IN THE HOOPA VALLEY TRIBAL COURT OF APPEALS
HOOPA VALLEY TRIBE
HOOPA, CALIFORNIA

MILDRED GRANT, Plaintiff/Appellee, v. **JAMES RICKABY, SR.,** Defendant/Appellant.	**NO. A-16-001** **OPINION AND ORDER**

Opinion and Order

The Order Dismissing Matter issued by the trial court on April 12, 2016 is AFFIRMED in its entirety.

Discussion

On June 26, 2014, Plaintiff and Appellee Mildred M. Grant brought suit against Defendant and Appellant James Rickaby, Jr. Ms. Grant alleged a property dispute with Mr. Rickaby. She produced a professional survey dated June 22, 2014, from which she alleged that one of Mr. Rickaby's building was at least partially located on her land.

Ms. Grant produced voluminous records supporting her claim to the land, all of which supported the 2014 survey. Mr. Rickaby produced no written evidence, despite promising in his pleadings that he would prove he had a superior claim. In particular, Mr. Rickaby alleged that a 1989 survey proved his superior claim. Mr. Rickaby noted as an alternative argument that he had acquired Ms. Grant's property by adverse possession.

The trial court held a factual hearing on August 11, 2014. The trial court's minutes of that hearing state that Mr. Rickaby acknowledged that his building was at least partially on Ms. Grant's property. At that point, Mr. Rickaby chose to rely upon adverse possession as his sole defense.

The trial court, noting that Mr. Rickaby ultimately never produced written evidence to support his adverse possession claim, held in favor of Ms. Grant. The court rejected Mr. Rickaby's adverse possession claim, and issued other orders to ensure the restoration of Ms. Grant's property line.

We affirm.

Hoopa law provides that a "complainant in a civil case shall have the burden of proving its case by the preponderance of the evidence. . . ." HVTC § 2.1.02. The trial court below held conclusively that Ms. Grant had met her burden by providing ample written documentation of her claim.

Mr. Rickaby's reliance upon the doctrine of adverse possession fails. In Anglo-American common law, a defendant raising a claim of adverse possession must prove by a preponderance of the evidence that the party "(1) actually possesses property, in a manner that is (2) open and notorious, (3) exclusive, (4) continuous, and (5) nonpermissive (adverse or hostile) (6) for a period established by the statute of limitations for ejectment." Joseph William Singer, Property § 4.2, at 143 (3d ed. 2010) (quotation marks omitted). As Mr. Rickaby points out, in California, the party claiming adverse possession "not founded on a written document" must also show the party has "timely paid all state, county, or municipal taxes . . . ." Cal. Code Civ. Proc. § 325(b). We need state no opinion at this time as to the proper rule at Hoopa for the establishment of an adverse possession claim.

Mr. Rickaby has not met his burden of proving adverse possession. California law requires adverse possession claimants to prove their claim by clear and convincing evidence. 54A Cal. Jur. 3d Real Estate § 856. We find this to be a sensible rule, and hereby adopt it. As the trial court found, Mr. Rickaby did not produce any evidence to justify his claim. He has failed to provide his adverse possession claim by clear and convincing evidence.

Trial court findings of fact are reviewable only for clear error by the appellate court. *Dodge v. Hoopa Valley Gaming Authority*, 7 NICS App. 51, 54 (Hoopa Valley Tribal Court of Appeals 2005) ("For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable de novo), questions of fact (reviewable for clear error), and matters of discretion (reviewable for abuse of discretion).") (quotation marks and citations omitted). On appeal, Mr. Grant merely argues that the trial court's decision was wrong, and identifies no instances of clear error.

Mr. Grant's tender of new evidence at the appellate stage of this matter cannot alter our conclusion. "The court reviews the same record and evidence that was used by the trial court." *Hoopa Valley Tribal Council v. Grant*, 6 NICS App. 151, 154 (2004) (Hoopa Valley Tribal Supreme Court 2004) (quotation marks and citations omitted). We cannot consider this new evidence.

The trial court order is affirmed.

It is so ordered this 9th day of September, 2016, for the panel:

Lisa E. Brodoff, Judge
Eric Nielsen, Judge
Matthew L.M. Fletcher, Chief Judge