



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



Beck et al. v. Neville et al.
CV-22-0134-PR

PARTIES:

Petitioners: Steven P. Beck, et al.

Respondents: Richard Neville, et al.

FACTS:

Nevilles and Becks owned adjoining properties in the Doubletree Canyon development. Becks' property was to the north of Nevilles' property. Nevilles' property included a concrete driveway and garage on the south side of their home, and a gravel area or parking space on the north side of their home. The property at issue ("the disputed property"), was a 135-square-foot triangular portion of the gravel area to the north of Nevilles' property between the two front yards. At all relevant times, Becks held record title to the disputed property.

In 2004, Becks had some landscaping done which included adding rock to their front yard. To keep the new rock from flowing down the slope of their front yard, they planned to place a line of decorative paver bricks roughly along the property line between their property and Nevilles. Due to a mistake by their landscapers, the line of bricks was installed along the north side of the gravel area, thereby inaccurately deviating from the recorded property line by including 135 square feet of land to the north of the actual property line. According to Becks' account, when this mistake occurred, they informed Nevilles of their (the Nevilles') non-ownership of the disputed property and requested that their own landscaper correct the placement of the pavers. However, the landscaper had gone out of business and the correction was not accomplished.

In 2014, Becks made additional changes to their landscaping which involved temporarily removing the 2004 line of pavers. Once Becks had completed the landscaping, they reinstalled the line of pavers in the same location as the 2004 installation.

In 2019, contractors informed Becks that they (the contractors) needed to extend drainage pipes on Becks' property, which would necessitate the removal of the line of pavers. The parties' versions differ as to what occurred next. According to Becks, they, as a courtesy, notified Nevilles of their intent to remove the line of pavers.

The Nevilles allege that it was only at that time that they learned that the Becks held record title to the disputed area. According to Becks' account of events, the following occurred after Mr. Beck's call:

8. Richard Neville called me several minutes later and informed me for the first time ever that the Nevilles claimed that they were the actual owners of the strip of land on our Property where the work was to be conducted (the “Disputed Property”) and that he would not allow us to perform the work on our property.

9. Within a few days, the Nevilles sent a cease and desist letter from an attorney threatening legal action.

10. The Nevilles alleged, again for the first time, that a decorative stamped piece of concrete, which was incorrectly installed by our landscapers in 2004 was the actual boundary line between the two properties.

11. When the concrete was incorrectly installed by our landscapers in 2004, we informed the Nevilles of their non-ownership of the Disputed property.

12. The Disputed Property has never been in the “exclusive” use of the Nevilles.

We have on occasion even parked cars there and had landscape material dumped there.

13. We have never observed the “driveway” and the “brown row of concrete” as the boundary line between the properties and we use the Disputed Property on a regular basis without interference from the Nevilles.

In competing declarations, Nevilles contend that, since 2004, they had believed the concrete curbing delineated the boundary line between the properties; that on several occasions Becks and their guests had attempted to park vehicles on the disputed property; that each time, Mr. Neville ordered Becks and their guests to leave; that on one occasion, Mr. Beck expressly asked for permission to park on the disputed property and Mr. Neville refused; and that, as part of the 2014 landscaping, Becks installed new curbing in the same location.

Becks filed a quiet title action regarding the disputed land. Nevilles counterclaimed for (1) adverse possession and (2) boundary by acquiescence. Maricopa County Superior Court Judge Pamela Gates granted summary judgment for Becks on both claims. She reasoned as follows with respect to the claim for adverse possession:

[Nevilles] did not establish an actual and visible appropriation of the land that commenced and continued under a claim of right inconsistent with and hostile to the claim of [Becks]. ...[Becks] installed decorative curbing on their property. All parties were aware the curbing was not on the property boundary. [Nevilles] used the disputed property. [Becks’] agent also used the property to gain access to the rest of the... property. [Nevilles’] actions failed to establish an actual and visible appropriation of the disputed land. ...Given the quantum of evidence required, reasonable people could not agree that [Nevilles] acquired title to the disputed property by adverse possession.

Regarding the claim for boundary by acquiescence, Judge Gates ruled:

Even when the court views the facts and reasonable inferences in the light most favorable to [Nevilles], the court finds that reasonable people could not agree that [Nevilles] acquired title to the disputed property by acquiescence. A party cannot be said to acquiesce in a boundary unless the boundary can be identified with certainty. ... The property owners did not walk the property and agree to a property boundary. [Becks'] landscaper installed the curbing. The parties were aware the curbing was not on the property boundary. The flat curbing falls far short of creating a boundary line identified with certainty necessary to establish boundary by acquiescence.

The Court of Appeals reversed in a split decision. It reaffirmed Arizona's statutory definition of adverse possession as "an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another." A.R.S. § 12-521(A)(1). The Appeals Court Majority, Judges Campbell and Howe, concluded that summary judgment on either the adverse possession or the boundary-by-acquiescence claim was erroneous because the parties' competing declarations created genuine issues of material fact precluding summary judgment. The dissenting judge, Judge Morse, Jr., concluded, however, that the facts relied on by Nevilles were not material facts sufficient to defeat summary judgment on either of the two claims. The summary judgment for Becks was reversed and the case was remanded to the Superior Court for further proceedings.

The Arizona Supreme Court granted Becks' Petition for Review.

ISSUES:

1. Does the state of Arizona recognize a cause of action for a boundary by acquiescence and if so, what are the elements of that cause of action?
2. Is the occasional parking of a portion of a vehicle on another's property sufficient to put another on notice that one is claiming the property and if so, how is the extent of the adverse possession determined?
3. Did the Nevilles produce evidence to meet their burden of proof as to either adverse possession or boundary by acquiescence?

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