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ANTONIO PADULA ET AL. *v.* AQUINO ARBORIO ET AL.
(AC 45134)

Bright, C. J., and Seeley and Bishop, Js.

Syllabus

The plaintiffs, A and G, owners of certain real property in Wethersfield, sought a judgment declaring them the owners, by adverse possession, of a certain strip of disputed land lying between their property and property owned by the defendant F. The plaintiffs bought their property for their son, L, and daughter-and-law, P, in January, 2003. F bought the adjacent property for her son, the defendant Q, from the predecessor landowner, S, in January, 2017. The true property line between the properties runs on a diagonal line inclining slightly to the northwest and toward the house and yard of the plaintiffs' property. Near, but not on, the true property line, sits a large hedge, that does not parallel the true property line, but, rather, follows a slight southwest diagonal, creating an elongated triangle of land that is bordered by the hedge on one side and the true property line on the other, creating the disputed area that the plaintiffs sought to acquire from the defendants by adverse possession. Historically, S maintained the hedge by hiring a contractor to trim the hedge approximately once a year. After the plaintiffs purchased their property, S and P had a conversation during which S affirmatively told P that he owned and had been maintaining the hedge. S also noted that L and P had been mowing the lawn in the disputed area and it was agreed that L and P would continue to do that mowing. During this meeting, S never gave P permission to mow the disputed area and P never sought S's permission. In the spring of 2017, Q took measurements of F's property, and realized that the true property line between the properties went through an aboveground pool on the plaintiffs' property. After attempting to discuss the matter with L and P, Q sent a letter to L in April, 2019, asking for the encroachments on F's property to be removed. In May, 2019, the plaintiffs filed their complaint seeking adverse possession of the disputed area. Following a trial, the trial court determined that the plaintiffs had proven their claim of adverse possession by clear and convincing evidence, having adversely possessed the disputed area from 2003 until 2019, and that the defendants failed to timely interrupt the plaintiffs' possession of the disputed area. On the defendants' appeal to this court, *held*:

1. The defendants could not prevail on their claim that the trial court erred in concluding that the plaintiffs, who never actually possessed their property or personally used the disputed area, could establish a claim for adverse possession: a title holder may assert a claim of adverse possession without actually being in personal possession of the property as long as there exists the requisite proof that the title holder intended his or her agents, whether tenants or licensees, to occupy the property in dispute and, in the present case, the trial court reasonably found from the evidence that L and P occupied the property under a right given to them by the plaintiffs, and it was legally insignificant whether they were characterized as tenants with a lease or simply as permitted users of the property; moreover, there was evidence that supported the court's finding that the plaintiffs, as the property owners, intended for L and P to possess the property, including the disputed area, and from this evidence the court inferred that the plaintiffs would not have purchased the property for L and P's use, and that L and P would not have agreed to occupy that property, if they had known that the actual property line did not extend to the line of hedges that appeared to delineate the boundary between the two properties.
2. The trial court erred in part in its determination of the area that the plaintiffs acquired by adverse possession:

   a. Contrary to the defendants' claim, the trial court did not err in failing to bar the plaintiffs from asserting adverse possession of the southeasterly portion of the disputed area that was not delineated by the line of hedges, as the defendants' claim that the disputed area can only be that portion

of property that actually abuts the hedgerow was based on a narrow interpretation of the disputed area as set forth in the complaint; the court properly determined that, based on evidence submitted by the plaintiffs and provided to the defendants prior to trial, the disputed area included a portion of the property line that extended beyond the line of hedges, and, upon review of the operative complaint, the defendants were sufficiently put on notice of the precise contours of the property that the plaintiffs were claiming to have adversely possessed.

b. The trial court's determination that the plaintiffs' adverse possession extended to the midline transecting the hedgerow was unsupported by the evidence and contradicted the court's own factual findings; a review of the record confirmed that the undisputed evidence presented at trial established that S and the defendants at all times maintained both sides of the hedgerow, and, on the basis of the evidence presented and the court's own findings, the court should not have awarded the plaintiffs any part of the hedgerow; accordingly, the court's judgment should have been limited to the property immediately north of the hedgerow, including no part of the hedgerow itself.

3. The defendants could not prevail on their claim that the trial court erred in concluding that the plaintiffs had proven their claim of adverse possession for fifteen years by clear and convincing evidence, as the court's findings and legal conclusions were factually supported and legally sound: the court properly found that S did not give P permission to mow the lawn in the disputed area, as S testified that he did not specify that he was giving permission to mow the lawn and did not explain that he owned that portion of the property, and P testified that she believed that S was asking her for permission to enter that part of the property in order to trim the hedges; moreover, the court concluded that S's once yearly entry into the disputed area to trim the hedges was insufficient to interrupt the plaintiffs' adverse possession of the disputed area or to negate S's ouster from the disputed area, and, similarly, the court concluded that the fact that the defendants occasionally mowed the lawn in the disputed area did not defeat the plaintiffs' claim of adverse possession because such momentary acts did not rise to the point of ouster, and, in reaching this conclusion, the court correctly noted that once a party had been ousted of possession of a disputed area, the occasional use of that area by the ousted party without the permission of the party in possession is not sufficient to constitute a break in the time period required to establish ownership by adverse possession; furthermore, the court correctly observed that the defendants failed to provide written notice to the plaintiffs according to the statute (§ 52-575 (a)) governing adverse possession to dispute the plaintiffs' right of possession and to prevent them from acquiring such a right, and did not provide any notice in writing until their April, 2019 letter, at which point more than fifteen years had already passed.

Argued March 8—officially released May 23, 2023

Procedural History

Action seeking to quiet title to certain real property, brought to the Superior Court in the judicial district of Hartford, where the court, *Budzik*, *J.*, granted the plaintiffs' motion to cite in Faith Arborio as a party defendant; thereafter, the defendants filed a counterclaim; subsequently, the case was tried to the court, *Budzik*, *J.*; judgment for the plaintiffs, from which the defendants appealed to this court. *Reversed in part*; *judgment directed.*

Kent J. Mancini, for the appellants (defendants).

Matthew D. Paradisi, for the appellees (plaintiffs).

Opinion

BISHOP, J. The defendants, Aquino Arborio and Faith Arborio, appeal from the judgment, rendered after a trial to the court, declaring the plaintiffs, Antonio Padula and Giuseppina Padula, to be the owners, by adverse possession, of a certain strip of land lying between the adjacent properties of the parties. On appeal, the defendants claim that (1) the plaintiffs could not prevail on their adverse possession claim because they never personally possessed the property in question, (2) the court incorrectly awarded the plaintiffs an area beyond that which was expressly sought in the complaint, and (3) the court incorrectly concluded that the plaintiffs had possessed the disputed property for the requisite period of fifteen years.[1] We affirm in part and reverse in part the judgment of the court.

The court found the following pertinent facts and made the following legal conclusions on the basis of those facts and its application of the relevant law. "In December of 1991 . . . Elizabeth Guild bought the house and property at 139 Southwell Road in Wethersfield (Southwell Road Property). In April of 1997 . . . Thomas Shugrue bought the house and property at [302] Dale Road in Wethersfield (Dale Road Property). The Southwell Road Property and the Dale Road Property share a border running roughly west in a straight line for approximately 180 feet from a concrete survey marker adjacent to Southwell Road. The parties agree that the true property line between the two properties runs on a diagonal line inclining slightly to the northwest and toward the house and yard of the Southwell Road Property. It is also undisputed that approximately [sixty] feet up from Southwell Road and generally near the true property line, there begins a rather large hedge that is approximately [three to four] feet wide at its base and [eight to nine] feet tall. The hedge is mature and provides essentially complete privacy between the backyards of the Dale Road and Southwell Road Properties. To the casual passerby, the hedge would appear to delineate the border between the two properties. Unfortunately, that is not the case.

"It is undisputed that the hedge does not sit on the true property line. Instead, the hedge starts approximately [seven to ten] feet south of the true property line; in other words, at its starting point, the hedge encroaches about [seven to ten] feet into the yard of the Dale Road Property. Making matters worse, from its starting point, the hedge does not parallel the slight northwest diagonal of the true property line. Instead, the hedge follows a slight southwest diagonal (thus further encroaching on the Dale Road Property) for approximately 120 feet until it intersects with the side/rear property line of the Dale Road/Southwell Road Properties. Thus, if one stands at the concrete survey marker on Southwell Road and draws a line through

the middle of the hedge that follows a slight southwest diagonal, and then compares that line to the true property line that follows a slight northwest diagonal, there is created an elongated triangle of land that measures about [eighteen] feet at its base at the side/back of the Dale Road/Southwell [Road] Properties and is bordered by the hedge on one side and the true property line on the other. See Plaintiffs' Exhibit 1 (depicting the disputed area). It is this area that the court will refer to as the 'disputed area' and it is this area that the [plaintiffs] seek to acquire from the [defendants] by adverse possession.

"When [Shugrue] moved into the Dale Road Property in 1997, he purchased the property from an estate. The prior owners of the Dale Road Property had passed away. When [Shugrue] purchased the Dale Road Property, he did not look at any survey map of the property, nor did he ever hire a surveyor to produce a survey map. When [Shugrue] purchased the Dale Road Property, he asked the daughter of the prior owners where the true property line was and [Shugrue] was told that the true property line was at the hedge, plus a 'couple' or a 'few' feet beyond that. [Shugrue] never knew, nor ever sought to determine, exactly where the true property line was.

"While [Shugrue] and [Guild] were neighbors, [Shugrue] maintained the hedge by hiring a contractor to trim the hedge approximately once a year. It was agreed that [Guild] would mow all the grass on her side of the hedge and in the entire disputed area. Although there was somewhat conflicting testimony at trial on this issue, in its role as fact finder, the court concludes that [Shugrue] and [Guild] agreed to this maintenance arrangement without discussing who owned what property, where the true property line was, or whether or not permission was being either sought or given for access to, or use of, the disputed area. By all accounts, the relationship between [Shugrue] and [Guild] was neighborly. In its role as fact finder, the court concludes that [Shugrue] and [Guild] simply came to a neighborly and practical arrangement on a division of labor without either [individual] discussing who owned what property, or what either [individual's] legal rights were. The court notes that [Shugrue] testified that he decided to trim the hedge because he knew it was on his property, but the court concludes, in its role as fact finder, that [Shugrue] never told [Guild] that was why he was doing the trimming, or that, in doing the hedge trimming, [Shugrue] was intending to assert his ownership of the disputed area in any way. Similarly, the court concludes, in its role as fact finder, that [Shugrue] was amenable to [Guild] mowing the grass in the disputed area as a matter of pure convenience, not because he was giving [Guild] permission to do so, or permission to use the disputed area. Because of the natural and obvious border created by the hedge, the court concludes that [Shugrue] simply abandoned the disputed area to

[Guild] as a matter of practicality because the presence of the hedge made the disputed area more naturally part of [Guild's] yard. The court concludes that during the time period that [Shugrue] and [Guild] were neighbors, [Shugrue] never went into the disputed area (except to trim the hedge once a year) and that he was fully aware that [Guild] treated the disputed area as her own. The court concludes that [Shugrue] never gave permission to [Guild] to make use of the disputed area because [they] simply never discussed their legal rights.

"In 1998, [Guild] built an aboveground pool in her backyard at the Southwell Road Property. The plot plans submitted to [the town of] Wethersfield for approval (which show the true property line, but not the hedge) indicate that the pool was to be placed in the center of [Guild's] backyard and entirely on [Guild's] property. See defendants' Exhibit G. Nevertheless, because there was a tree with overhanging branches on the northern edge of [Guild's] property, and, the court concludes, in the exercise of reasonable inference, common sense, and human experience, because the pool installer mistakenly concluded that the hedge marked the southern edge of [Guild's] backyard, the pool ended up being placed somewhat off-center in the backyard and closer to the hedge. The result was that the pool was placed such that it was bisected by the true property line, leaving about [eight] feet of the pool encroaching into the Dale Road Property. [Shugrue] testified that he knew that [Guild] had built the pool, that he saw where it was located, but that he never made any objection to its location or gave [Guild] permission to use the area of his property that the pool was encroaching upon.

"In January of 2003, [Guild] sold the Southwell Road Property to [the plaintiffs]. [The plaintiffs] do not use the Southwell Road Property as their home. Instead, [the plaintiffs], who are husband and wife, purchased the Southwell Road Property for their son, Leone Padula (Leo), and his wife, Anna Padula.[2] Although [the plaintiffs] are the record owners of the Southwell Road Property, the property has always been occupied by Leo and Anna as their home. Regardless, the Padulas are a close-knit family and [the plaintiffs], who live nearby, visit Leo and Anna frequently.

"When the [the plaintiffs] were considering purchasing the Southwell Road Property, Antonio and Anna visited the property and noted the large hedge in the backyard. Anna very much considered the privacy offered by the hedge to be an important asset of the property. Nevertheless, there is no evidence that any of the Padulas sought to confirm that the hedge was on [the plaintiffs'] property. The [plaintiffs] simply assumed that the hedge marked the true property line because the hedge appeared to be such an obvious natural border between the Dale Road and Southwell

Road Properties.

"After some interior renovations, Leo and Anna moved into the Southwell Road Property in the spring of 2003. By the exercise of reasonable inference, human experience, and common sense, the court finds as a factual matter that [the plaintiffs] intended to convey to [Leo and Anna] the entirety of the Southwell Road Property for their use and possession, including the disputed area.

"In the early spring of 2003, Anna and [Shugrue] met by happenstance over a small wooden fence separating their properties and located at about the point where the hedge begins. After introducing themselves, the conversation turned to yard work. [Shugrue] affirmatively told Anna that he owned the hedge, that he had been maintaining the hedge historically, and that he intended to continue maintaining the hedge. [Shugrue] also noted that the Padulas had been mowing the lawn in the disputed area during that spring and it was agreed that the Padulas would continue to do that mowing. Again, although there was somewhat conflicting testimony at trial on this point, the court concludes, in its role as fact finder, that during this meeting between [Shugrue] and Anna, [Shugrue] never gave Anna or the Padulas permission to mow the disputed area and Anna never sought [Shugrue's] permission. Although the court credits [Shugrue's] testimony that he happened to tell Anna that he owned the hedge, the court concludes, in its role as fact finder, that [Shugrue] did not tell Anna that he owned any portion of the disputed area. Similar to his arrangement with [Guild], the court concludes that [Shugrue] and Anna were simply seeking to reach a neighborly understanding as to who was going to do what yard work and that neither party discussed [n]or made any reference to their legal rights (aside from [Shugrue] mentioning that he owned the hedge).

"After Anna and [Shugrue's] conversation and still in the spring of 2003, the Padulas began an extensive renovation project in the yard at the Southwell Road Property. The Padulas removed soil and grass in the front portion of the disputed area, installed a sprinkler system, and laid down new sod in the disputed area. The Padulas dug out and removed an old tree and planted new arborvitae trees in the disputed area to provide added privacy to the backyard and pool area. The Padulas substantially widened and repaved their driveway, expanding it some [four] feet into the disputed area where, previously, there had been no such encroachment. The Padulas expanded and restoned their back patio, expanding one edge of the new patio about [six] inches into the disputed area. The Padulas removed the wooden fence over which [Shugrue] and Anna had talked and replaced it with a new vinyl fence. The Padulas also did some repairs to the mechanicals of the pool, which remained in its original location and

continued to encroach about [eight] feet or so into the disputed area. The Padulas' project took about three months to complete and included the use of 'Bobcat' machines to remove soil and move stones and compacting machines necessary to level and compact soil in the disputed area. [Shugrue] testified that he was fully aware of the Padulas' extensive renovation project, but that he never registered any objection to the Padulas' open and obvious construction activities in the disputed area. Nor did [Shugrue] ever give the Padulas any permission to engage in their renovation project. The court also finds that, over the years of [the plaintiffs'] ownership of the Southwell Road Property, the Padulas made frequent, continuous, open, obvious, and exclusive use of their backyard, including the disputed area, for family events and gatherings and all of the normal uses for which residential homeowners use their yards.

"In January of 2017, [Shugrue] sold the Dale Road Property to . . . Faith Arborio. Like [the plaintiffs], Faith did not live at the Dale Road Property. Instead, sometime in January, 2017, Faith's son, Aquino Arborio, moved into the Dale Road Property with his family. Aquino has no formal lease with his mother, but [he] pays her an agreed upon monthly amount as rent.

"In the early spring of 2017, Aquino decided to take some measurements of the Dale Road Property. Aquino wanted to expand the patio area along the property line with the Southwell Road Property and so [he] wanted to know exactly how much room he had along the mutual property line. Aquino enlisted his twin brother, Anthony [Arborio], to help make the measurements. Using a measuring tape, maps, and other documents they had acquired from the town of Wethersfield, the brothers set about making their measurements. Aquino and Anthony first located the concrete marker adjacent to Southwell Road. The brothers also used a metal detector to find a metal property marker buried nearby. The brothers then went to the side/back of the Dale Road/Southwell Road Properties and, measuring off the correct distance using the town maps, located a concrete property marker in that area. Aquino and Anthony had to dig down into the soil to find and uncover the concrete marker. Tracing a straight line from the concrete marker at the side/back of the Dale Road/Southwell Road Properties and to the stone marker adjacent to Southwell Road, Aquino and Anthony quickly realized that the property line between the Dale Road/Southwell Road Properties went right through the Padulas' pool. To confirm their measurements, the brothers went back the next day and measured again. They reached the same results. To mark their findings, the brothers left a long orange 'snow stake' in the side/back of the property to mark where they had concluded the true property line was.

"In the early evening of the same day that he and his

brother took the second set of measurements, Aquino knocked on the Padulas' front door to tell them what he had found. Aquino spoke with [Leo and Anna] at their front door about [his] measurements and the fact that the true property line appeared to be more than a few feet north of the hedges and appeared to go right through the Padulas' pool. Aquino left some of the town documents he had used to make his measurements with the Padulas to review. The Padulas indicated to Aquino that they needed to discuss the matter with Antonio Padula (as the record owner) before formally responding, but otherwise indicated they wanted to reach an amicable solution. Aquino also informed his mother (as the record owner) of what he had found. The court notes that the [plaintiffs] dispute that Aquino met with [Leo and Anna] in the spring of 2017, or that the [defendants] informed the Padulas in any way prior to April 27, 2019, that there were encroachment issues along their mutual property line. Nevertheless, in its role as fact finder, the court credits the testimony of Aquino and Anthony Arborio on this issue and concludes that such a meeting did occur.

"After the initial meeting with [Leo and Anna] in the spring of 2017, [Aquino] made several informal attempts to engage the Padulas in a discussion about the property line and the encroachments that Aquino had discovered. Occasionally, Aquino would bring up the matter when he happened to see one of the Padulas outside their house. Each time the matter was brought up, the Padulas deflected Aquino's inquiries, stating that Antonio Padula was not available to discuss the matter for one reason or another, but that the Padulas would respond in due course. The Padulas dispute that these interactions occurred. Nevertheless, in its role as fact finder, the court concludes that Aquino did attempt to engage the Padulas about the property line dispute as described [herein].

"By the beginning of 2019, Faith Arborio had decided that the encroachment issue needed to be brought to a resolution. Additionally, by early 2019, Aquino had decided that he wanted to tear down the hedge and install a fence to give him more room for a patio along the parties' mutual property line. Aquino anticipated starting the work in the spring of 2019. Thus, on April 27, 2019, Aquino sent a letter [(April 27, 2019 letter)] to [Leo] telling [him] of the encroachment that Aquino had discovered in 2017 and asking the Padulas to remove those encroachments. In its role as fact finder, the court finds that [the] April 27, 2019 letter was the first written notice from the [defendants] to the Padulas informing the Padulas of the property line and encroachment dispute. The court also finds that the April 27, 2019 letter was not recorded on the land records of the town of Wethersfield, nor was the April 27, 2019 letter served on the Padulas in accordance with General Statutes §§ 52-575, 47-39, or 47-40.[3]

"On May 6, 2019, [Aquino] met with [Leo] and showed him some additional maps and information obtained from the town of Wethersfield demonstrating the encroachments in the disputed area. On May 10, 2019, Aquino gave Leo a copy of a formal survey of the Dale Road and Southwell Road Properties commissioned by the [defendants]. This survey, conducted by Harry E. Cole & Son, showed the true property line between the Dale Road and Southwell Road Properties, including encroachments from the Padulas' pool, driveway, and patio. On May 15, 2019, Leo responded to Aquino by texting him a copy of his attorney's business card. On May 28, 2019, the [plaintiffs] filed the initial complaint in this case seeking adverse possession of the disputed area. On December 18, 2019, the [defendants] filed a counterclaim against the [plaintiffs] generally sounding in trespass."[4] (Footnotes added; footnotes omitted.)

The court also made the following factual findings in footnotes throughout its memorandum of decision. "There was no evidence as to who planted the hedge, or when it was first planted, but it is undisputed that the hedge has been in its present location since at least when [Guild] first purchased the Southwell Road Property in 1991."

"The court finds that the hedge itself is not part of the disputed area because [Shugrue] always made it clear that he owned the hedge itself and the Padulas never exercised any possession of the hedge itself. In other words, the [defendants] own the hedge. The southernmost border of the disputed area runs from the survey marker on Southwell Road through the middle of the hedge, or the middle of its base trunks, as depicted on plaintiffs' exhibit 1. The court also finds that the [plaintiffs] own the arborvitae trees [the Padulas] planted."

"Similarly, there was much testimony at trial as to who mowed the disputed area after 2017, when the court concludes the [defendants] informed the Padulas of the encroachment issues. In its role as fact finder, the court concludes that, after the spring of 2017, *both* parties were mowing the disputed area, at least to some degree, in an attempt to bolster their rights to the area." (Emphasis in original.)

"In its role as fact finder, the court finds that on April 24, 2019, Harry E. Cole & Son placed survey stakes in the disputed area for the purpose of completing their survey of the Dale Road and Southwell Road Properties and that this was done at the direction of the [defendants]. The court declines to resolve the parties' dispute as to who may have removed the survey stakes because of a lack of persuasive evidence."

On the basis of its findings and its application of relevant law, the court determined that the plaintiffs had proven their claim of adverse possession by clear

and convincing evidence, and, more specifically, that they adversely possessed the disputed area from 2003 until 2019, and that the defendants failed to timely interrupt the plaintiffs' possession of the disputed area. Accordingly, the court rendered judgment for the plaintiffs on their adverse possession claim. This appeal followed.

Before our discussion of the defendants' specific claims, we note the basic tenets of adverse possession. "[T]o establish title by adverse possession, the claimant must oust an owner of possession and keep such owner out without interruption for fifteen years by an open, visible and exclusive possession under a claim of right with the intent to use the property as his [or her] own and without the consent of the owner." (Internal quotation marks omitted.) *O'Connor* v. *Larocque*, 302 Conn. 562, 581, 31 A.3d 1 (2011); see also General Statutes § 52-575 (a).

"[T]he open and visible element requires a fact finder to examine the extent and visibility of the claimant's use of the record owner's property so as to determine whether a reasonable owner would believe that the claimant was using that property as his or her own." (Internal quotation marks omitted.) *Brander* v. *Stoddard*, 173 Conn. App. 730, 747, 164 A.3d 889, cert. denied, 327 Conn. 928, 171 A.3d 456 (2017).

"[I]n general, 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 [or her] own use and the exclusion of others." (Internal quotation marks omitted.) *Briarwood of Silvermine, LLC* v. *Yew Street Partners, LLC*, 209 Conn. App. 271, 279, 267 A.3d 905 (2021). "[S]hared dominion over property defeats a claim of adverse possession because the exclusivity element of adverse possession is absent." (Internal quotation marks omitted.) *Roberson* v. *Aubin*, 120 Conn. App. 72, 76–77, 990 A.2d 1239 (2010). The claimant's possession, however, "need not be absolutely exclusive; it need only be a type of possession which would characterize an owner's use. . . . It is sufficient if the acts of ownership are of such a character as to openly and publicly indicate an assumed control or use such as is consistent with the character of the premises in question. . . . [A] claimant's mistaken belief that [s]he owned the property at issue is immaterial in an action for title by adverse possession, as long as the other elements of adverse possession have been established. . . . In other words, a mistaken belief as to boundary does not bar [a] claim of right or negate [the] essential element of hostility in a claim of adverse possession." (Citations omitted; internal quotation marks omitted.) *Briarwood of Silvermine, LLC* v. *Yew Street Partners, LLC*, supra, 279–80; see also *Dowling* v. *Heirs of Bond*, 345 Conn. 119, 145, 282 A.3d 1201

(2022) ("a claim of adverse possession is equally valid whether the party making that claim used the property with the knowledge that it was owned by another or, instead, mistakenly believed that he owned the property").

"That having been said, consideration of intent is by no means irrelevant to a claim of adverse possession because the claimant must establish that he or she possessed the land under a claim of right . . . . [This] means nothing more than [using the land] . . . without recognition of the right of the landowner, and that phraseology more accurately describes it than to say that it must be under a claim of right. . . . To establish that the claimant used the land under a claim of right, the intent of the possessor to use the property as his own must be shown." (Citations omitted; internal quotation marks omitted.) *Dowling* v. *Heirs of Bond*, supra, 345 Conn. 145. As to permissive use, "prior permission may undermine the existence of a claim of right; use of the land by the express or implied permission by the true owner is not adverse and, therefore, cannot ripen into adverse possession. . . . [O]ne who enters into the possession of land in subordination to the title of the real owner . . . is estopped from denying that title while he holds actually or presumptively under it. . . . As with a prescriptive easement, implied permission by the true owner is not adverse." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 146.

Finally, as to the time requirement for adverse possession, "the claimant must oust an owner of possession and keep such owner out without interruption for fifteen years . . . ." (Internal quotation marks omitted.) *O'Connor* v. *Larocque*, supra, 302 Conn. 581. "When a party is once dispossessed it is not every entry upon the premises without permission that would disturb the adverse possession." (Internal quotation marks omitted.) *Boccanfuso* v. *Green*, 91 Conn. App. 296, 312, 880 A.2d 889 (2005). Indeed, after having been ousted from possession of the land, no entry into the land shall be sufficient unless, within such fifteen year period, the person or persons claiming ownership "gives notice in writing to the person or persons in possession of the land . . . of the intention of the person giving the notice to dispute the right of possession of the person or persons to whom such notice is given and to prevent the other party or parties from acquiring such right, and the notice being served and recorded as provided in sections 47-39 and 47-40 shall be deemed an interruption of the use and possession and shall prevent the acquiring of a right thereto by the continuance of the use and possession for any length of time thereafter . . . ." General Statutes § 52-575 (a).

"A finding of adverse possession is to be made out by clear and positive proof. . . . [C]lear and convinc-

ing proof . . . denotes a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution. . . . [The burden] is sustained if evidence induces in the mind of the trier [of fact] a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist. . . . The burden of proof is on the party claiming adverse possession." (Internal quotation marks omitted.) *Brander* v. *Stoddard*, supra, 173 Conn. App. 743–44.

I

The defendants' first claim is that the court erred in concluding that the plaintiffs, who never actually possessed the Southwell Road Property or personally used the disputed area between the Southwell Road Property and the abutting Dale Road Property, could establish a claim for adverse possession. We disagree.

On appeal, "our scope of review is limited. . . . Because adverse possession is a question of fact for the trier . . . the [trial] court's findings as to this claim are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . We cannot retry the facts or pass on the credibility of the witnesses. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed . . . ." (Internal quotation marks omitted.) *Caminis* v. *Troy*, 300 Conn. 297, 306, 12 A.3d 984 (2011).

At the outset, we note that a titleholder may assert a claim of adverse possession without actually being in personal possession of the property so long as there exists the requisite proof that the title owner intended his or her agents, whether tenants or licensees, to occupy the property in dispute. "What one may do personally in the matter of taking and holding possession of real estate for adverse possession purposes may be done by or through another. Thus, the requirement of actual possession of property necessary to acquire title by adverse possession need not be met by acts of the adverse claimant but may be met through acts of another, who actually possesses and occupies the land for, and in subordination to, the adverse claimant. Accordingly, the requirement of actual possession may be met or kept fresh through possession on behalf of the adverse claimant by an agent, licensee, relative, or tenant. The fact that a permittee of an adverse claimant in possession of real estate pays no rent to the latter does not as a matter of law destroy the efficacy of such possession for the benefit of the claimant." (Footnotes

omitted.) 3 Am. Jur. 2d 108–109, Adverse Possession § 20 (2013); see also *Hightower* v. *Pendergrass*, 662 S.W.2d 932, 937 (Tenn. 1983) ("[A]dverse possession through a licensee is the same as adverse possession through and by the claimant. What a claimant can do himself, he can do by an agent licensee or tenant."). Nevertheless, it is significant that the actual possessor of the property must be occupying the land on behalf of the titleholder, and, therefore, proof of the intent of the titleholder as to possession of the disputed area is a necessary element of a claimant's proof. See *Deregibus* v. *Silberman Furniture Co.*, 124 Conn. 39, 41–42, 197 A. 760 (1938) (in evaluating whether landlord, as adverse claimant, could tack on tenant's use of property for purposes of prescriptive easement, court looked at whether disputed area was considered by both parties to be included in lease); see also *Dowling* v. *Heirs of Bond*, supra, 345 Conn. 145 ("the intent of the possessor to use the property as his own must be shown" (internal quotation marks omitted)).

In *Deregibus* v. *Silberman Furniture Co.*, supra, 124 Conn. 39, our Supreme Court concluded: "While a tenant cannot effect a disseisin in his landlord's favor or originate adverse possession or user unless the lease includes the land or easement, the inclusion need not necessarily be expressed; it suffices if it is impliedly included. . . . Whether or not the easement here in question was within the leases was a question of fact, to be determined in the light of the circumstances, including the use made of it. . . . The facts now found as to such circumstances and use are sufficient to establish that the right of way was considered by both parties to the leases to be included in them. Not only is it found that the plaintiff's predecessors in title and landlords would not have bought the property without the way as a necessary appurtenant easement and knew and assented to the use of it by the plaintiff and other tenants, but it is also an inescapable inference from the facts found as to the purposes and manner of use of the premises by the tenants that they would not have rented and occupied them had they not understood that this way, essential to those purposes and user, was included and within the implied terms of the leases." (Citations omitted.) Id., 41–42.

Applying the reasoning and holding of *Deregibus*, the trial court in the present case found from the evidence that the plaintiffs would not have purchased the property if the hedges did not delineate the boundary between the two properties and, similarly, that Leo and Anna would not have possessed the property without the same understanding. Moreover, the court found that the plaintiffs intended for Leo and Anna to occupy the entirety of the Southwell Road Property, including the disputed area, which they assumed by the appearance of the property to be included in their purchase.

The defendants make essentially two arguments in support of their claim. First, they contend that *Deregibus* applies only where there is a lease in place between the owners and occupants, and, in this case, there was no evidence of a lease between the plaintiffs and Leo and Anna. Second, they contend that the court made two clearly erroneous factual findings: (1) that the plaintiffs would not have purchased the Southwell Road property if they did not believe that the disputed area was part of what they were purchasing, and (2) that the plaintiffs intended to convey to Leo and Anna the entirety of the Southwell Road Property for their use and possession including the disputed area. We are not persuaded by either argument.

As to the first argument, although we acknowledge that the factual underlayment of *Deregibus* involved a tenancy, that case did not turn on the existence of a landlord-tenant relationship. The teaching of *Deregibus*, as it applies to the case at hand, is that the use of the disputed land by Leo and Anna cannot be considered as adverse to the titleholder unless the possession of that disputed land was intended by the purchasers of the property, in this case, the plaintiffs. Although the defendants do not dispute that principle, they claim that *Deregibus* does not apply because, here, there was no lease between the plaintiffs, as the owners of the property, and Leo and Anna. In our view, however, that is a distinction without a difference. As we explain herein, the trial court reasonably found from the evidence that Leo and Anna occupied the Southwell Road Property under a right given to them by the plaintiffs. As noted, it is legally insignificant whether they are characterized as tenants or simply as permitted users. See 3 Am. Jur. 2d, supra, § 20, pp. 108–109. In sum, what a claimant can do himself, he can do by an agent licensee or tenant.

As to the second argument, our review of the record leads us to conclude that the court's factual findings are supported by the evidence. Specifically, the evidence that the plaintiffs, as the owners, intended for Leo and Anna, their son and daughter-in-law, to possess the Southwell Road Property, including the disputed area, consisted of testimony from Anna. Anna testified that the plaintiffs intended, from the very beginning, to purchase the Southwell Road Property for her and Leo to reside at. Anna also testified that when she and her father-in-law, the plaintiff Antonio Padula, visited the property before the purchase, she noted hedges on both sides of the property and a row of trees in the back, enclosing the whole yard. She stated: "It was very private and I like that. And I knew my husband would like that . . . ." From this evidence, the court inferred that the plaintiffs would not have purchased the property for Leo and Anna's use, and that Leo and Anna would not have agreed to occupy that property, if they had

known that the actual property line did not extend to the line of hedges that appeared to delineate the boundary between the Southwell Road Property and the Dale Road Property. Although we acknowledge that the evidence is circumstantial as to the value placed by the plaintiffs in the apparent privacy of the Southwell Road Property caused, in large part, by the location of the hedgerow defining the apparent boundary between the Southwell Road and Dale Road Properties, we conclude that the court's findings, by inference, that the plaintiffs would not have purchased the property and that Leo and Anna would not have occupied the property without this feature of privacy were supported by the evidence, and, therefore, they were not clearly erroneous.

II

The defendants next claim that the court erred in awarding the plaintiffs an area beyond that which was expressly sought in the operative complaint. There are two parts to this claim. The defendants first assert that the plaintiffs claimed, by adverse possession, only the disputed property that was delineated by the hedgerow, and yet the court awarded the plaintiffs property that extended beyond the line of hedges into the northeasterly portion of the defendants' property. The defendants also assert that the plaintiffs sought no part of the hedgerow itself, and yet the court awarded one half of the hedgerow to the plaintiffs. We agree, in part, with the defendants' claim.

In reviewing this claim, we are mindful that, because the interpretation of pleadings is always a question of law, our review of the trial court's interpretation of the pleadings is plenary. *Flannery* v. *Singer Asset Finance Co., LLC*, 312 Conn. 286, 299, 94 A.3d 553 (2014).

The operative complaint in this matter is dated August 22, 2019. In the complaint, the plaintiffs alleged in relevant part that, "[a]t all times set forth herein, the southerly portion of 139 Southwell Road abutted up against a parcel of real property known as 302 Dale Road. . . . At the time the plaintiffs purchased 139 Southwell Road, there was a large hedgerow and fence separating 139 Southwell Road from 302 Dale Road. . . . At the time the plaintiffs took title to 139 Southwell Road in 2003, they did so with the understanding that the aforesaid hedgerow accurately demarked the property line between 139 Southwell Road and 302 Dale Road." In addition, the plaintiffs alleged that they "have adversely possessed *all of the property north of the hedgerow* separating 139 Southwell Road and 302 Dale Road," and, in their prayer for relief, requested a judgment declaring them the legal owners of that property. (Emphasis added.)

On the first day of trial, prior to the start of evidence, the defendants' counsel argued that the plaintiffs

intended to present evidence that was "far in excess of the pleadings . . . ." The defendants' counsel objected to the admission of plaintiffs' exhibit 1, a property survey that he had received during the previous week, insofar as it depicted the disputed area's "adverse possession line" as running through the middle of the hedgerow and to the south of the edge of the hedgerow. He argued that such evidence should not be considered because, in the plaintiffs' operative complaint, they had claimed only the property "north of the hedgerow."

The court reserved its decision on the defendants' objection, explaining that it would allow the plaintiffs to present such evidence and, after hearing the evidence, it would decide whether the plaintiffs were improperly expanding their claim beyond the pleadings and whether it would cause unfair surprise to the defendants.

In its memorandum of decision, the court did not expressly rule on the defendants' objection. Nevertheless, it defined the disputed area as depicted in plaintiffs' exhibit 1, and concluded that the plaintiffs had proven, by clear and convincing evidence, that they acquired that area by adverse possession.

A

The defendants first contend that the plaintiffs should have been barred from asserting adverse possession of the southeasterly portion of the disputed area that is not delineated by the line of hedges. We disagree.

During the trial, there were surveys and numerous photographs of the parties' properties that were admitted into evidence. Generally, they show a line of hedges beginning at the rear of the parties' properties and running in a southwesterly direction but ending at a point approximately sixty feet before the properties reach the street where a survey marker signifies the legal boundary between properties. Additionally, beginning at the end of the row of hedges and extending toward the street and the legal boundary marker, there is a fence that spans the area from the edge of the hedgerow to a group of arborvitae trees planted by Anna. Accordingly, the disputed area, as found by the court, is not marked solely by the hedgerow but includes the fence and arborvitaes.

The defendants' claim that the disputed area can only be that portion of property that actually abuts the hedgerow is based on a narrow interpretation of the disputed area as set forth in the plaintiffs' complaint. The court, however, did not as narrowly define the area of dispute. Rather, the court determined that the southernmost border of the disputed area runs from the survey marker on Southwell Road through the middle of the hedge, or the middle of its base trunks, as depicted on plaintiffs' exhibit 1 and, by implication, the disputed area defined by the court includes the property north of the fence

and arborvitaes as well. In short, the court considered as part of the disputed area a portion of the property line that extends beyond the line of hedges for about sixty feet to the street line. Indeed, as previously noted, there was testimony that the Padulas planted arborvitaes, expanded their driveway, and maintained the lawn and plantings in this area for the requisite period of time in the same manner as they did the remainder of the disputed area.

We are mindful that "pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Manere* v. *Collins*, 200 Conn. App. 356, 366, 241 A.3d 133 (2020). Upon our review of the operative complaint in this matter, we believe that the defendants were sufficiently put on notice of the precise contours of the property that the plaintiffs were claiming to have adversely possessed. Moreover, *KDM Services, LLC* v. *DRVN Enterprises, Inc.*, 211 Conn. App. 135, 271 A.3d 1103 (2022), on which the defendants rely, is readily distinguishable from the present case. In *KDM Services, LLC*, this court concluded that the trial court abused its discretion by allowing the plaintiff to amend its complaint *after trial* to conform to the evidence. Id., 143. This court reasoned that the amended complaint alleged " 'an entirely new and different factual situation,' " and the special defenses asserted by the defendant necessarily were addressed to the original complaint, and it was not given the opportunity to defend against the amended complaint by filing amended special defenses, conducting discovery, or calling witnesses at trial to rebut the plaintiff's claim. Id., 142. In the present case, plaintiffs' exhibit 1, which the court used to demark the disputed area and which made clear that the alleged disputed area included the portion of the property at issue, had been provided to the defendants *before trial*. In reserving its ruling on the defendants' objection to plaintiffs' exhibit 1, the court made clear, prior to the start of evidence, the possibility that it might consider the disputed area as depicted by that exhibit. Thus, unlike the defendant in *KDM Services, LLC*, the defendants here had the opportunity to defend against and present evidence to rebut the plaintiffs' claim of adverse possession as to that area. Accordingly, on balance, we believe that the court fairly delineated the southeasterly portion of the disputed area that does not include the hedgerow.

B

The defendants next contend that the court should not have awarded the plaintiffs any part of the hedgerow because (1) in the operative complaint, the plaintiffs claimed only the property immediately north of the hedgerow and no part of the hedgerow itself, and (2) such an award is contrary to the court's factual findings. We agree with the defendants that the court's determi-

nation that the plaintiffs' adverse possession extends to the midline transecting the hedgerow is unsupported by the evidence and contradicts the court's own factual findings.

In its memorandum of decision, the court acknowledged that "[t]he southernmost border of the disputedarea runs from the survey marker on Southwell Road through the middle of the hedge, or the middle of its base trunks, as depicted on plaintiffs' exhibit 1," but found that "*the hedge itself is not part of the disputed area because* [*Shugrue*] *always made it clear that he owned the hedge itself and the Padulas never exercised any possession of the hedge itself*. In other words, the [defendants] own the hedge." (Emphasis added.) Ultimately, however, the court concluded that the plaintiffs had acquired the entire disputed area by adverse possession.[5]

Our review of the record confirms that the undisputed evidence presented at trial established that the defendants and their predecessor, Shugrue, at all times maintained both sides of the hedgerow. On the basis of the evidence presented, and the court's own findings, we agree with the defendants that the court should not have awarded the plaintiffs any part of the hedgerow. Accordingly, we conclude that the court's judgment should have been limited to the property immediately north of the hedgerow, including no part of the hedgerow itself.

III

The defendants' final claim is that the court erred in concluding that the plaintiffs had proven their claim of adverse possession for fifteen years by clear and convincing evidence. We disagree.

The defendants challenge both the court's factual findings and legal conclusions. As set forth previously, "[b]ecause a trial court is afforded broad discretion in making its factual findings, those findings will not be disturbed by a reviewing court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed . . . ." (Emphasis omitted; internal quotation marks omitted.) *O'Connor* v. *Larocque*, supra, 302 Conn. 574–75. The legal conclusions that the court drew from those facts are subject to plenary review. See *Aramony* v. *District of Chapman Beach*, 144 Conn. App. 514, 530, 72 A.3d 1252 (2013) ("[a]pplication of the pertinent legal standard to the trial court's factual findings is subject to our plenary review" (internal quotation marks omitted)); see also *O'Connor* v. *Larocque*, supra, 573 ("[I]t is the province of the trial

court to find the facts upon which [such a] claim is based. Whether those facts make out a case of adverse possession is a question of law reviewable by this court." (Internal quotation marks omitted.)).

The court's factual findings in support of its conclusion that the plaintiffs adversely possessed the disputed area for the requisite fifteen year period are set forth in the court's memorandum of decision. The court stated: "In the spring of 2003, the undisputed evidence is that the Padulas began an extensive renovation project in their yard, including the disputed area. The Padulas removed soil and grass in the front portion of the disputed area, installed a sprinkler system, and laid down new sod. The Padulas dug out and removed an old tree and planted new trees in the disputed area. The Padulas widened and repaved their driveway, expanding it into the disputed area. The Padulas restoned their back patio and expanded it into the disputed area. The Padulas removed a fence along the property line (and in the disputed area) and replaced it with a new one. The Padulas also did repairs to the mechanicals of the pool, which remained encroaching into the disputed area. The Padulas' project took three months and included the use of large machines to move and compact soil and stones in the disputed area. All of this activity was open, obvious, and visible to [Shugrue], as he readily admitted at trial. All of this activity, the court concludes, exhibits an open and obvious intent by the Padulas to exclusively possess and use the disputed area as if it were their own property. Yet [Shugrue] never objected to the Padulas' project, or sought to give them permission to use his land, or sought to assert his rights to the disputed area in any way. Moreover, after the renovation project was completed in the spring [of] 2003, the Padulas continuously and exclusively used the pool and their entire yard (including the disputed area) for family gatherings and, on a daily basis, all the normal uses for which residential homeowners use their yards in an open, obvious, and visible manner and to the exclusion of [Shugrue]. The court concludes that the clear and convincing evidence presented at trial demonstrates that, by the spring of 2003, [Shugrue] had wholly abandoned the disputed area to the Padulas to use as their own yard." (Footnote omitted.) The court then concluded that the defendants did not effectively interrupt the plaintiffs' adverse possession of the property because they never provided the plaintiffs with a written notice that conformed to § 52-575 reclaiming the property within fifteen years of when the adverse possession began. In particular, the court found: "There is no evidence that there was any written notice to the [plaintiffs] from the [defendants] within the fifteen year time period required by § [52-575]. The first written notice of the encroachment issue from the [defendants] to the [plaintiffs] did not come until April 27, 2019—after the fifteen year time period

(which first began to run in the spring of 2003) had run to its conclusion in the spring of 2018. Regardless, even if the April 27, 2019 letter could be considered timely, there is no evidence that the April 27, 2019 letter was ever served on the [plaintiffs], or that it was ever recorded on the land records of the town of Wethersfield. See General Statutes § [52-575]." (Footnote omitted.) The court also found that the defendants' mowing of the disputed area did not constitute an ouster of the plaintiffs' adverse possession.

The defendants first contend that the court's factual findings were clearly erroneous insofar as the court found that Shugrue did not give Anna permission to mow the lawn in the disputed area. We disagree. In support of its finding, the court explained that, "[a]lthough the court credits [Shugrue's] testimony that he happened to tell Anna that he owned the hedge, the court concludes, in its role as fact finder, that [Shugrue] did not tell Anna that he owned any portion of the disputed area. Similar to his arrangement with [Guild], the court concludes that [Shugrue] and Anna were simply seeking to reach a neighborly understanding as to who was going to do what yard work and that neither party discussed [n]or made any reference to their legal rights (aside from [Shugrue] mentioning that he owned the hedge)."

We conclude that the court's findings are supported by the record. Specifically, Shugrue testified that, in his conversation with Anna, he did not specify that he was giving the Padulas "permission" to mow the lawn, and he did not explain to Anna that he owned that portion of the property. Indeed, Anna testified that, from her perspective, Shugrue did not give her permission to mow the lawn in the disputed area and, in fact, she believed that Shugrue was asking *her* for permission to enter that part of the property in order to trim the hedges. Thus, the court's findings were not clearly erroneous.

The defendants next contend that, as a matter of law, the court's findings that they discussed the possible encroachments with the Padulas in 2017 and concurrently mowed the lawn in the disputed area precluded the court from concluding that the plaintiffs had proven their claim of adverse possession by clear and convincing evidence. As to the exclusivity of the plaintiffs' use, the court concluded that Shugrue's once yearly entry into the disputed area to trim the hedges was insufficient to interrupt the Padulas' adverse possession of the disputed area or to negate Shugrue's ouster from the disputed area. Similarly, the court concluded that the fact that the defendants occasionally mowed the lawn in the disputed area did not defeat the plaintiffs' claim of adverse possession because such momentary acts did not rise to the point of ouster.

In reaching this conclusion, the court correctly noted

that once a party has been ousted of possession of a disputed area, the occasional use of that area by the ousted party without the permission of the party in possession is not sufficient to constitute a break in the time period required to establish ownership by adverse possession. See *Ahern* v. *Travelers Ins. Co.*, 108 Conn. 1, 7, 142 A. 400 (1928) ("[w]hen a party is once dispossessed it is not every entry upon the premises without permission that would disturb the adverse possession" (internal quotation marks omitted)); *Boccanfuso* v. *Green*, supra, 91 Conn. App. 312 (same). In addition, the court correctly observed that the defendants failed to provide written notice to the plaintiffs in accordance with § 52-575 (a),[6] to dispute the right of possession and to prevent them from acquiring such a right, and, indeed, did not provide *any* notice in writing until their April 27, 2019 letter, at which point more than fifteen years already had passed. Accordingly, we conclude that the court's findings and conclusions are factually supported and legally sound.[7]

The judgment is reversed only with respect to the delineation of the property regarding the hedgerow itself, and the case is remanded with direction to render judgment consistent with this opinion; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

[1] "General Statutes § 52-575 (a) establishes a fifteen year statute of repose on an action to oust an adverse possessor." (Footnote omitted.) *O'Connor* v. *Larocque*, 302 Conn. 562, 578–79, 31 A.3d 1 (2011). Specifically, § 52-575 (a) provides in relevant part that "[n]o person shall make entry into any lands or tenements but within fifteen years next after his right or title to the same first descends or accrues or within fifteen years next after such person or persons have been ousted from possession of such land or tenements; and every person, not entering as aforesaid, and his heirs, shall be utterly disabled to make such entry afterwards . . . ."

[2] Leo and Anna were not named as plaintiffs in this case and references to the plaintiffs and Leo and Anna, collectively, or a combination thereof, are to the Padulas.

[3] General Statutes § 52-575 (a) provides in relevant part that no entry into the land shall be sufficient "unless within such fifteen-year period, any person or persons claiming ownership of such lands and tenements and the right of entry and possession thereof against any person or persons who are in actual possession of such lands or tenements, *gives notice in writing to the person or persons in possession of the land or tenements of the intention of the person giving the notice to dispute the right of possession of the person or persons to whom such notice is given and to prevent the other party or parties from acquiring such right, and the notice being served and recorded as provided in sections 47-39 and 47-40 shall be deemed an interruption of the use and possession and shall prevent the acquiring of a right thereto by the continuance of the use and possession for any length of time thereafter*, provided an action is commenced thereupon within one year next after the recording of such notice. . . ." (Emphasis added.)

[4] In finding for the plaintiffs on the claim for adverse possession, the court also denied the defendants' counterclaim for trespass. The defendants have not appealed from the denial of their counterclaim.

[5] The parties agree that the court awarded the plaintiffs the entire disputed area, as depicted in plaintiffs' exhibit 1, including one half of the hedgerow.

[6] See footnote 3 of this opinion.

[7] Because we conclude that the trial court properly determined that the plaintiffs had proven their claim of adverse possession for fifteen years by clear and convincing evidence, we need not address the plaintiffs' alternative ground for affirmance, in which the plaintiffs contend that the court should

have tacked on a previous owner's prior use of the disputed area.