Circuit Court for St. Mary's County
Case No. 18-C-16-000638

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2201

September Term, 2017

DUANE L. EDGECOMB, ET UX.

v.

ELSIE MATTINGLY, ET VIR.

Meredith,
Arthur,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: December 31, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case involves a property dispute between neighbors in Hollywood, Maryland. Appellants Duane ("Lee") and Laurie Edgecomb own real property immediately east and adjacent to real property owned by appellees Elsie and William Mattingly. Decades before the Edgecombs purchased their property, the prior owner constructed a wooden fence near—but not quite on—the property line between their property and the Mattinglys'. The total area between the fence and the property line is approximately 1,455 square feet. The Mattinglys testified that they always believed these 1,455 square feet of land (the "Disputed Property") to be theirs. The Mattinglys treated the Disputed Property as their own, by mowing the grass, planting and removing trees, planting a bush and flowers, and decorating portions of the land with a bird bath and metal geese.

In 2015, over 20 years after the Mattinglys first planted trees on part of the Disputed Property, a dispute arose between the Edgecombs and Mattinglys when William Mattingly began to install a chain link fence on the posts of the wooden fence. This led the Mattinglys to hire a surveyor, who established that the property line was four to six feet west of the wooden fence. The dispute soon turned less-than-neighborly when Lee used a Bobcat to dig up land on the Disputed Property. Eventually, in 2016, the Mattinglys filed a complaint for adverse possession and damages against the Edgecombs. The circuit court found that the Mattinglys had adversely possessed the land but denied their claim for damages. Both sides appealed.

The Edgecombs present three issues, which we have consolidated and rephrased into two:[1]

I. Did the trial court err in considering the Edgecombs' fence as evidence of a boundary for purposes of adverse possession?

II. Did substantial evidence exist to support the trial court's decision that the Mattinglys had established the necessary elements of adverse possession?

In their cross-appeal, the Mattinglys ask whether the circuit court erred in denying their claim for damages.[2]

[1] The Edgecombs phrased their questions presented as follows:

I. Did the Circuit Court err when it found that Appellees owned the Disputed Property by adverse possession when the fence the Appellees claims as the border of the property was prohibited from being considered as evidence under Maryland Law?
II. Did the Circuit Court err when it found that Appellees owned the Disputed Property by Adverse Possession when the record lacked substantial evidence to prove the elements necessary to take someone else's land by way of adverse possession?
   a. Did the Circuit Court err when it found that the Appellees owned the Disputed Property by adverse possession despite the fact that the record is devoid of the substantial evidence of the type and intensity of uses necessary to establish adverse possession?
   b. Did the Circuit Court err when it found that the Appellees Owned the Disputed Property by Adverse Possession despite the fact that Appellees did not present substantial evidence to prove the continuity element of adverse possession?
II. Did the Circuit Court err when it found that Appellees owned the Disputed Property by adverse possession despite the fact that Appellees did not prove the hostility element of adverse possession because the Appellees acknowledge that the Appellants were the true owners of the Disputed Property?

[2] The Mattinglys' question presented stated:

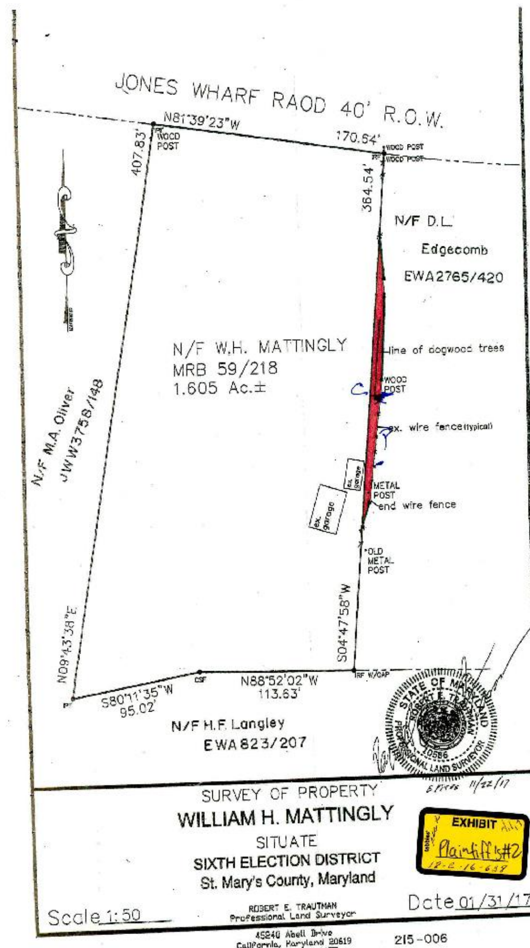
On the Edgecombs' first issue, we hold that the circuit court did not commit legal error in considering the existence of a fence as a reference point marking the Disputed Area over which the Mattinglys claimed to exercise dominion during the statutory period. We conclude that substantial evidence exists in the record to support the circuit court's decision that the Mattinglys had established the necessary elements of adverse possession. Finally, we hold that trial court's decision to deny the Mattinglys' claim for damages after determining that there was no credible evidence in the record to support their claim was not clearly erroneous. Thus, we affirm the judgment of the trial court.

BACKGROUND

Since 1979, the Mattinglys have lived at 25526 Jones Wharf Road, Hollywood, Maryland (the "Mattingly Property"). The Edgecombs purchased the neighboring property to the east at 25540 Jones Wharf Road (the "Edgecomb Property") in 2006. Some time before either party owned these properties, a predecessor-in-interest to the Edgecombs—the Rollers—built a wooden fence near the property line between the Mattingly Property and Edgecomb Property. Back then, the fence connected to another fence that ran parallel to Jones Wharf Road to create an enclosure for horses. The fence line was bowed, forming

> Did the trial court err in denying Appellees/Cross-Appellants' claims for damages stemming from the destruction of property caused by Appellant/Cross-Appellee Duane L. Edgecomb, when said party admitted to causing the damage, photographic evidence of the damage was admitted into evidence, Appellees/Cross-Appellants' expert testified as to the extent of the damage and the cost of repairing the damage, without any contradictory evidence or contradictory expert opinion?

an arch shape, and sat four to six feet from the property line. The bow in the fence left 1,455 square feet of the Edgecomb Property to the west of the fence, connected to the Mattingly Property. These 1,455 square feet, represented by the shaded area in the picture below (Plaintiffs' Ex. 2), is the Disputed Property in this case:



The Underlying Action

Following a dispute over ownership of the Disputed Property, the Mattinglys filed a complaint for adverse possession in the Circuit Court for St. Mary's County on April 29, 2016. The Mattinglys sought a declaration that they are the owners of the Disputed Property as well as $150,000 in damages to compensate the Mattinglys for damage to the

Disputed Property and for the anxiety and stress the Edgecombs caused the Mattinglys. The Edgecombs answered the complaint on June 3, 2016, denying the Mattinglys' claims and asserting 20 affirmative defenses, including statute of limitations, and ranging from duress to charitable immunity. The case eventually proceeded to a three-day bench trial on November 1 and 29 and December 14, 2017.

The Mattinglys' Case

Adverse Possession

After opening arguments, William testified first. He related that, when the Mattinglys moved in, he understood the "disputed area" to be his. He cut the grass "all around the whole area from way into the other end, the whole - - the whole acre and a half or more." William also parked his cars in the area and stored propane tanks there. His family also "played games and things like that over there in this disputed area." William testified that there was no briar patch on the Disputed Property.

Around 1990,[3] William planted cedar trees about a foot west of the fence in the northern portion of the Disputed Property. The Mattinglys maintained those trees until 2002, when William tore them out because they had grown too large. Then, in 2004, two years after taking out the cedar trees, the Mattinglys planted Cleveland pear trees and a Sharon bush in the Disputed Property, further south than where the cedar trees had been.

[3] William testified several times in his deposition that he planted the cedar trees in 1996, which would have amounted to only 19 years of possession. But at trial, he maintained that he planted them in 1990. While the trial court commented that William's "memory on some of these things is not precise," the trial court found that William planted the cedar trees in 1990.

They planted the trees and bush about 2 ½ to 3 feet west of the fence and mulched around them. William also planted flowers between the Cleveland pear trees and Sharon bush, which "came up every year." Then, "as time went on," after planting the pear trees, William testified that the Mattinglys placed some decorative geese and birdbaths in the mulched area. [4] William also kept trucks and some propane tanks in part of the Disputed Area for a period of time until his wife Elsie requested that he remove them sometime between 1988 and 2002.

In regard to the fence, William testified that the Rollers had installed and maintained it. William thought the fence was following the property line and on the Edgecombs' property. He explained: "The fence line belonged to them, because I never maintained the fence until it started falling down." The Rollers occasionally repaired the fence, replacing rotted fence posts and coming onto the Mattinglys' side of the fence to do so.

A dispute over the property arose in 2015 when William asked Lee "about putting [a] chain link fence all the way from [behind the Cleveland pear trees] down to the driveway." William testified that Lee came by his house two days later to ask him to move

[4] William testified at trial that he put out the geese and birdbaths in 2004, just "three or four months" after planting the pear trees. But on cross-examination the Edgecombs' counsel confronted William with his deposition testimony in which he testified that he decorated the mulched area with the geese and birdbaths four years prior to his 2017 deposition—in 2013. When confronted with this conflicting testimony at trial, William explained: "I know I put them out there [before 2013], but I got confused and whatever. But I know they've been out there a right good while." He then testified that it was probably between 2004 and 2006. Then, the Edgewoods' counsel confronted William with a photo from 2012 that did not appear to show mulch around the pear trees and William admitted that, while he was sure their trees were mulched in 2004 and 2015, they may not have been the entire time in between.

the fence two inches west because Lee "c[ouldn't] cut grass between his cedar trees and the fence."

In response, the Mattinglys hired a surveyor, Mr. Robert Trautman, to discern the property line. William testified that Trautman's survey was how he first learned where the property line was. After receiving the results of Trautman's survey, the Mattinglys met with the Edgecombs to discuss the property line. William testified that, at that meeting, he and his wife agreed to remove any materials from the Edgecombs' side of the property line, clean up the mulch, and "slope the banks" of the property. The next day, April 18, 2015, the Mattinglys removed mulch they had laid in the Disputed Property. William testified that he later removed his metal geese "and things" after Lee "started tearing up everything" because he "didn't want [his] geese and things destroyed."

When asked on cross-examination why he removed the mulch and things if he owned the Disputed Property, William replied: "Because Mr. Edgecomb didn't like the idea that we had done all that, and he was getting a little angry about different things. And we turned around and did it just to please him, to keep him quiet. Tell him we got a lawyer to figure this out."

William also testified that, around May 2016, Lee took his Bobcat and dug out the sloped ground along the property line. The depth of the area that Lee dug out ranged from about six inches on one end to about five feet at the deepest part of the slope. Lee also cut down tree branches from the pear trees in September 2015.

Following William's testimony, Robert E. Trautman, a registered land surveyor, testified about his survey of the boundaries between the Mattingly Property and the

Edgecomb Property. Trautman's survey confirmed that the "arc shape[d] fence" sat about four to six feet onto the Edgecomb Property, due to the variance of the shape of the arc. The court entered into evidence a letter Trautman wrote explaining his findings, including that "there appears to be approximately 1,455 square feet of area" between the fence and the property line.

Finally, Elsie testified that the Mattinglys maintained the Disputed Property by cutting the grass and utilized this area as a play area for the Mattinglys' children. Elsie testified that she could not recall any instance of anyone other than her family doing anything in the Disputed Property. Elsie also testified that, on occasion, the prior owners of the Edgecombs' property would enter the Disputed Property to fix the fence separating the Edgecombs' property from the Disputed Property.

Damages

The Mattinglys called Mr. John William Quade, Jr., a certified general appraiser, as an expert in the field of appraisals. Quade testified that from the time he first assessed the Mattinglys' property in September 2016 to his final visit the day prior to trial, "erosion ha[d] taken place on the bank from the Mattingly side into the center of the ditch [that Lee dug with his Bobcat]" due to the excavation performed by Lee and was worsening.

Quade valued the damage caused by Lee at $14,111. Quade based this figure on an estimate that he received from a contractor, Mr. Wayne Davis, and did not personally perform a cost analysis of the value of the damage to the Disputed Property. The Mattinglys did not offer an appraisal or other documentation concerning the value of the damage into evidence. Quade admitted on cross-examination that the estimate included

the cost of replacing fencing and that it would have affected the estimate if the replaced fencing had belonged to the Edgecombs rather than the Mattinglys. Quade further admitted that the estimate valued the cost to "[f]ill in excavated ditch approximately 10 feet wide by 3 feet deep by 185 linear feet long."

Motion for Judgment

At the close of the plaintiffs' case, the court recessed and urged the parties to settle their dispute out of court. The court did not reconvene until nearly a month later, on November 29, 2017. Counsel for the Edgecombs began the proceeding by moving for judgment, arguing three main points: (1) the Edgecombs' fence was not appropriate evidence of a boundary for the court to consider as demarcating the land adversely possessed; (2) the Mattinglys did not satisfy the continuity requirement because the two sets of trees were not planted for a continuous amount of time or in the same area; and (3) if the court believed William's deposition rather than his trial testimony, that he planted the cedar trees in 1996, only 19 years had passed before April 2015 when the Mattinglys removed the mulch from the Edgecombs' side of the property line. According to the Edgecombs, the only activity that the Mattinglys undertook in the Disputed Area that spanned 20 years was cutting the grass, which was not adequate to put the prior owners of the Edgecombs' property on notice of adverse possession. The Mattinglys responded that planting and removing the cedar trees, mowing the grass, and planting different flora comported "with the ordinary management of similar lands by owners" and, collectively, constituted acts that would establish adverse possession.

After reciting the facts adduced during plaintiffs' case, the trial court denied the Edgecombs' motion for judgment. The court found that the Mattinglys established a prima facie case of adverse possession—making their possession open and notorious—because their "conduct [wa]s similar to how an owner uses property of this type. The land is a small yard and has been maintained and used as such[.]" The Mattinglys' possession was also hostile, the court found, because "there [wa]s no indication defendants or their predecessors granted permission to maintain the land or otherwise acknowledged their title [to] the land until sometime in 2015." As to whether the possession was interrupted during the statutory period, the court found that there was a "lack of evidence" and "if there's evidence of it, it is not weighty – sufficiently weighty to grant the motion on the continuous possession issue."

The Edgecombs' Case

The defense then opened its case, calling Ms. Mary K. Summers, a former neighbor of the Edgecombs and the daughter of the Rollers, the predecessors-in-interest who had already deceased. She testified that her parents owned the Edgecombs' property from 1984 until her mother passed away years later. Summers testified that she always understood the boundary to her parents' property to be 2 to 3 feet beyond the fence that enclosed the front-half of the property at the time. Summers explained that, because they lived on a farm, her family maintained only the yard and allowed the grass and weeds on the rest of the property to grow in the summer and die in the winter. Summers also testified that she never saw the Mattinglys or anybody else doing anything—cutting the grass, placing structures, or planting—on the Disputed Property.

Lee testified next. He explained that he moved to 25540 Jones Wharf Road after purchasing the property from the Rollers in 2006. The Edgecombs already owned several adjacent properties. Together, the properties formed one large parcel once he purchased the property from the Rollers. When he bought the property, he continued, Lee walked the property line with Mr. Roller and William on the Mattinglys' side of the fence. Lee testified that he and William talked about the property line that day in January 2007, and there was no dispute about where the line was. Lee was hesitant to do so at first, but Mr. Roller insisted because there had been "problems of [the Mattinglys] respecting the property line." Lee knew even before then, though, that the wooden fence was not the property line because "it was as crooked as a snake."

Around the fall of 2006, a few months after buying his property, Lee "did some landscaping, filled holes, dr[agged] the property with a beam to make it flat." He did this "between the area behind where [he] put [his] trees, where the fence was," because "there were some irregularities" that he had to fix so he could use his riding mower to cut the grass there. He also testified that he planted "Kentucky 31" grass in this area, "[a]ll the way up to the property line." When his counsel asked him to confirm whether he did this in the Disputed Property, Lee responded, "Absolutely. Yes."

According to Lee, the Mattinglys did not have cedar trees around the property line at the time he bought the property and seeded the Disputed Property with grass. It was not until "shortly after" that the "trees showed up."

In January 2007, Lee prepared a plat that he recorded in the land records of Saint Mary's County that showed the property line between the Edgewood Property and the

Mattingly Property, intersected at two points by the bowed fence drawn onto the plat. He testified that he "absolutely" knew that some of his property sat west of the bowed fence. Lee also testified that, in 2007, there was a wire fence that ran between the property line and the wooden fence to help act as a buffer because the Rollers' horses had been getting out. There were also metal posts from an old fence that ran along the deeded property line.

Further, Lee testified that the Mattinglys had not made use of much of the Disputed Property because it was covered in a briar patch so thick that the fencing had to stop to avoid it. A year or two before he bought the property from the Rollers, Lee testified that he helped Mr. Roller move the fence posts west, closer to the Mattingly Property, and he helped him remove trees in the area to create "runs" for the horses that went about eight feet west of the fence, toward the Mattingly Property. While they were moving the posts, William came up and claimed they were moving the posts onto his property. But Lee and Mr. Roller "finished the work, and nothing was done about it." At that time, Lee stated that he saw no visible indication that the Mattinglys were making use of the Disputed Property for any purpose, and there were no trees planted there at the time. Lee added that neither the Mattinglys' propane tanks nor cedar trees were in the Disputed Property. He claimed that the propane tanks were back further near the garage on the Mattingly Property, and he knew this because "that was the only place that the land was flat enough to put tanks." He also disputed Williams' testimony that the cedar trees were planted within a foot of the wooden fence, insisting instead that William planted them about five feet beyond the property line—"a reasonable distance off the property line. And I didn't have a problem with them." Lee knew this because he "drove by them every day."

Lee testified that the property dispute arose in 2015 when William asked if he would mind if William put up a metal fence on Lee's fence posts. Lee said that he did mind because he had about 6 feet beyond his fence and, if William put up a metal fence, Lee wouldn't be able to get around to tend to his trees on the Mattingly-side of his fence. Rather than allowing William to put fencing on the posts on his property, Lee told William that he planned to move the fence posts closer to the property line.

After their conversation, Lee pulled all his wooden fence posts out of the ground. William called the sheriff, who told them to find the boundary line, which they did. Then, the Mattinglys took down the new fencing that William had put up and, according to Lee, "agreed to honor their side of [the boundary]. So [Lee] didn't anticipate any problems after that."

Despite the purported agreement in 2015, Lee also testified to another dispute between the parties. Lee said that the Mattinglys caused rocks and debris to fall into the Disputed Property. Lee caused his attorney to send a letter to the Mattinglys to prevent further damage to the Edgecomb Property and to return the Edgecomb Property to its original state, including removing the trees that the Mattinglys had planted in the Disputed Property.

After Lee's testimony, the parties offered closing arguments followed by the trial judge reciting the facts he heard adduced during the defense's case. The trial judge then scheduled the parties to return on December 14 when the court would issue its ruling and recessed for the day.

The Court's Ruling

When the parties reconvened before the court on December 14, the trial judge began proceedings by summarizing the relevant testimony and exhibits the parties had presented during the trial. The court then explained its ruling and findings in open court:

> No money damages have been proved. There is an estimate of what it would cost to fix. It was not received. There is no credible evidence of what the damages would be, and requests for money damages are denied.
>
> There are 27 exhibits. It is clear the plaintiffs had used the property long before the Edgecombs purchased it. They have lived out there since 1979.
>
> . . . [T]he plaintiff said he maintained the one and a half acres of grass with his wife and no one else. The wife said that the child helped, and that's a photograph of that.
>
> He planted the cedar trees apparently around 1990 and tore them down 12 years later in 2002. I have already commented that plaintiff's memory on some of these things is not precise.
>
> But what is left standing after you take out imprecision? Plaintiff's [Exhibit] No. 4 shows a youngster with a mower cutting the grass near the birdbath in November of 1995. That's evidence of control.
>
> The tree and the bush that his brother-in-law gave him were in 2003 or '4. He said he mulched the annual flowers. He said he cut tree branches in September of 2015. He said he cut the grass every week or two, and that the defendant had destroyed it.
>
> Elise Mattingly confirmed some of that, that she helped cut the grass with the help of the youngsters. She testified to the Rollers installing the fence.
>
> The trees alone do not satisfy plaintiffs obligation[.] . . . But we don't look at them in a vacuum.
>
> When you look at the evidence of cutting the grass, planting flowers, planting trees and taking them out 12 years later, cutting limbs in 2015, and all of the evidence taken together, the plaintiffs have met their burden.

The court also found Trautman's survey (Plaintiffs' Ex. 2), showing the Disputed Property in red (the shaded area), to be believable. The court found that the Mattinglys had believed that they had owned the Disputed Property by 1990 at the latest. The court ruled that the Mattinglys had "exercised actual, open, notorious, visible, exclusive, hostile

under claim of title and ownership, and continuous dominion over the 1,455 square feet at issue." Noting that the decision wasn't easy or "clear at first blush," the court found that "taken together, it is clear that from 1990 to 2015, [the Mattinglys] exercised those things over the property."

On December 19, 2017, the court entered a written order denying the Mattinglys' claim for damages and ordering that the Mattinglys "are awarded, through adverse possession, the property delineated in red on [Trautman's survey]." The Edgecombs noted their timely appeal to this Court on January 11, 2018.

DISCUSSION

Standard of Review

Pursuant to Maryland Rule 8-131(c), we apply the clearly erroneous standard of review to factual findings and review the trial court's decision for legal error:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Md. Rule 8-131(c). Accordingly, this Court gives "due regard to the trial court's role as fact-finder and will not set aside factual findings unless they are clearly erroneous." *Clickner v. Magothy River Ass'n Inc.*, 424 Md. 253, 266 (2012). "We must assume the truth of all the evidence, and of all the favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the lower court." *Porter v. Schaffer*, 126 Md. App. 237, 259 (1999). "A factual finding is clearly erroneous if there is no competent and material evidence in the record to support it." *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md.

App. 562, 576 (2007). The trial court's legal determinations and conclusions of law receive no deference and are reviewed de novo. *Porter v. Schaffer*, 126 Md. App. 237, 259 (1999).

I.

The Edgecombs' Wooden Fence as a Boundary

The Edgecombs insist that the Mattinglys' claim of adverse possession is "fatally flawed because the only visible line of demarcation of the Disputed Property was a fence that was owned and built by" the Edgecombs and/or their predecessors-in-title. According to the Edgecombs, it was error for the court to "consider the fence as evidence of adverse possession because the undisputed evidence shows the fence was constructed by the record owner . . . within the Edgecomb Parcel." Because "the fence was the only physical manifestation of any kind of boundary or demarcation of the Disputed Property," the Edgecombs suggest that the court committed legal error by relying "on evidence that Maryland prohibits it from considering."

The Court of Appeals in *Costello v. Staubitz* summarized the law applicable to adverse possession claims that involve a visible line of demarcation, like a fence. 300 Md. 60, 73 (1984). Costello and Staubitz owned adjoining undeveloped lots between Red Cedar Road and the banks of Whitehall Creek in Annapolis. *Id.* at 63. A predecessor-in-interest to Costello had erected a fence from the road to the creek some 40 years prior to the underlying suit for adverse possession. *Id.* That fence ran diagonally northeast to southwest, crossing the property line between the lots (which ran north to south), so that it created a triangle of land at the southeast corner of the Costello's property that separated from the remainder of the Costello's property that sat to the west of the fence. *Id.* The

Staubitzes used that triangle of land indistinguishably from their own property (which, like the disputed triangle of land, sat to the east of the fence), believing they "owned all of the land up to the fence." *Id.* at 64. A portion of the land was left in its natural state, and on other portions of the disputed triangle, Staubitz planted trees, placed (and moved) a concrete fire pit, built a boathouse and temporary boat railway, and buried a pet. *Id.* Finding this usage to satisfy the elements of adverse possession, and the fence to constitute a boundary to delineate the extent of the Staubitz's possession, the trial court ruled that Staubitz acquired title to the disputed triangle through adverse possession. *Id.* at 65-66.

After this Court affirmed, the Court of Appeals granted certiorari and reversed. *Id.* at 67. The Court's opinion focused on the trial court's treatment of the fence as a visible boundary delineating what land Staubitz had possessed adversely. *Id.* at 68. Examining its decisional law dating back to the 19th Century, the Court enunciated the following "general principles" that apply "in adverse possession cases in which a visible line of demarcation [i]s a factor:"

1) The existence of a visible line of demarcation ordinarily *does not* constitute evidence of adverse possession when:
    a) it was created by a record owner, for the record owner's own purposes, within the record owner's land; or
    b) it was created by a party claiming title by adverse possession for the purpose of claiming the visible line of demarcation as a boundary only if it is in fact coincident with the actual boundary.
2) The existence of a visible line of demarcation ordinarily constitutes *some evidence* of adverse possession when:
    a) it was created by a party claiming title by adverse possession for the purpose of claiming the visible line of demarcation as a visible boundary delineating the extent of the claimed adverse possession; or
    b) there is no evidence to show by whom and for what purpose the line of demarcation was created.

Id. at 72-73 (internal citations omitted) (emphasis added).

Turning to the facts before it, the Court observed: "The only evidence presented relating to the fence was that it was erected by a farmer who was the record owners' predecessor in interest. The farmer's sole purpose for erecting the fence was to confine his cattle on his own property, . . . and to prevent them from straying onto the adjoining property[.]" Accordingly, "the existing fence was not a visible boundary delineating the extent of the claimant's adverse possession[,]" because it "was erected by the record owners' predecessor within the predecessor's own boundaries and for the predecessor's own purposes." *Id.* at 73-74. The fence, "therefore, did not constitute evidence of adverse possession and was not an appropriate factor to be taken into account in determining the extent of the claimant's adverse possession." *Id.* at 74. The Court explained the effect of its ruling: "the applicable principle is that the claimant, who was without color of title, [wa]s entitled to acquire title by adverse possession *only to land actually occupied*." *Id.* at 74 (emphasis added). Because the trial court "did not make any findings as to what, if any, land was actually occupied by the claimant for the statutorily prescribed twenty-year period[,]" the Court remanded the case to the trial court for further proceedings. *Id.*

This Court applied the principles of *Costello* in a subsequent appeal between the Peters (the Costellos' successor-in-interest) and the Staubitzes regarding the same Disputed Property. *Peters v. Staubitz*, 64 Md. App. 639 (1985). The Court of Appeals had directed the case to be remanded to the trial court to determine "what, if any, land was actually occupied by the claimant for the statutorily prescribed twenty-year period." *Id.* at 642 (*citing Costello*, 300 Md. at 74). On remand, the trial court "made detailed findings"

concerning the Staubitzes' "acts of dominion over the Disputed Property and their duration." *Id.* Based on these findings, [the trial court] ruled that Staubitz 'has acquired title to the disputed strip of land . . . by adverse possession." *Id.* On appeal, Peters argued that the trial court erred as a matter of law in using the fence to delineate the extent of the Staubitzes occupancy. *Id.* The Court clarified that "the court need not totally ignore the fact that there is a fence in existence because it is evidence of the outer limit of physical property over which [the claimant] could reasonably have exercised dominion." *Id.* at 644. The evidence of a fence, however, does not relieve a claimant of the requirement "to demonstrate his acts of dominion over the disputed land for the required statutory period." *Id.* (*citing Costello*, 300 Md. at 74). Turning to the case before it, the Court held that the appellee had satisfied the requirements of adverse possession and that the court "merely referenced to the fence for what it was—'a visible border.'" *Id.*

Applying the foregoing lessons to the case before us, we hold that the trial court did not err by considering the existence of the fence. The Mattinglys referred to the fence as the reference point for the Disputed Area and what they believed was the outer limit of physical property over which they had exercised domain for over 20 years. *See id.* at 644. As in *Peters*, however, the existence of the fence, or a reference to its contours, did not absolve the trial court of determining the exact demarcation of the property actually occupied for the statutory period, which we discuss next.

II.

Substantial Evidence of Adverse Possession

The Edgecombs contend that the Mattinglys "failed to meet their burden of proof in this matter as to the elements necessary to prove adverse possession." According to the Edgecombs, a review of the facts on which the circuit court relied "demonstrates the paucity of evidence" that "does not rise to the level of 'substantial evidence' necessary under Maryland law to take away the [Edgecombs'] property." The Edgecombs maintain that the Mattinglys failed to establish that their possession was open and notorious with the intensity required, continuous and uninterrupted for 20 years, or hostile to the Edgecombs' ownership.

A party claiming to have adversely possessed property bears the burden of establishing that their possession satisfied the necessary elements for a period of 20 years: "possession must be actual, open, notorious, exclusive, hostile, under claim of title or ownership, and continuous or uninterrupted." *Senez v. Collins*, 182 Md. App. 300, 323-24 (2008). We analyze these categories based on the adverse claimant's "objective manifestation" of adverse use rather than the claimant's subjective intent to claim the land. *Id.* at 324. This Court has placed these elements into "three groups: possession must be (1) actual, open and notorious, and exclusive; (2) continuous or uninterrupted for the requisite period; and (3) hostile, under claim of title or ownership." *Id.* at 324. The Edgecombs contend that the Mattinglys failed to prove elements in all three groups, so we address each in turn.

A. Actual, Open and Notorious, and Exclusive

The Edgecombs claim that a "review of [the trial court's] findings of fact demonstrates the paucity of evidence the Circuit Court considered when it decided that the Appellants no longer own part of their land." Specifically, the Edgecombs complain that the trial court's reliance on two sets of trees (cedar and pear trees) is misplaced because there was a two-year gap during which no trees were in the Disputed Area. William testified that he planted the cedar trees in 1990 and tore out the cedar trees in 2002 and did not plant the pear trees until two years later, in 2004. Moreover, the Edgecombs continue, William's testimony established that the two sets of trees were not planted in the same portion of the Disputed Property, meaning that there was no point in time when the entire Disputed Property had trees that the Mattinglys had planted.

The Edgecombs assert that the remaining evidence upon which the trial court relied failed to rise to the level of substantial evidence. They point out that the trial court incorrectly credited William with cutting limbs off trees in the Disputed Property when William's testimony was that Lee had cut off those limbs. They also point out that the Mattinglys did not plant the annual flowers or place the decorative geese and birdbath in the Disputed Area until 2004, after the Mattinglys planted the pear trees and Sharon bush. That leaves mowing the lawn, the Edgecombs say, as the only evidence of continuous usage for 20 years. And mowing the lawn, they urge, should not constitute substantial evidence of control to support a finding of adverse possession.

In *Senez*, Judge Ellen Hollander, writing for this Court, explained how we analyze the first group of elements: actual, open and notorious, and exclusive. *Senez*, 182 Md. App.

at 324-26. "The element of 'open and notorious' pertains to the concept of constructive notice to the title owner. Possession 'must be visible and notorious, so that the owner may be presumed to have notice of it.'" *Senez*, 182 Md. App. at 325 (quoting *Beatty v. Mason*, 30 Md. 409, 414 (1869)). The analysis of actual, open possession is an objective one. We are concerned with "the possessor's objective manifestation of adverse use and not his or her subjective intent." *Miceli v. Foley*, 83 Md. App. 541, 552-53 (1990). And "actual notice to the owner is not required." *Senez*, 182 Md. App. at 325. Instead, "[p]ossessory acts of dominion over land may be sufficient to charge the record owner with knowledge that the land is adversely possessed." *Miceli*, 83 Md. at 561 (citing *Blickenstaff v. Bromley*, 243 Md. 164 (1966)).

For possession to be exclusive, "the claimant must possess the land as his own and not for another." *Senez*, 182 Md. App. at 325 (quoting *Orfanos Contractors, Inc. v. Schaefer*, 85 Md. App. 123, 130 (1990)). The Court of Appeals has quoted 3 Am. Jur. 2d *Adverse Possession* § 50 to further summarize this element:

> In order to ripen into title, adverse possession must be exclusive, that is the claimant must hold possession of the land for himself, as his own, and not for another. Indeed, "exclusive possession" simply means that the disseisor must show an exclusive dominion over the land and an appropriation of it to his own use and benefit. An adverse claimant's possession need not be absolutely exclusive, however; it need only be a type of possession which would characterize an owner's use.

Blickenstaff v. Bromley, 243 Md. 164, 173 (1966).

The determination of whether a claimant is in actual possession of a disputed area is a fact-intensive inquiry. *Senez*, 182 Md. App. at 325. Because the Mattinglys seek to acquire ownership of the Disputed Property without color of title, their adverse possession

can extend only to that portion of the Disputed Property that the Mattinglys actually occupied. *Costello*, 300 Md. at 68. "While there is no precise formula in what constitutes actual occupation, it would be virtually impossible to require that a claimant use every square inch of the Disputed Property for every moment of the statutory period to establish adverse possession." *Peters*, 64 Md. App. at 647. Our analysis requires "'something more than mere occasional use of land[.]'" *Senez*, 182 Md. App. at 325-26. "[T]he type of possessory acts necessary to constitute actual possession in one case may not be essential in another." *Blickenstaff*, 243 Md. at 171. We "consider the character and location of the land and the uses and purposes for which the land is naturally adapted." *Senez*, 182 Md. App. at 326 (citation omitted). "The standard to be applied to any particular tract of land is whether the possession comports with the ordinary management of similar lands by their owners, and if so, it furnishes satisfactory evidence of adverse possession." *Blickenstaff*, 243 Md. at 171. Accordingly, "acts sufficient to demonstrate possession of wild, undeveloped forest may fall short of the activity needed to establish possession of developed property." *Senez*, 182 Md. App. at 326 (citation omitted).

The Disputed Area in this case is not quite undeveloped forest but also not quite fully developed land. The *Miceli* case is instructive in determining the character of possession necessary to constitute 'actual' possession for our purposes. Miceli faced adverse possession claims from two of his neighbors to the west and several more to the north. *Miceli*, 83 Md. App. at 546. Much like the case before us, the border to the western part of Miceli's property had a fence that was situated inside the property line, *id.* at 548; his property was bordered to the north by an abandoned railroad right-of-way. *Id.* at 550.

After the circuit court found that the two neighbors to the west and four of the neighbors to the north had each obtained parcels of Miceli's land by adverse possession, Miceli appealed. *Id.* at 547.

A major contention on appeal was whether Miceli's neighbors had asserted actual ownership over the land. *See id.* at 555. Trial testimony revealed that the predecessor-in-interest to the two properties to the west had "consistently maintained and mowed the parcel up to the fence line[,]" and had "used the land to gather firewood and as a playground for the children." *Id.* at 556. This Court noted that "no evidence was produced that such uses [we]re inconsistent with the nature of the residential property or with other uses in the neighborhood." *Id.* Accordingly, we affirmed the circuit court's finding that the neighbors to the west and their predecessor had "assumed the requisite dominion and control over the property." *Id.*

We then went on to uphold several similar acts of dominion by the neighbors to the north. One neighbor to the north, Miller, testified that he and his son "cleaned garbage off the land and used a briar scythe and mower to care for it[,]" and had "also cultivated the land planting six dozen pine trees, four blue jumpers, four forsythia bushes and six dozen plantings of English Ivy." *Id.* at 562. Additionally, their entire family had used the land "as a recreational lot." *Id.* We discerned no clear error in the trial court's finding that Miller had exercised dominion and control over the land. *Id.* Nor did we find error in the circuit court's conclusion that another neighbor, Beitler, had exercised dominion and control by "add[ing] to the planting on the old railroad strip with ground cover and perennial flowers[,]" by mowing the grass, maintaining the greenery, raking leaves,

pruning plants, and spraying poison ivy and brambles. *Id.* Yet another neighbor was found to have exercised dominion by mowing the land occasionally and placing "no trespassing" signs. *Id.* Finally, we upheld the finding of adverse possession regarding the fourth neighbor to the north, Liersmann, on the basis based on his mowing of the grass, removing railroad ties and stone from the land, and storing firewood on the land. *Id.* at 560. We concluded that Liersmann's two-year physical absence from the land did not break the continuity of his possession. *Id.*

The land at issue in *Miceli* was of a similar character and nature as the Disputed Property in this case. Accordingly, we conclude that our holdings in *Miceli* dictate the result in this case. Like the various neighbors in *Miceli*, the Mattinglys testified that they mowed the grass up to the fence line and planted several trees, a bush, and flowers. They also decorated the land with other ornaments and mulch. While the trial court incorrectly attributed the cutting of tree limbs in 2015 in the Disputed Property to William, there is competent and material evidence in the record to support the trial court's conclusion that that Mattinglys continued to exercise dominion of the Disputed Property until sometime in 2015 when the dispute concerning the placement of the chain link fence arose.

Further, similar to the neighbors in *Miceli*, the Mattinglys' possession of the Disputed Property comported with the ordinary management of similar lands by neighboring owners. Summers testified that when her family lived on the Edgecomb Property, they had mowed only the lawn surrounding their house and not land on the other side of the fence by the Mattingly Property. Given the relatively rural location and under-

developed nature of the Disputed Property, we see no error in the circuit court's conclusion that the Mattinglys' possession was actual, open and notorious, and exclusive.

B. Continuous

The Edgecombs point to the two-year gap between the Mattinglys' removal of the cedar trees and planting of the pear trees, and contend "there is no point in time, based on the testimony of the [Mattinglys], that the entire Disputed Property was planted with trees." According to the Edgecombs, we "may consider the existence of visible trees within the Disputed Property as evidence that the [Mattinglys] were using portions of the Disputed Property open and notoriously[,]" but the Mattinglys failed to establish that their open and notorious use was *continuous* for the 20-year period.

An "interruption of the continuity of possession" stops the 20-year period of the statute from running against the rightful owner. *Goen v. Sansbury*, 219 Md. 289, 296 (1959) (citation omitted). If the possession is interrupted but later resumes, the limitation period runs "only from the time of such resumption." *Id.* (citation omitted). A possessor may not cobble together separate and distinct periods of possession to equal the 20 years required for adverse possession. *Id.* at 297. The Court of Appeals established long ago that, "[u]pon every discontinuance of the possession of a wrong-doer, by operation of law the possession of the rightful owner is restored, and nothing short of an actual adverse and continuous possession for twenty years can destroy his right, or vest a title in the wrong-doer." *Casey's Lessee v. Inloes*, 1 Gill 430, 433 (Md. 1844). In other words, when a gap exists in the period of actual possession, the law restores the owner's rights, and the 20-year clock starts back at day 1 when the adverse possession resumes. *See Rosencrantz v.*

Shields, Inc., 28 Md. App. 379, 395 (1975) (holding that an owner's failure to re-enter land after successfully reasserting his rights did not impair his right to do so at a later point because his assertion of superior title restarted the adverse-possession period at zero).

As we alluded to above, this Court has already considered whether a two-year absence from a more rural property necessarily breaks the continuity of possession. *See Miceli*, 83 Md. App. at 560. In that case, the owner of the Liersmann property to the north of Miceli's land had possessed a portion of the abandoned railroad easement by removing railroad ties and stones, mowing the grass, and storing firewood and other materials on the land. *Id.* Miceli argued on appeal that the adverse possession was not continuous because the possessor was gone for two years for military service. *Id.* This Court rejected Miceli's argument, reasoning that "what is continuous for purposes of adverse possession depends greatly on the type of land at issue." *Id.* Liersmann had "used the property as a storage area. Though the land may not have been actively used day in and day out, its use for storage remained consistent." *Id.* This Court held that his two-year absence for military service did not render the trial court's findings to be clearly erroneous because the "court could have inferred, and apparently did infer, that the conditions to which [the possessor] testified [had] existed before, during and after his time in the service. There was no evidence to contradict this inference." *Id.*

The Mattinglys have a stronger case than Liersmann did in *Miceli*. In this case, the Mattinglys were not physically absent from the land for two years. Instead, there was merely a two-year period from 2002 to 2004 in which they did not have trees planted on the Disputed Property. Considering that the Mattinglys testified that they continued to

mow the grass and that their kids continued to play on the land from 2002 to 2004, the trial court clearly credited their testimony to this effect. We cannot, then, say on appeal that the circuit court erred by determining that their possession was continuous despite the evidence that the Mattinglys' trees were not planted on the Disputed Property for two years out of the statutory period.

Accordingly, we hold that the circuit court's conclusion that the Mattinglys' possession was continuous for the statutory period was supported by substantial evidence.

C. Hostile

The Edgecombs also assert that the trial court erred "because there is undisputed evidence in the record that the [Mattinglys] failed to meet the hostility element of their adverse possession claim because the[y] previously and expressly acknowledged that the [Edgecombs] were the rightful owners of the Disputed Property." On this point, the Edgecombs direct us to the Mattinglys' removal of belongings from the Disputed Property after Trautman completed his survey in 2015. The Edgecombs say that this was a clear acknowledgment by the Mattinglys that the Edgecombs "had a superior right to the property" *before* they filed their complaint in the underlying case.

This Court dealt with the issue of hostility in *Senez*, 182 Md. App. at 342. We began our discussion by recounting the standard of review, mainly that "once a claimant has made a satisfactory showing as to open, continuous use for the statutory period, 'the burden then shifts to the landowner to show that the use was permissive.'" *Id.* at 340 (brackets omitted) (quoting *Kirby v. Hooks*, 347 Md. 380, 392 (1997)). Relying largely on our prior decision in *Yourik v. Mallonee*, this Court reiterated that a claimant asserting possession under claim

of right (rather than color of title) must demonstrate some evidence of his or her "intention to appropriate and hold the land as owner, and to the exclusion, rightfully or wrongly, of everyone else." *Senez*, 182 Md. App. at 343-44 (quoting *Yourik*, 174 Md. App. 415, 428 (2007)). In *Yourik*, this Court explained:

> The term "hostile" signifies a possession that is adverse in the sense of it being "without license or permission," and "unaccompanied by a[] recognition of . . . the real owner's right to the land." The type of "recognition of right" that destroys hostility is not mere acknowledgment or awareness that another claim of title to the property exists, but rather ***acceptance*** that another has a ***valid right*** to the property, and the occupant possesses subordinately to that right.

174 Md. App. at 428-30 (internal citations and original brackets omitted) (emphasis in *Yourik*).

We have not found a reported decision in Maryland that directly addresses whether a possessor can disclaim title, gained through adverse possession, by accepting that another has a valid right to the property after title was acquired. Courts in other jurisdictions generally have held that, once title is acquired by adverse possession, it cannot be divested except in a manner recognized at law to transfer title. *See, e.g.*, *Mugaas v. Smith*, 206 P.2d 332, 333-34 (Wash. 1949) ("It is elementary that, where the title has become fully vested by disseisin so long continued as to bar an action, it cannot be divested by parol abandonment or relinquishment or by verbal declarations of the disseizor, nor by any other act short of what would be required in a case where his title was by deed."); *Ahl v. Jackson*, 272 A.D.2d 965 (N.Y. App. Div. 2000) ("Because plaintiff was vested with title to the property by adverse possession, title may be transferred only by deed or other method recognized at law.").

In this case, substantial evidence supports the trial court's conclusion that the Mattinglys held the Disputed Property as their own for the statutory period. At trial, the Mattinglys described their use of the Disputed Property, which William testified he treated as his own. The Mattinglys never asked the Edgecombs, or anyone else, for permission to maintain possession of the Disputed Property. The Mattinglys' use included planting cedar trees in 1990, which the trial court explicitly found was "evidence of ownership," mowing the grass, planting other trees and a bush, and utilizing the disputed area as a play area for the Mattinglys' children. While the Edgecombs contend that William's alleged request for permission to hang a fence in 2015 evidences passivity, this event occurred five years after the Mattinglys had already exercised dominion and control over the Disputed Area for 20 years. Accordingly, we see no error in the circuit court's conclusion that the Mattinglys' possession was hostile.

III.

The Mattinglys' Claim for Damages

In their cross-appeal, the Mattinglys insist, without citation to any law in support of their argument, that the trial court clearly erred in denying their damage request. They assert that *all* of the evidence was in their favor, including Lee's admission that he caused the damage, Quade's opinion on the amount of damages, and William's testimony describing the damage to the property.

The Edgecombs retort that it was the Mattinglys' burden to prove damages and that this Court defers to the trial court's ability to judge the credibility of witnesses. According to the Edgecombs, the Mattinglys failed to admit into evidence the appraisal that Quade

prepared, leaving Quade's "flimsy," hearsay-based testimony as the only evidence of damages. Further, the Edgecombs continue, the estimate Quade testified to "was inflated . . . because it included the costs of filling in a ditch that was not part of the Disputed Property of the Mattinglys' property." The Edgecombs also complain, as they did at trial, that Quade's testimony was improper because he did not rely on hearsay to form his own opinion, but Quade simply accepted the hearsay estimate of a third party without any analysis of his own.

It is the function of the trial court to assess credibility. Generally, "whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court" and reviewed under an abuse of discretion standard. *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011). The trial court has the opportunity at trial "to observe the witness's demeanor, judge his credibility, and pass upon the weight to be given to his testimony." *Loyola Fed. Sav. Bank v. Hill*, 114 Md. App. 289, 306 (1997). In short, the "trial judge may believe or disbelieve, credit or disregard, any evidence introduced, and a reviewing court may not decide on appeal how much weight must be given as a minimum to each item of evidence." *Id.* at 307.

In this case, the trial court had ample reasons to deem the testimony of the Mattinglys' appraisal expert as not credible. First, the Mattingly's appraisal expert based the amount of damages solely on an estimate that he had obtained from a contractor, instead of an estimate that he provided himself. Second, the estimate calculated the cost to fill dirt on an area approximately 27% larger than the Disputed Property. Third, the estimate included the cost to replace a fence that is on the Edgecombs' property.

The contractor who provided the estimate did not testify at trial, and the estimate itself was not received into evidence. The Mattinglys offered an out-of-court statement as substantive evidence of their damages, but the contractor's estimation was hearsay that was inadmissible evidence for the purpose of determining the amount of damages in this case. *See* Md. Rule 5-801(c) (defining hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). Once the trial court made that determination, correctly, there was no other evidence to support the amount of damages. Accordingly, the trial court's decision to deny the Mattinglys' claim for damages after determining that there was no credible evidence in the record to support their claim was not clearly erroneous.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.