under re-direct examination, Diamond testified the Landscaping by Fisher line is on the Fisher property. Id. at 82-83.

Russell Meyers testified for Aiken that he is familiar with the Aiken property by virtue of his hunting on the property approximately thirty to forty times since 2005. Id. at 89. Meyers recalled the first time that he hunted the property having "Bill" take him around the area, showing him boundaries to hunt. Id. at 90. Meyers remembered rock piles and a field that came down almost to the Fisher house. Id. at 90. Meyers denied there were any paved areas or parking areas and denied seeing anything man-made on the eastern side of the property in 2005-2006. Id. at 91.

Under cross examination, Meyers testified that he was only on the property in the fall to hunt and did not visit in the summer landscaping season. Id. at 94. Meyers testified that he could view all the Fishers' property through the tree lines and that rock planters were at the entrance near the driveway. Id. at 93-94.

Benjamin Morrison also testified for Aiken as being familiar with Aiken's property having hunted on the lands since 2004. Id. at 96-97. Morrison testified that early on he did not notice parking in the now parking area. Id. at 100. Morrison testified that over time, the parking area changed as the Fishers "made a stockpile." Id. at 100. Morrison denied the northeast portion was ever landscaped to make it attractive. Id. at 100. He testified that the parking/work area used to be where hay was made off the field. Id. at 100. Morrison further testified that one time he was harvesting a deer after dark with the assistance of Bill Aiken, when they returned closer to the area in dispute, Defendant Fisher confronted them stating there have been robberies around and he was inquiring who was up there. Id. at 101-103. Under cross-examination, Morrison responded "early on" he did not see landscaping vehicles but "later" he did. Id. at 104.

Plaintiff called Defendant Linda Fisher to testify under cross-examination. Id. at 108. Linda Fisher testified that she and her husband, Daniel Fisher, moved in 1986 when they purchased the property and were cordial neighbors with the Aikens. Id. at 108. Linda Fisher could not recall specific dates of when William Aiken became the record owner of the neighboring parcel, and Linda no longer resides at 211 Farmington Ohio pyle Road. Id. at 110-111. William Aiken had asked Linda Fisher to look after his house when he was not residing there and would alert her when he gave people permission to hunt his land. Id. at 111. Linda Fisher denied telling William Aiken that he could not come on the property and denied ever excluding Aiken. Id. at 115-116.

Linda Fisher testified that the parking area existed when they purchased it from Mr. Wareham and was conclusively used as a parking area in 2005 and 2010. Id. at 118. Linda Fisher testified the parking area is gravel/dirt and that anyone could park in that area. Id. at 119.

In approximately 2009 “when this all started,” Linda Fisher approached Bill Aiken and a surveyor inquiring “why [he was] doing this.” Id. at 120. Mr. Aiken replied that he wanted to know his property lines and for the Fishers to “stay off of them.” Id. at 120. Linda Fisher replied to Aiken she did “know about adverse possession” to which Aiken replied, “I was hoping you wouldn’t know about that.” Id. at 120. Linda Fisher denied telling Aiken that they had not been using the property continuously for 21 years. Id. at 120.

Linda Fisher testified that on Exhibit 14, surveyor Destro placed the barn on her side of the property line and that the Fishers had removed and replaced an old barn with the new barn. Id. at 123.

Linda Fisher testified that her father-in-law used to operate a nursery business for Jan Bygate and that he planted the trees in question and made the rock beds in front of the trees. Id. at 124. Linda Fisher further testified that Mr. Wareham walked the property with her pointing out the boundary lines being a little beyond the tree line and down to where it was maintained on the southwestern side. Id. at 127-128. Since their purchase, Linda Fisher testified that she and Daniel Fisher have been using the same area by mowing and maintaining the grass, planting flowers, and raising family on the property. Id. at 128. With regard to the landscaped beds surrounded by rocks, Linda Fisher testified that they have been there since Mr. Wareham showed her around the property. Id. at 129. Linda Fisher testified that the parking area has been there since they purchased the property and that they have maintained it. Id. at 129. The parking/work area in the back and the southwest side has also been maintained to the possession line since the purchase. Id. at 129.

William Aiken resides at 248 Farmington Ohio pyle Road, Bygate’s Farm. Id. at 133. William Aiken testified that his trust owns the property, but it has been in his family’s ownership since the mid-1950s when owned by his grandmother, Janet Bygate. Id. at 133. William Aiken is the son of William F. Aiken and Judith B. Aiken, the original plaintiffs. Id. at 134. Aiken testified that he frequently visited the property throughout his life having gone there many weekends until he moved away in about 2003. Id. at 134. Aiken used the property as a child for play and then as he aged, he would perform any number of different maintenance jobs, trimming shrubs and trees, weeding, painting, and repairs. Id. at 134. Even when his parents owned the property, Aiken would handle the house and tenants. Id. at 135.

Aiken testified he first remembered Linda Fisher in late 2009 when she asked if she could walk her dog up and down the driveway into the woods. Id. at 135. As early as 2005 or 2006, Aiken would run into Daniel Fisher. Id. at 135. Aiken continued to maintain the property especially the eastern boundary by removing invasive shrubs one summer in the early 2000s. Id. at 136. Aiken testified that the Fishers never told him to get off of their property or that he was not permitted to perform maintenance on the eastern boundary. Id. at 136. Similarly on the western boundary, Aiken removed invasive bushes in the early 2000s. Id. at 136.

Aiken was cordial with the Fishers until a few months before they filed the Statement of Adverse Possession. Id. at 137. Aiken moved to his residence full-time in 2003, he is retired, and he keeps a “journal of jobs” that he has done. Id. at 138. Aiken writes down “various jobs” that he performs including documenting when he mows the grass, paints or trims certain things, or when he has interactions that have to do with the property. Id. at 139.

Aiken testified that his journal entry reflected a date of April 2010 when he met Linda Fisher outside with a surveyor and had the discussion about boundary lines. Id. at 140. Aiken recollects that Linda Fisher told him that although the parking area had been on the eastern side “since the days of Mountain Greenery which was the nursery that [his] grandmother and [her] father-in-law ran, even though it had been there since that far back they had not been using it for 21 years.” Id. at 141. Aiken stated he made this statement and Linda Fisher “acknowledged that it was true.” Id. at 141.

The entirety of both parcels belonged to Aiken’s grandmother prior to the Fishers’ parcel being created in 1986. Id. at 142. Aiken testified that with respect to the western portion, he maintained that area along the woods and property line. Id. at 142. Aiken did not recall any journal entries about his maintaining the property to the west. Id. at 143. Aiken described the green hatching on Exhibit 14 and the eastern portion as “just natural vegetation.” Id. at 143. Aiken describes the parking/work area as “a mess back there,” stating it is packed gravel, dirt, a burn pile, a brush pile, and piles of rocks and mulch. Id. at 143. According to Aiken, the parking/work area grew in size over the years. Id. at 143.

In 2005 or 2007, Dan Fisher mentioned to Aiken that he erected the new barn on the exact footprint of the old barn to avoid any property line disputes. Id. at 144. Aiken denied any man-made structures to the north of the Fisher deed line and denied that the Fishers have ever erected a fence. Id. at 144-145. Reviewing the Google Earth photographs, Aiken testified that the encroachment was smaller in 2005 than it was in 2012 and he could see no evidence of Fisher possession in the photo from 1994. Id. at 145. Aiken testified that nothing prevented him from using the entirety of his property and no one ever told him he could not. Id. at 145-146.

According to Aiken, “on more than one occasion” Dan Fisher told him that he would “move his equipment and piles off my property, whenever the time came, that he or I would have the survey done and establish the property lines exactly.” Id. at 147. In April 2010, Aiken testified that Dan Fisher moved equipment and piles off his side of the property line and told Aiken that he had done so. Id. at 147.

Aiken admitted photographs at Exhibit 9 taken in October 2014. Exhibit 9B shows Daniel Fisher’s truck and trailer on Aiken’s property that the Fishers are claiming by adverse possession and Exhibit 9C shows a different view of the vehicles on the eastern boundary with Fisher. Id. at 148-150. Aiken testified the vehicles are movable and have not been parked there for years. Id. at 151. Aiken testified to a junk pile that “comes and goes.” Id. at 154.

The Court inquired about a visible grass difference between maintained lawn and field on Exhibit 9B to which Aiken replied that he has had a neighboring farmer brush hog the field and that Dan Fisher has also done it “various times with and without [his] permission.” Id. at 155. On Exhibits 9C and 9D, Aiken admitted the Fishers brush hogged the field, denying that it is a lawn. Id. at 155-156. Aiken further testified that when his neighbor farmer brush hogs the fields that he does the entirety from the property line to the rental house but when Dan Fisher does it, he “doesn’t always do the whole field.” Id. at 156.

Aiken testified that he contacted an attorney in 2005 with concerns of the Fishers encroaching on his property to the north, that the encroachment was growing every year. Id. at 157-158. According to Aiken, he asked Dan Fisher to remove “stuff” and he did. Id. at 158. Aiken presented an email that he sent to Attorney Gary Altman in June and July 2005. Id. at 158. See, Exhibit

13. The document appears as a printout of a Word document, Aiken explaining that he saves his emails in Word so that he can search them easier and to save them if he lost access to email. Id. at 159. Aiken inquired of Attorney Altman what he should do with the growing encroachment by Daniel Fisher. Id. at 160. Aiken wrote, “He claims he doesn’t know where the property line is, but I don’t believe him. He said he’d move his equipment if it’s on my property. Can you recommend a surveyor I could use to determine the property line?” Id. at 160-161. Aiken also wrote that Dan Fisher wants to buy a few acres but that he would not sell to him because his backyard is ugly with commercial activity equipment, burn pile, and piles of mulch. Id. at 161.

Under cross-examination, Aiken testified that he became the record owner in October 2012, and that he lived in San Diego from 1987 or 1988 until 2003. Id. at 162. Prior to California, Aiken lived in various places including attending college in Vermont and Colorado. Id. at 163. Aiken testified that he lived outside the area from the time the Fishers bought in 1986 until he returned in 2003, but that he spent a lot of time at the property. Id. at 163. The first survey by Aiken was in 2009 by Fayette Engineering with the stakes being replaced in 2010, having been moved, according to Aiken, by Linda Fisher. Id. at 163-164.

Aiken admitted that the debris area and parking in the back has been there “a fairly long time.” Id. at 165. Aiken lives across the road and up the street, the house on the adjoining property to the Fishers is used as a rental. Id. at 165.

Aiken identified trees in a narrow-wooded area but did not know who planted the trees. Id. at 166. Aiken did not put in the rock planters but testified they were leftover from the Mountain Greenery days and that the Fishers did not maintain those bed. Id. at 167. Aiken testified the Fishers helped him carry the weeds to their burn pile when he removed the bush honeysuckle overgrowth invasive species. Id. at 167. Aiken testified the northeastern side of the driveway parking area was not there for a long time, rather the Fishers re-graveled and suddenly employees started parking there. Id. at 170. Aiken admitted Exhibit 9B reflected that trees were growing out of a brush pile. Id. at 172.

Aiken denied the debris was in this location in 1993 or 1994. Id. at 175. Aiken testified that he would engage Tom Cesarino or his father to brush hog the areas to the east and north annually. Id. at 175. Aiken testified he cleared a huge strip of invasive bush honeysuckle in the area that the Fishers are claiming along the east side. Id. at 177. Under recross-examination, Aiken testified that the Fisher property was deeded by his grandmother to the Wareham family in 1976. Id. at 177-178.

Daniel Fisher was called as on cross-examination by Plaintiff’s counsel. Fisher was questioned about when he applied for a zoning certificate in 1998 whether he indicated that his lot size was 3.3 acres, to which he responded, that he did not know the acreage and the “girl at the tax, told me how much.” Id. at 180-181. Fisher denied the handwriting on the Application for Zoning Certificate was his but agreed that he did read and sign the document. Id. at 181-182. See, Exhibit 10. Fisher could not recall the date of incorporation for Landscaping by Fisher Incorporated under questioning if the date was June 24, 1993. Id. at 183-184. Fisher testified he placed the Landscaping by Fisher sign on the property for the fiftieth anniversary of his father’s landscaping business. Id. at 183. Upon this testimony, Plaintiff rested.

Joseph Destro was called to testify again by Defendants. Id. at 185. Destro testified that he examined the property and performed a survey. Id. at 186. See, Exhibit A. Exhibits B and C show the stone beds that were on the Fisher property and depict how the stones appeared in 2010 and again when Destro visited the property as recently as 2020. Id. at 187. There were a number of beds down the property lines. Id. at 187. The stone beds were south of the lane, on the western side adjacent to the road, and going back to the green shaded area of Exhibit 14. Id. at 188. Destro testified the area below the tree line marked in green on the exhibit was maintained better in 2010 than when he visited the property in 2020. Id. at 188. In 2010, Destro went to the property to look

for evidence of possession being both physical evidence and what the Fishers were asserting as their property. Id. at 189. Upon this evidence, Destro marked the possession lines. Id. at 189.

Describing the parking/work area, Destro testified the area was associated with the landscape business being a planted area, shrubs, parking area, surrounded by a mowed area. Id. at 190. The area to the west of the red line on Exhibit 14 were shrubs, stone planters, park-like trees, and the vegetation was “knocked down” and weed whacked. Id. at 190. Destro testified to what he saw being maintained by the Fishers stating, “You can really tell the difference on the northern side between the mowed field and then the green area that’s adjacent to the parking area. [...] it’s manicured different.” Id. at 192. According to Destro, the difference in maintenance is one aspect of possession. Id. at 193.

Under cross-examination, Destro testified the stone beds had moss on them and had been there for a very long time. Id. at 194. Destro agreed that nothing in the area claimed by Fisher possession would prohibit the Aikens from continuing to use the lands. Id. at 196. Destro stated, “The specific area described in the deed is not the same as the area that the Fishers thought at that time or think they own or do own.” Id. at 197. The stone beds were in an area claimed by the Fishers. Id. at 198. Again, Destro testified he saw shrubs and maintained areas that indicated possession by the Fishers in those portions now claimed through adverse possession. Id. at 201. Destro testified Fisher told him that he maintains those areas, but under questioning, admitted he had no way of knowing whether that was true. Id. at 202.

George Chisnelle has known Daniel Fisher since the 1960s and has been to their property nearly a hundred times. Id. at 203-204. Chisnelle testified that the parking area to the east of the driveway has been there “since [the Fishers] owned the property.” Id. at 204. Chisnelle has parked there, has seen others park there to visit the Fishers, and no one has ever stopped him from parking there. Id. at 204. As to the parking/work area, Chisnelle testified those areas “always seemed to be used by them in the landscaping business.” Id. at 205. Regarding the rock beds, Chisnelle testified “they’ve always been there” and the Fishers maintained them for a period of time as a holding area for shrubs. Id. at 206.

Harry Woodrow Burd, Jr. testified for the Fishers that he worked with Dan’s father since 1971 and then continued helping some when Dan Fisher took over. Id. at 208-209. Burd has been there “from day one.” Id. at 209. Burd testified he would always park in the parking area off the driveway or in the back by the equipment. Id. at 210.

With the usage of the parking/work area in the back, Burd testified that a 40-foot trailer would bring sod to the property and needed a large area to turn around. Id. at 210. According to Burd, the Fishers used “the whole entire area.” Id. at 210. A pile was kept for things brought back from a landscaping job like old shrubs. Id. at 210.

George W. Maust testified that he also has been employed by Landscaping by Fisher for forty years, first with Lou Fisher and now with Dan Fisher. Id. at 214-215. The parking area off the driveway has been there “ever since [he has] been working for Dan.” Id. at 216. Maust is familiar with the space in the rear, testifying that he “always parked the trucks back there and the equipment” and that the area is used for shrub and mulch deliveries. Id. at 216. Maust testified Dan Fisher has been using the parking/work area for as long as Maust has worked for him. Id. at 216. Maust also cuts grass and weed whacks the property. Id. at 216.

Linda Fisher presented family photographs of her children playing in their yard in approximately 1996 and of her brother-in-law that also depicts the parking/work area in the background. Id. at 219-220. See, Exhibits D and E. Exhibit F shows a tractor, dump truck, and a white utility van in the background of her children playing. Id. at 221. Exhibit G has in the background machinery, piles of landscaping mulch, and stones in the back parking/work area. Id. at 222. Exhibits I through N show more children, a deck, and the parking area off the driveway in the background, starting back approximately 1986 or 1987. Id. at 223-226.

Linda Fisher testified that since they purchased the property that they have always parked off the driveway in the same area. *Id.* at 226. The area used by the Fishers throughout the years is the same area marked for possession by surveyor Destro. *Id.* at 226-229. Linda Fisher testified under cross-examination that they always believed the areas now claimed by adverse possession were actually theirs from the beginning, having been shown these boundaries by Mr. Wareham when they purchased the property. *Id.* at 233.

Daniel Fisher testified that he met with Mr. Wareham who took him outside to show him the property before he purchased it. *Id.* at 235. Mr. Wareham told Daniel Fisher that the “boundaries were the mowed area that was mowed by Cesarino in the back and in the front and then the planters on each side.” *Id.* at 235. Fisher testified he believed that the soil pile, stumps, bricks, even down to the planters were all on his property. *Id.* at 236. Fisher testified that he has used the entirety of the area marked on Destro’s survey as his own since he purchased the property. *Id.* at 236.

Daniel Fisher further testified that the rock planters have been in place since he bought the property, the planters are approximately twenty feet by sixteen feet, and that he has always taken care of them stating, “No one else has, but me.” *Id.* at 237-238. Daniel Fisher testified that he had never seen Aiken in the areas where he alleged to have removed the invasive bushes but has seen Aiken walk along the right of way up to his rental house. *Id.* at 240. Fisher denies that Aiken ever cleaned within these boundaries. *Id.* at 240. Fisher does not remember ever helping Aiken carry or clean anything. *Id.* at 240.

With regard to the parking area off the driveway, Fisher testified it has been there since before they moved in, having been previously used for the office of Mountain Greenery. *Id.* at 240. Fisher has maintained the parking area solely since his purchase in 1986. *Id.* at 240.

As to the parking/work area, Fisher testified that he uses it as a place to put debris and burn limbs and mulch. *Id.* at 241. This area has also been used since 1986. *Id.* at 241. Fisher testified that a forty-foot tractor trailer delivers his mulch and can make the giant turn around at his shed. *Id.* at 241. On this area Fisher stores his dozer, bobcat, and trucks. *Id.* at 241. Fisher has maintained the driveway, planted dogwoods along it, and graveled it. *Id.* at 242-243. See, Exhibits O through Q. As to why Destro would testify the rock beds used to be in better shape in 2010, Fisher stated that he used to have more men working to take care of them. *Id.* at 244-245. Exhibit S shows where Fisher stores his material being the back line of possession. *Id.* at 245. Exhibits T, U, and V show equipment, trucks, and logs for firewood along the back area. *Id.* at 246-247. Fisher denies ever expanding his property and claims ownership of the entirety of the area marked on the Destro survey, believing originally that he always owned it. *Id.* at 247-248.

Discussion

Ejectment is an action filed by a plaintiff who does not possess the land but has the right to possess it, against a defendant who has actual possession. *Soffer v. Beech*, 409 A.2d 337, 343 (Pa. 1979). A plaintiff in an ejectment action must rely on the strength of his own title and not on the weakness of the defendant’s title. *Hershey v. Poorbaugh*, 21 A.2d 434, 436 (Pa.Super. 1941). Once the plaintiff in the ejectment action establishes title the burden shifts to the defendant to prove a better title. *Hallman v. Turns*, 482 A.2d 1284, 1287 (Pa.Super. 1984). The purpose of an ejectment action is not to determine the relative and respective rights of all potential title holders, “but rather the immediate rights between plaintiff and defendant involved in that particular litigation.” *Siskos v. Britz*, 790 A.2d 1000, 1006 (Pa. 2002).

Ejectment is a possessory action wherein Aiken must prove the right to exclusive possession, primarily through proof of paramount title. *Roberts v. Estate of Pursley*, 700 A.2d 475 (Pa.Super. 1997). The evidence established and the parties do not dispute that Aiken has record title to the disputed parcel. In fact, both parties’ expert surveyors agree to the boundary lines by deed. The

Fishers base their claim of title to the disputed area by adverse possession, and thus, the burden shifts to them to prove that they have acquired title pursuant to this claim.

Adverse possession is an extraordinary doctrine which permits one to achieve ownership of another's property by operation of law and the grant of this extraordinary privilege must be based upon clear evidence. *Edmondson v. Dolinich*, 453 A.2d 611, 614 (Pa.Super. 1982). 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).

Actual Possession

There is no precise definition of what constitutes actual possession of real property; the determination of possession is dependent upon the facts of each case, and to a large extent the character of the land in question. Actual possession of land means dominion over the land but is not equivalent to occupancy. *Reed v. Wolyniec*, 471 A.2d 80, 85 (Pa.Super. 1983). Actual possession of property may be established in connection with the maintenance of a residence, by cultivation of the land, or by making improvements to the land. *Glenn v. Shuey*, 595 A.2d 606, 611 (Pa.Super. 1991). In general, however, actual possession of land means dominion over the property; it is not the equivalent to occupancy. *Recreation Land Corp. v. Hartzfeld*, 947 A.2d 771 (Pa.Super. 2008). The requirements for "actual" possession of a property will necessarily vary based on the nature of the property. *Id.*

The photographs and testimony reveal the nature of the property in dispute to be used for storage of landscaping materials and equipment, parking for the Fishers, their visitors, landscaping customers, and employees, and as an extension of the Fishers' yard. The area in dispute is bounded by what the Fishers incorrectly believed to be their deeded property line. The Fishers' photographs confirm actual possession for a period greater than twenty-one years.

Aiken argues that Landscaping by Fisher was not incorporated until 1993 which defeats the twenty-one years requirement for adverse possession. The testimony reveals the lands were used for parking, both for residence and business, and for staging of landscaping materials and equipment since 1986. The date of incorporation is insignificant when the business activities throughout three decades reveals the actual use of the property by the Fishers.

Aiken admitted into evidence applications made by the Fishers to Wharton Township for zoning and building permits in 1998 and 2007 whereon the acreage was identified as 3.3 acres. Fisher denied the handwriting on the Application for Zoning Certificate was his stating about the acreage, "I didn't know exactly how much it was and the girl at the tax, she told me how much [...]." N.T. at 181. Fisher admitted the signatures on the applications were his, but without evidence as to his knowledge or belief of acreage, the Court gives no weight to the applications.

Aiken further argued that historic Google Earth photographs establish that the Fishers did not use the disputed parcel as claimed since 1986. The Court has reviewed the photographs and believes those submitted from the 1990s and early 2000s were not clear enough photographs to be convincing evidence. The photographs show tree coverage over much of the mountainous, wooded areas and whether or not the land was disturbed under the foliage is speculative.

From the credible testimony by the Fishers that the property has been used by them since they purchased it in 1986, it is clear that the Fishers are in actual possession of the disputed property.

Exclusive Possession

To constitute exclusive possession for purposes of establishing title to real property by adverse possession, the claimant's possession needs to be a type of possession which would characterize an owner's use. *Brennan v. Manchester Crossings, Inc.*, 708 A.2d 815 (Pa.Super. 1998). Exclusive possession can be established by acts, which at the time, considering the state of the land, comport with ownership; such acts as would ordinarily be exercised by an owner in appropriating land to his own use and the exclusion of others. *Lyons v. Andrews*, 313 A.2d 313, 315-316 (Pa.Super. 1973). "Exclusive" possession does not need to be absolutely exclusive. *Reed*, supra at 84.

The Fishers have maintained the property surrounding their lot by cutting the grass, planting and maintaining various shrubbery, at times for the landscaping business, and generally using the land as an extension of their own property. The land used by the Fishers in the back was large enough to turn around a forty-foot tractor trailer. The Fishers' use was to the general exclusion of others as the Court heard no credible testimony that the disputed parcel was used by anyone else. In his brief, Aiken cites pages 254-255 of the transcript and argues that "Daniel Fisher acknowledged that at the direction of William's grandmother, he assisted his father in placing the so-called stone planters on Five Gates Farm in several locations." The Court's review of the notes of testimony reveals that Daniel Fisher testified he was "not sure what kind of arrangement" was between his father and William Aiken's grandmother. The record is also void of the planters being installed "at the direction" of Jan Bygate, the grandmother.

Aiken further argues that Fishers were on cordial terms and did not exclude the Aiken family from the disputed land. This testimony comports with the Fishers' misunderstanding that what is now disputed was always believed by them to be their boundaries by recorded deed. The record is devoid of any evidence of Aiken or his predecessors attempting to use or maintain the disputed parcel such that "exclusion" would have been required to be manifested by the Fishers.

Continuous Possession

In order for adverse possession to ripen into title, it is necessary to show that such possession has been continuous and uninterrupted for the full statutory period. *Glenn*, supra at 611 citing *Tioga Coal Co. v. Supermarkets General Corp.*, 433 A.2d 483 (Pa.Super. 1981). The statutory period is twenty-one years in this Commonwealth, as in most jurisdictions. The law does not require that the claimant remain continuously on the land and perform acts of ownership from day to day. *Id.* Moreover, the activity on the property need not occur every day for it to be "continuous" for purposes of adverse possession. *Ewing v. Dauphin County Tax Claim Bureau*, 375 A.2d 1373 (Pa.Comwlth. 1977).

From 1986 to the present, the Fishers have maintained the property consistent with the nature of the property being an extension of their yard, a parking area, and a work area for the landscaping business. The Fishers undertook these activities, uninterrupted since 1986. It was not until the filing of the instant action that Aiken, or the Trust's predecessors in title, ever raised any objection. Aiken emphasizes the 2009 email to Attorney Gary Altman wherein he wrote that Fisher would remove any equipment on Aiken's property following a survey. The Court does not find this compelling evidence as nothing materialized until 2010 when this action was filed, sufficiently beyond the twenty-one year period. Further, Daniel Fisher's alleged offer in 2009 to remove any equipment from Aiken's property would not defeat the claim of adverse possession where, as here, Daniel Fisher believed that the area now disputed was, in fact, his own property.

Aiken argues that sporadic parking by visitors to the Fisher residence is not sufficient to constitute continuous use. This argument is opposite the testimony that the Fishers, their personal visitors, their employees, and their customers all routinely parked in the parking areas.

Aiken argues that the Fishers' photographs show their daughter Rebecca, who was not born until 1992, and thus could not be used to establish the time frame prior to then. However, Linda Fisher testified that some photographs show her daughter, Emily at age four in approximately 1988, as Emily was thirty-six years old at the time of hearing, and other photographs show Natalie who was born in 1981. *Id.* at 223. Still other pictures admitted by the Fishers show the parking area in 1987, the year after a deck was built on their residence. *Id.* at 223.

Accordingly, the Court finds the Fishers' use easily exceeds the requisite twenty-one year statutory requirement beginning in 1986 for establishing adverse possession.

Open and Notorious Possession

Adverse possession requires the parcel to be used visibly to place the record owner on notice. The requirement that, to be adverse, a use must be open and notorious is for the protection of those against whom it is claimed to be adverse. *Koresko v. Farley*, 844 A.2d 607, 613 (Pa.Comm. 2004). It enables them to protect themselves against the effect of the use by preventing its continuance. *Id.* This requirement may be satisfied by a showing that either the landowner against whom the use is claimed has actual knowledge of the use or has had a reasonable opportunity to learn of its existence. *Id.* To establish adverse possession, possessory acts must be sufficiently visible and obvious to put a reasonable owner on notice that his property is being occupied by a non-owner with the intent of claiming possessory rights. *Glenn, supra.* The record owner is "charged with seeing what reasonable inspection would disclose." *Id.*

The credible evidence suggests that the Fishers' conduct was sufficient to demonstrate open and notorious possession as they used the area for their own purposes and it is reasonable to conclude Aiken, as a neighbor since 2003, could observe the Fishers' use. Aiken's predecessors in title were all family members and the record supports that the Fishers have openly used the disputed parcels since 1986. The Court finds especially credible the testimony of the Fishers' employees of their landscaping business who testified that the disputed land has been used by the Fishers since 1986. As such, the Court holds the Fishers have established their possession to be open and notorious.

Hostile Possession

The word "hostile" as an element of adverse possession does not mean ill will or actual hostility, but simply implies assertion of ownership rights which are adverse to those of the true owner and all others. *Brennan, supra.* Hostility will be found when the claimant possesses the property without permission of the title owner. *Glenn, supra* at 612. "While the word 'hostile' has been held not to mean ill will or hostility, it does imply the intent to hold title against the record title holder." *Vlachos v. Witherow*, 118 A.2d 174, 177 (Pa. 1955). If all other elements of adverse possession are present, hostility will be implied. *Tioga Coal Co. v. Supermarkets General Corp.*, 546 A.2d 1, 3 (Pa. 1988). Further, the true owner must affirmatively act to interrupt the adverse possessor's use of the property. *Reed, supra* at 85.

Aiken argues that Fisher asked him to sell property of Five Gates Farm to him, but Aiken declined. This argument is irrelevant as the request to sell, and resultant denial was not for the property in dispute.

The Court find incredulous that a property owner since 2003 (Aiken) who journals daily logs when he mows the grass would not object loud and clear if his land was being used by another. Aiken's lack of objection until this action in 2010 supports the Fishers' testimony that they always believed the disputed parcel to be their own property.

It is the opinion of this Court that all other requirements for adverse possession have been met, and therefore the final element of hostility is too.

WHEREFORE, we will enter the following Order denying the Action in Ejectment and to Quiet Title filed by Plaintiff, The William F. Aiken Living Trust formerly William F. Aiken and Judith B. Aiken and granting title to the disputed parcel by adverse possession to Defendants Daniel B. Fisher and Linda K. Fisher.

ORDER

AND NOW, this 3rd day of August, 2021, following nonjury trial, it is hereby ORDERED and DECREED that the Action in Ejectment and to Quiet Title filed by Plaintiff, The William F. Aiken Living Trust formerly William F. Aiken and Judith B. Aiken is DENIED.

It is further ORDERED and DECREED that title to the disputed parcel is awarded to Defendants Daniel B. Fisher and Linda K. Fisher by adverse possession being the area identified on the Statement of Adverse Possession, dated July 1, 2010, recorded at Book 3127, Page 160.

BY THE COURT,
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary

WARMAN ABSTRACT & RESEARCH LLC

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FCBA BENCH BAR CONFERENCE

Save the Date

FCBA Bench Bar Conference will be held on

Wednesday, October 13th from
8:30 a.m. to 1:00 p.m. at

The Historic Summit Inn

Agenda to follow

LUNCH & LEARN SERIES

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

- **Date: Thursday, September 16th** from 12:00 p.m. to 1:30 p.m.
- **Location:** Courtroom No. 1 of the Fayette County Courthouse
- **Discussion topics: The new standard seller's property disclosure statement, seller's disclosure obligations, and tips for the proper use of the standard form in residential real estate transactions.**
- **Presenters:** Brian W. Carter, Esquire - PA Association of Realtors

CLE Credit

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

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2016

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 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.

While same day registrants are welcome, lunch will be served first to those who register in advance of the program day due to the difficulty in estimating the number of walk-ins.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbbar.org on or before Tuesday, September 14th.

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