

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 24-CV-5412

LISA GRAVES,
Plaintiff

v.

ALYSSA BENNETT,
Defendant

DECISION ON MOTION

RULING ON DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

This is a boundary dispute between neighboring landowners in Bolton. Plaintiff Lisa Graves claims to own certain areas within Defendant Alyssa Bennett’s deeded boundaries through adverse possession or, alternatively, through prescriptive easement or acquiescence. Pursuant to Rule 56 of the Vermont Rules of Civil Procedure, Bennett moves for partial summary judgment on the adverse possession claim (Count I). Plaintiff is represented by Attorney Chad V. Bonanni, Esq. and Defendant is represented by Attorney Hans G. Huessy, Esq. For the reasons discussed below, the motion is DENIED.

Background and Undisputed Material Facts

Bennett owns real property located at 2844 Notch Road in Bolton that she purchased in 2018 from Heather and Joseph Colangelo. Graves owns an adjoining property located to the north of Bennett’s property that she purchased in 2005. The parties share a boundary line. As of 2020, Graves did not know the exact location of the boundary line. Graves’ predecessor in interest, Otto Hansen, also did not know the exact location of the boundary.

After failing to locate monuments establishing the boundary, Bennett had the boundary surveyed by McCain Consulting, Inc. *See* Ex. B (survey dated Oct. 2, 2020). The survey showed two “clearing encroachment” areas and one “building encroachment” area. The encroachment areas are near a stream. According to the survey, Graves’s shed was located on Bennett’s property in the “building encroachment” area.

Around the time of the survey, the parties communicated about the survey, Graves potentially moving her shed, and Graves putting compost in the encroachment areas. In an email to Bennett sent October 5, 2026, Graves wrote:

As to my shed being over the line, I wanted to ask if you prefer that I move it 4 – 5 feet (I’m guessing on that amount)? I also wanted to ask about my putting all natural compost (leaves, egg

shells, flowers, orange peels...NO meat, bones, etc) out near the stream. When I first moved here 15 years ago it was swampy back there. In fact, I found chunks of wood, a box spring mattress and tarps that someone had thrown back there likely trying to fill in the swampy area (what were they thinking). I cleaned all that up and the compost has kept it from eroding and getting swampy again. I also wanted to mention that I never did any clearing in that area – it was like it is now when I moved in back in 2005 - as was the pipe that diverts water off the lawn to the stream (Otto Hansen, the former owner, installed that likely 20 or so years ago if you’ve even noticed it). I’m not back near the stream very often – I basically use the shed to store summer items and occasionally put compost out there but all of that said, I will honor however you’d like to proceed.

To the area down below from there where we did a little cleaning up – that started when a huge white birch tree fell (on my side thankfully) and we wanted to clean it up. In addition to the fallen tree, we primarily cleaned up dead stuff on the ground and apologize that we went a little over when doing that. That was a one-time thing just to clean up the tree and my intention now is to spend time up on the hill near the boulder as that is where I love it the most.

Ex. D. Shortly thereafter, the parties learned that the Town of Bolton had a 50-foot setback requirement for sheds. Thus, the shed’s placement violated that setback requirement regardless of whether it was on Graves’ or Bennett’s side of the boundary. On November 9, 2020, Graves reported that the shed had been moved. As to the compost, Bennett responded to Graves that “I have no problems with leaves or lawn clippings being placed there. However, I would ask that no food scraps are placed on my side of the property line any longer as they attract bears, which we have a resident population of here.” Ex. F.

Graves claims that she has gained ownership of the encroachment areas by way of adverse possession. Specifically, she contends that she has used these areas for various purposes, including planting vegetation, installing a hammock, and lining the creek bed with rocks.

Discussion

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a). “Where the moving party does not bear the burden of persuasion at trial, it may satisfy its burden of production by showing the court that there is an absence of evidence in the record to support the nonmoving party’s case.” *Caldwell v. Champlain Coll. Inc.*, 2025 VT 17, ¶ 7, 221 Vt. 10 (quotation omitted). “The nonmoving party may survive the motion if it responds with specific facts raising a triable issue,” and courts “give the nonmoving party the benefit of all reasonable doubts and inferences.” *Id.* (quotations omitted). Summary judgment is “mandated,” however,

“where, after an adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which the party has the burden of proof at trial.” *Id.* (quotation omitted). Where a jury could find for the plaintiff “only . . . by relying on speculation, the defendant is entitled to summary judgment.” *Id.* (quoting *Boyd v. State*, 2022 VT 12, ¶ 19, 216 Vt. 272).

Bennett seeks summary judgment on Graves’ adverse possession claim. “To achieve title through adverse possession, a claimant must demonstrate that possession of the land was open, notorious, hostile and continuous throughout the statutory period of fifteen years.” *MacDonough-Webster Lodge No. 26 v. Wells*, 2003 VT 70, ¶ 24, 175 Vt. 382 (quotation omitted); see also *Roy v. Woodstock Cmty. Tr., Inc.*, 2013 VT 100A, ¶ 29, 195 Vt. 427. “The claimant has the burden of establishing all of these elements.” *Jarvis v. Gillespie*, 155 Vt. 633, 638, 587 A.2d 981, 985 (1991) (citation omitted). “Acts of possession are deemed sufficiently open and notorious if they are conducted in a manner which would put a person of ordinary prudence on notice of the claim.” *Id.* at 641, 587 A.2d at 986 (citation omitted) (holding that visibility to claimant’s land use from an abutting public road and testimony from a longtime town clerk that claimant claimed ownership sufficed). A claimant may thus satisfy the “open and notorious” requirement through either actual or constructive knowledge. See, e.g., *Restatement (First) of Property* § 459 cmt. i (1944) (noting “[t]he use may be such as to be apparent upon an ordinary inspection of the premises” or “of such common knowledge in the community” so as to give the titleholder “a reasonable opportunity to learn of it by availing themselves of such knowledge”). Consistent with these concepts, the Vermont Supreme Court has affirmed adverse possession claims for mining operations unnoticed by the physically absent title holder. *N.A.S. Holdings, Inc. v. Pafundi*, 169 Vt. 437, 444, 736 A.2d 780, 787 (1999).

Pursuant to the “doctrine of tacking,” an adverse possessor “may add his period of possession to the possession of the previous owner in order to meet the statutory period.” *Lysak v. Grull*, 174 Vt. 523, 526, 812 A.2d 840, 844 (2002) (citing *Deyrup v. Schmitt*, 132 Vt. 423, 425, 321 A.2d 42, 44 (1974)). Moreover, “[u]nder Vermont law, continuous use does not require constant use; ‘Continuity of use is merely such use as an average owner would make of the property, taking into accounts its nature and condition.’” *Parker v. Potter*, No. 10752012, 2012 WL 9092650, at *2 (Vt. Super. Ct. Sept. 26, 2012) (Toor, J.) (quoting *Darling v. Ennis*, 138 Vt. 311, 313-14, 415 A.2d 228, 230 (1980)). “Thus, although certain of the acts of possession taken by a claimant may not be sufficient to establish possession in all circumstances, each case must be examined individually, viewing the claimant’s acts in light of the nature of the land.” *Jarvis*, 155 Vt. at 639, 587 A.2d at 985.

Bennett contends that Graves’ use of the encroachment areas was not “significant enough” to support a claim of adverse possession. Mot. for Summ. J. at 4-8 (Oct. 14, 2025). Bennett contends that planting vegetation, mowing the lawn, installing a hammock, lining the stream bed with rocks, and an underground pipe “[c]ollectively . . . are insufficient to support a claim for adverse possession.” *Id.* at 6. She notes that the hammock has not been hung in the encroachment areas since 2018, which means the longest period of time it could have been located there was 13 years because Graves purchased her property in 2005. *Id.* at 7. She further notes that the underground pipe and underwater rocks would not put her on notice that Graves was asserting ownership. *Id.* at 8.

Graves disputes many of Bennett's facts and raises additional disputed facts as to her (and her predecessors') use of the encroachment areas. She asserts that "during her ownership" she has "used the area up to and including the stream as part of [her] yard." Graves Aff. ¶ 5. Graves' photographs show her yard extending to the stream, and she asserts that is how the yard appeared when she acquired the property. *Id.* ¶ 6. They also show that she had fallen branches cut and removed from the encroachment areas, which she asserts "occurred frequently given the wooded area and storms." *Id.* ¶ 7. Graves asserts that every fall since she bought the property, she would spend several days gathering leaves and dumping them in the disputed area near the stream. *Id.* ¶ 9. She offers photos showing friends and family occupying the disputed area in 2019 and the hammock hung in 2020, and she says she has placed the hammock in that area "continuously every summer since around 2012." *Id.* ¶¶ 10-11; Ex. 5.

Graves further asserts that during her ownership of the property, she has planted daffodil bulbs and mowed the grass in the disputed area, "treating it as [her] backyard," and dumped compost in the disputed area at least twice a month. Graves Aff. ¶¶ 12-13. She states that a pipe has been located in the encroachment area next to the stream since she bought the property, that "[u]pon information and belief Otto Hansen installed this pipe," and that the pipe is "above ground and visible." *Id.* ¶¶ 14-15. She points to a photo showing that approximately one to two feet of the end of the pipe is plainly visible. Ex. 6. Graves states that she has stacked the stones in the stream since 2005. Graves Aff. ¶ 29. Contrary to Bennett's assertion that Graves merely lined the stream bed with rocks underwater, Graves's photos show the stones stacked above water on the side of the stream, like a stone wall. Ex. 9.

When Graves acquired the property in 2005, there were horseshoe pits in the encroachment area that were installed by the Hansens sometime during their ownership. Graves Aff. ¶ 30; Hansen Aff. ¶ 6. The Hansens claim that they "cleared trees up to the stream and planted grass to expand the backyard of the property" and "used the area up to the stream as part of [their] yard during [their] ownership of the property" Hansen Aff. ¶¶ 5-6. The Hansens bought the property in 1999 and sold it to Graves in 2005. *Id.* ¶ 2.

Graves placed a shed in the encroachment area in 2019 and concedes that she removed it in 2022, but asserts that she did so because it needed to be 50 feet from the property line to comply with the Town of Bolton's zoning regulations. Graves Aff. ¶¶ 16, 22. Graves approached Bennett's surveyor when he was flagging the disputed area and "expressed to him [her] disappointment where he was marking the boundary, told him [she] had been using that section since [she] bought the property and expressed concern regarding [her] rights." *Id.* ¶ 19.

In sum, the record reveals an abundance of disputed material facts as to Graves and/or her predecessors' use of the disputed areas for the statutory period and, thus, whether they acquired the disputed areas by adverse possession before this suit was filed in 2024. There is evidence that the Hansens cleared trees and planted grass in that area to expand their backyard, subsequently used that area during their ownership, and even installed horseshoe pits. There is also evidence that Graves continued to use that area as part of her yard regularly for certain activities since 2005. Based on this evidence, a fact finder could deem these activities "such use as an average owner would make of the property, taking into accounts its nature and condition," *Darling*, 138 Vt. at 313-14, 415 A.2d at 230, and thus reasonably conclude that Graves has

acquired the disputed areas by adverse possession. *See, e.g., Lysak*, 174 Vt. at 526, 812 A.2d at 844 (mowing, snow removal, installation of fence, driveway, trees, swings, concrete slab, garden, outdoor fireplace for grilling, and septic tank, and use as leachfield); *Jarvis*, 155 Vt. at 640, 587 A.2d at 986 (cutting firewood, trees, and brush, parking vehicles, staging logging operation, building loading ramp, loading and unloading tractor, storing slab wood, and posting “No Trespassing” signs); *Carroll v. Casey*, No. 23-CV-02138, 2023 WL 8874986, at *5 (Vt. Super. Ct. Dec. 05, 2023) (Barra, J.) (mowing, maintenance, stone wall, hedgerow, rototilling, planting and harvesting trees, making a garden, hanging laundry, and “playing”); *cf. Deyrup*, 132 Vt. at 425, 321 A.2d at 43-44 (no adverse possession where evidence consisted merely of children playing, a “small garden” planted “partly” on the disputed premises, occasional dog-walking, parking a boat trailer “on several occasions,” and parking a car “at times”).

Bennett argues that *Lysak*, *Jarvis*, *Deyrup*, and *Carroll* do not support Graves’s adverse possession claim. Reply at 7-8. She contends that the *Lysak* adverse possessor’s use of the claimed area was “much more intense” than Graves’ use of the disputed area here, and that Graves’ use is “much more in line with *Deyrup*,” where no adverse possession was found, “than *Carroll* or *Jarvis*.” *Id.* While the uses in *Lysak* and *Jarvis* were likely more intense than Graves’ use here, those cases do not represent the minimum level of usage to qualify for adverse possession. And Graves’ use is more intense than in *Deyrup*. Moreover, *Lysak*, *Jarvis*, and *Deyrup* were all decided on the merits and, consequently, are of limited value in determining the level of usage required to survive summary judgment for the particular property in question. If a finder of fact finds Graves credible, then her use is arguably comparable to the use deemed sufficient to survive summary judgment in *Carroll*.

Where there is conflicting evidence, those are disputes for the fact finder to resolve. An adverse possession “claim is not defeated simply because the defendants produce evidence which could support a contrary inference. It is for the . . . fact finder[] to weigh the evidence.” *Russell v. Pare*, 132 Vt. 397, 401-02, 321 A.2d 77, 81 (1974), *overruled on other grounds by Lague, Inc. v. Royea*, 152 Vt. 499, 568 A.2d 357 (1989).

Bennett also argues that Graves’ use of the encroachment areas was not under a “claim of right” because she did not assert that she owned those areas before this lawsuit was filed. “[T]he element of open and notorious use . . . may be asserted under a claim of title, where the claimant has a colorable, but defective, deed, or under a claim of right.” *First Congregational Church of Enosburg v. Manley*, 2008 VT 9, ¶ 13, 183 Vt. 574 (citing *Cnty. Feed Store, Inc., v. Ne. Culvert Corp.*, 151 Vt. 152, 156, 559 A.2d 1068, 1070 (1989)). “The requirement that claimants demonstrate a claim of right ‘rests on the public policy that existing rights in land should not be lost unless the owner has been put on guard sufficiently to enable him or her to take preventive action with reasonable promptness.’” *Id.* (quoting 16 *Powell on Real Property* § 91.04[1] (2005)). “Where there is no claim of title and ‘a lot has no definite boundary marks, adverse possession can only extend as far as claimant has actually occupied and possessed the land in dispute.’” *Id.* (quoting *Cnty. Feed Store*, 151 Vt. at 156, 559 A.2d at 1070).

Here, Bennett contends that Graves’ statements and actions prior to the lawsuit were “inconsistent with a claim of right.” Reply at 3. For her part, Graves claims that when she communicated with Bennett about composting and relocating the shed, she “was trying to work

with her in a neighborly attempt to resolve a boundary dispute,” and that she “never intended to cede my property rights by removing the shed or trying to resolve the boundary dispute in a neighborly way.” Graves Aff. ¶¶ 20, 24. She also explains what she meant in one her emails to Bennett: “When I emailed Ms. Bennett on October 5, 2020 that I am not back at the stream very often, I meant that I am not there every day. I am there approximately twice a month dumping compost, I compost leaves every fall; and I stack rocks to the side of the stream and remove obstructions from the stream as needed after storms.” *Id.* ¶ 21.

Contrary to Bennett’s assertion, Graves did not somehow waive her right to bring an adverse possession claim through her actions and statements. There is no rule that an adverse possessor must explicitly state that they have acquired title by adverse possession when a neighbor raises a boundary issue to perverse that claim. The case relied on by Bennett does not support that proposition. *See Manley*, 2008 VT 9, ¶ 13. Significantly, Bennett cites no other authority to support this argument. *See* Mot. at 4-6. Moreover, if Graves had acquired titled by adverse possession, it could have occurred by operation of law before Bennett even raised the boundary issue in 2020. *See Mahoney v. Tara, LLC*, 2014 VT 90, ¶ 9, 197 Vt. 412 (“Once the prescriptive period has run, the adverse possessor acquires title as perfect as acquisition by grant. Thus, an adverse possession claim is really one for recognition of title and enforcement of the rights that accompany title. In other words, although an adverse party bears the burden of proving the elements of adverse possession, her action, if successful, does not *confer* title but rather *recognizes* title vested independently of the judgment.” (quotations and citations omitted)). While some of Graves’ statements and actions may go to Graves’ credibility and provide areas for cross-examination at trial, they do not mandate summary judgment for Bennett on this record.

Order

Accordingly, for the foregoing reasons, Defendant’s motion for summary judgment (Mot. #1) is DENIED.

This matter will be set for a pretrial conference.

Electronically signed on August 28, 2026 at 1:10 PM pursuant to V.R.E.F. 9(d).

A handwritten signature in blue ink, reading "Megan J. Shafritz", is written over a horizontal line.

Megan J. Shafritz
Superior Court Judge