THERESA P. O'CONNOR ET AL. *v.*
DOROTHY LAROCQUE
(SC 18648)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan,
Eveleigh and Vertefeuille, Js.

Argued January 11—officially released November 1, 2011

John H. Parks, for the appellant (defendant).

Bruce D. Tyler, for the appellee (named plaintiff).

Opinion

ZARELLA, J. The defendant, Dorothy Larocque, appeals[1] from the judgment of the trial court quieting title to certain real property in favor of the named plaintiff,[2] Theresa P. O'Connor, predicated on a finding that the plaintiff had disseized the defendant of her interest in the property as a tenant in common. The defendant claims that the trial court improperly determined that the plaintiff had overcome the presumption that possession by a tenant in common is not adverse to another cotenant[3] and had proven, by clear and convincing evidence, the elements of an adverse possession.[4] The plaintiff responds that the trial court properly concluded that she had overcome the presumption against adverse possession by a tenant in common and had proven its underlying elements. We agree with the defendant and, accordingly, reverse the judgment of the trial court.

The record reveals the following uncontested facts and procedural history. The plaintiff and the defendant are sisters, and they have two other siblings. Their father died intestate in 1971, and, by statute,[5] a vacant lot (lot) that he had solely owned passed as part of his estate, with a one-third interest passing to his widow, the parties' mother, and a one-sixth interest passing to each of his four children. A probate certificate of devise or descent reflecting this division of interest was recorded in the land records of the town of Somers (town) on April 14, 1972. On February 27, 1980, the parties' mother, incorrectly believing that she held full title to the lot, conveyed it to the plaintiff and the plaintiff's husband by quitclaim deed. The deed conveyed "all such right and title" as the mother "ha[d] or ought to have" in the lot, and not full title to the entire lot. As a consequence of this misunderstanding and of the plaintiff's apparent failure to consult the town's land records, the plaintiff incorrectly believed, like her mother, that she had acquired full title to the lot.

In 1987, the plaintiff and her mother became aware that there was a "cloud" on the title, that her mother had inherited only a one-third interest in the lot and that the defendant and her siblings each had inherited only a one-sixth interest in the lot. The plaintiff, through her attorney, thus asked the defendant to sign a quitclaim deed relinquishing her one-sixth interest to the plaintiff, which the defendant refused to do. In February and April, 2007, the surviving spouse of one of the siblings and the other sibling, who are not parties to this appeal, conveyed their respective one-sixth interests to the plaintiff by quitclaim deed. As a result, prior to the commencement of this litigation, the plaintiff held a five-sixths interest in the lot, and the defendant held a one-sixth interest.

On October 1, 2007, the plaintiff brought the quiet

title action underlying this appeal against the defendant, claiming full ownership of the lot. The first count of the complaint alleged ownership through adverse possession. The plaintiff alleged that she had claimed the subject property as her own, continuously and for more than fifteen years, in an open, visible, hostile, notorious, adverse and exclusive manner, from the time she had acquired her mother's interest on February 27, 1980, to the time she had filed the complaint. In support of her claim, she alleged that she had planted evergreen trees along the perimeter of the lot, paid all of the property taxes, maintained liability insurance, mowed the grass, used the lot for disposing of tree branches and brush from other property and otherwise maintained the property to the exclusion of others. In addition, the plaintiff alleged that her name was listed in the town's assessment records as the owner of the lot but that she held only a five-sixths interest in the lot.

The plaintiff alleged, in the second count of the complaint, ownership by way of an equitable claim. The basis for this claim was that, because the defendant had prevailed in an earlier adverse possession action against the plaintiff involving nearly identical allegations with respect to an adjoining property, the plaintiff was entitled to prevail on her reciprocal claim in the present action as a matter of fairness. The defendant asserted six special defenses, including that the plaintiff's claim of adverse possession was defeated by the legal presumption against adverse possession that applies when the parties are tenants in common, and a counterclaim seeking partition or sale of the lot.

Thereafter, the defendant filed a motion for summary judgment. The trial court granted summary judgment in the defendant's favor as to the second count of the complaint on the ground that it was "devoid of any allegations resembling any equitable theory of liability." The court added that "no rule in law or equity exists that the victor in an earlier case becomes the vanquished in a later one merely because their roles have reversed."[6]

The case proceeded to a bench trial on the first count of the complaint and on the defendant's counterclaim. The plaintiff testified at length regarding actions she had taken that allegedly demonstrated her exclusive possession of the lot. She testified that the lot was adjacent to a large piece of land on which her own home was situated, that one third of the lot consisted of woods and that, shortly after she had acquired her mother's interest in 1980, she had planted evergreen trees around the remaining two thirds of the lot, which consisted of a grassy field. In addition, her husband had mowed the grass periodically, and, for many years, she had granted annual requests by the Four Town Fair Association to use the lot for parking during the town fair. Since 1980, the plaintiff also had maintained a liability insurance policy, cleaned up brush and leaves

and paid all of the real estate taxes due on the lot.[7] The plaintiff finally testified that she had not communicated with the defendant for twenty-five years, except for her request through an attorney to sign the quitclaim deed in 1987, and that she had not changed the way in which she had used the lot after learning that she lacked sole ownership.

On cross-examination, the plaintiff conceded that an aerial photograph showing that the wooded portion of the lot was adjacent to the road, that the evergreen trees she had planted were behind the woods on the two sides of the lot bordering her other property, and that the fourth side of the lot was separated from a neighboring property by what appeared to be existing trees, "fairly and accurately represented the lot . . . ." The plaintiff further testified that she had planted the evergreen trees "pretty far apart" and that motor vehicles could enter the lot through spaces in between the trees. In addition, the lot was accessible through a larger space between the trees maintained by the plaintiff, as well as through the woods adjacent to the road. The plaintiff admitted that she had never built a fence around the lot or posted "No Trespassing" signs to deter people from entering. Upon being asked, "how did you tell [the defendant] that you were adversely possessing against her," the plaintiff responded: "Through [the] court and lawyers. When . . . the question of the other two lots [involving clouded titles] came up, it was brought up."

Upon completion of the plaintiff's testimony, her husband testified that his Jeep Wrangler and trailer, which together measured approximately seven feet wide by ten feet long, could "easily" be driven onto the lot, as could his full size automobile. The defendant was the last to testify and stated that the plaintiff had never told her that she was claiming exclusive possession of the lot.

During closing arguments, the plaintiff's attorney argued that the defendant had received notice of the plaintiff's claim to the property when the defendant commenced similar litigation against the plaintiff seeking to resolve title to two other lots in which both parties had an interest. He specifically argued: "The [plaintiff] testified that there was a case, and this had come to the attention [of] the parties at the time of [the defendant's] claim to the property involving the various lots, including this lot. And I'm referring to that case for the purpose of pointing out that the defendant certainly had notice. There was correspondence from attorneys with regard to signing a quitclaim deed.[8] . . . [T]o say that the defendant didn't know that the plaintiff was claiming this is somewhat disingenuous, to say the least."

At the conclusion of the trial, the court rejected the defendant's special defenses and found that the plaintiff

had overcome the presumption that possession by a tenant in common is not adverse to another cotenant and had proven by clear and convincing evidence all of the requisite elements of adverse possession. The court also found in favor of the plaintiff on the defendant's counterclaim for partition or sale of the lot before rendering judgment quieting title in favor of the plaintiff.

Following the trial court's issuance of its memorandum of decision, the defendant filed a motion seeking an articulation of, inter alia, the basis for the trial court's findings and conclusion that the record contained clear and convincing evidence sufficient to overcome the presumption against adverse possession by a tenant in common. In replying to multiple questions relating to this issue, the court repeatedly referred to several pages in its memorandum of decision discussing (1) the "bitter relationship between the parties," who had not spoken in twenty-five years and had been involved in "prior, acrimonious litigation" concerning a different parcel of land conveyed to the defendant by their mother, and (2) the use of the lot as testified to by the plaintiff. The court also took judicial notice of the two prior cases involving litigation between the parties.[9] This appeal followed.

The defendant claims that the trial court improperly concluded that the plaintiff had acquired title to the lot by adverse possession. The defendant specifically challenges the trial court's conclusion that the plaintiff had overcome the presumption that, as a tenant in common, her possession of the lot was not adverse to the defendant. The plaintiff replies that the trial court properly determined that she had satisfied all of the requirements for an adverse possession, including overcoming the presumption against adverse possession by a tenant in common. We agree with the defendant.

We begin with the applicable standard of review. The plaintiff claims that adverse possession should be reviewed as a question of fact under the "clearly erroneous" standard, whereas the defendant argues that the issue constitutes a question of law subject to our plenary review. Neither party is entirely correct. "Adverse possession is frequently said to be a question of fact . . . and such question is ordinarily within the province of the jury to determine. It has been more precisely stated, however, that adverse possession usually is a mixed question of law and fact, depending on the circumstances and conduct of the parties as shown by the evidence."[10] 2 C.J.S. 719, Adverse Possession § 292 (2003). Thus, "[i]t is the province of the jury, or court sitting as a jury, to determine from conflicting or doubtful evidence the existence of facts necessary to constitute adverse possession . . . and that of the court to decide as a matter of law whether the facts found, or which are admitted or undisputed, fulfill the requirements of such possession." Id. "If there is at least some

evidence, although slight, which is sufficient to be submitted to the jury, and which tends to show the existence of the essential facts alleged to constitute adverse possession, and such evidence is disputed, or, if undisputed, is of a doubtful character, the question as to the existence of such facts is one of fact for the jury and should be submitted to [it] for determination, under proper instructions from the court; or in case of a trial by the court alone, the question is one of fact for the court sitting as a jury. . . .

"Whether the facts as found by the jury constitute adverse possession is a question of law for the court. The fact of adverse possession also is a question of law for the court and should not be submitted to the jury where the facts with regard thereto are admitted, or the evidence thereof is undisputed and susceptible of but one reasonable inference or conclusion, or where the evidence is insufficient to go to the jury on such question as where there is no evidence in the record upon which the jury could base a finding of adverse possession." Id., § 292, pp. 719–20.

Consistent with this principle, this court repeatedly has recognized that "[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." *Lucas* v. *Crofoot*, 95 Conn. 619, 623, 112 A. 165 (1921); see also *Wildwood Associates, Ltd.* v. *Esposito*, 211 Conn. 36, 43, 47, 557 A.2d 1241 (1989) (stating that reviewing court may examine whether evidential facts are legally or logically inconsistent with trial court's conclusion of adverse possession and rejecting plaintiffs' contention that evidence was insufficient as matter of law to support defendants' claim of adverse possession); *Loewenberg* v. *Wallace*, 147 Conn. 689, 699, 166 A.2d 150 (1960) (concluding that mere fact that fence had been in place for more than fifteen years did not, in and of itself, as matter of law, require finding of acquisition of title by adverse possession); *Hagopian* v. *Saad*, 124 Conn. 256, 257, 199 A. 433 (1938) (stating that reviewing court may examine legal conclusions drawn from facts found by trial court in adverse possession action); *Goodwin* v. *Bragaw*, 87 Conn. 31, 39–40, 86 A. 668 (1913) (stating that facts found were "inconsistent with any legal conclusion other than that the defendant had acquired by adverse possession title to the space over that portion of the gangway occupied by [the] structure"); *Layton* v. *Bailey*, 77 Conn. 22, 28, 58 A. 355 (1904) (stating that reviewing court may examine conclusion of adverse possession on basis of evidential facts when some or all of facts found by trial court appear to be legally or logically inconsistent with conclusion). The same principle has been applied in the context of other property takings. See *Bristol* v. *Tilcon Minerals, Inc.*, 284 Conn. 55, 83, 931 A.2d 237 (2007) ("Whether private property has been taken by inverse

condemnation is a question of law subject to our plenary review. . . . The trial court's conclusions must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case." [Citation omitted; internal quotation marks omitted.]).

Because 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* . . . . A trial court's findings in an adverse possession case, *if supported by sufficient evidence*, are binding on a reviewing court . . . ." (Emphasis added; internal quotation marks omitted.) *Caminis* v. *Troy*, 300 Conn. 297, 306, 12 A.3d 984 (2011). "In applying the clearly erroneous standard of review, [a]ppellate courts do not examine the record to determine whether the trier of fact could have reached a different conclusion. Instead, we examine the trial court's conclusion in order to determine whether it was legally correct and factually supported. . . . This distinction accords with our duty as an appellate tribunal to review, and not to retry, the proceedings of the trial court." (Internal quotation marks omitted.) *Saunders* v. *Firtel*, 293 Conn. 515, 535, 978 A.2d 487 (2009).[11]

With respect to the standard of proof, "[a]dverse possession is not to be made out by inference . . . but by clear and positive proof. . . . [C]lear and convincing 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 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." (Citation omitted; internal quotation marks omitted.) *Wildwood Associates, Ltd.* v. *Esposito*, supra, 211 Conn. 42. Application of the pertinent legal standard to the trial court's factual findings is subject to our plenary review.[12] See *Davis* v. *Margolis*, 107 Conn. 417, 421–22, 140 A. 823 (1928); see also *Bristol* v. *Tilcon Minerals, Inc.*, supra, 284 Conn. 83 (question of law is subject to plenary review, meaning that "[t]he trial court's conclusions must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case" [internal quotation marks omitted]).[13] "The burden of proof is on the party claiming adverse possession." *Caminis* v. *Troy*, supra, 300 Conn. 305.

We next consider the governing legal principles. Despite extensive case law on the subject, the root of adverse possession in our law is statutory.[14] General Statutes § 52-575 (a)[15] establishes a fifteen year statute of repose on an action to oust an adverse possessor. In both form and substance, § 52-575 (a) appears to have remained largely unchanged since its original enactment in 1684. The 1684 statute, in turn, was derived from a 1624 English statute.[16] See General Statutes (1821 Rev.) tit. 59, § 1 n.1. Connecticut's adverse possession statute, in both its current and originally enacted forms, reduces the original English limitations period from twenty years to fifteen, slightly modernizes the statutory language and removes one exception from the statute's purview. In all other respects, § 52-575 (a) and its predecessors are remarkably similar to the original English statute.

Over the years, this court has further refined and developed the doctrine of adverse possession. In 1811, we stated that an adverse possession consists of "a possession, not under the legal proprietor, but entered into without his consent, either directly or indirectly given. It is a possession, by which he is disseized and ousted of the lands so possessed. To make a disseisin, it is not necessary, that the disseizor should claim title to the lands taken by him. It is not necessary, that he should deny or disclaim the title of the legal proprietor. No; it is necessary only, that he should enter into, and take the possession of the lands, as if they were his own; to take the rents and profits, and so manage with the property, as the legal proprietor himself would manage with it. If property be so taken, and so used, by any one, though he claims no title, but avows himself to be a wrongdoer, yet, by such act, the legal proprietor is disseized. . . . In truth, to determine, whether or not, the possession be adverse, it is only necessary, to find out, whether it can be considered as the constructive possession of the legal proprietor. . . . If it be without such consent, and against his will, it is adverse." *Bryan* v. *Atwater*, 5 Day (Conn.) 181, 188–89 (1811).

In 1860, we stated more concisely that "the only legitimate inquiry" in a case of adverse possession was whether the party claiming ownership "had the actual, open, adverse occupancy and possession of the controverted property, claiming it as [his] own . . . and actually excluding all other persons from its possession," for an uninterrupted period of fifteen years. *Huntington* v. *Whaley*, 29 Conn. 391, 398 (1860). We added that "[a]n adverse possession is not to be made out by inference . . . but by clear and positive proof" and that the doctrine should be strictly applied. Id. In 1866, we further explained what had been implicit in *Huntington*, namely, that evidence of an open, visible and exclusive possession for an uninterrupted period of fifteen years was required to demonstrate that the adverse

possession had occurred with the "knowledge and acquiescence of the owner" and, therefore, that the owner had been given a full opportunity to assert his rightful claim. *School District No. 8* v. *Lynch*, 33 Conn. 330, 334 (1866). Present law likewise requires that, "[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 own and without the consent of the owner. . . . A finding of adverse possession is to be made out by clear and positive proof. . . . The burden of proof is on the party claiming adverse possession." (Internal quotation marks omitted.) *Alexson* v. *Foss*, 276 Conn. 599, 614 n.13, 887 A.2d 872 (2006).

In cases involving claims by one cotenant against another, we have added to this heavy burden by applying a presumption *against* adverse possession. The rationale for this presumption is that, "in view of the undivided interest held by cotenants . . . possession taken by one is ordinarily considered to be the possession by all and not adverse to any cotenant." *Ruick* v. *Twarkins*, 171 Conn. 149, 157, 367 A.2d 1380 (1976); see also *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 191; *Doolittle* v. *Blakesley*, 4 Day (Conn.) 265, 272–73 (1810); 3 Am. Jur. 2d 243–44, Adverse Possession § 201 (2002). In other words, the presumption is based on a recognition that one cotenant's possession is not necessarily inconsistent with the title of the others. See *Ruick* v. *Twarkins*, supra, 157; see also *Camp* v. *Camp*, 5 Conn. 291, 303 (1824); *Bryan* v. *Atwater*, supra, 191.

Although the presumption may be overcome in certain circumstances, it is not easily done. "[A] cotenant claiming adversely to other cotenants must show actions of such an unequivocal nature and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable." *Ruick* v. *Twarkins*, supra, 171 Conn. 157. Not only must an *actual intent* to exclude others be demonstrated; id., see also *Lucas* v. *Crofoot*, supra, 95 Conn. 624; *Newell* v. *Woodruff*, 30 Conn. 492, 497 (1862); *Paletsky* v. *Paletsky*, 3 Conn. App. 587, 589, 490 A.2d 545 (1985); *Diamond* v. *Boynton*, 38 Conn. Sup. 616, 619, 458 A.2d 18 (1983); but there also must be proof of "an ouster and exclusive possession so openly and notoriously hostile that the cotenant will have *notice* of the adverse claim." (Emphasis added.) *Ruick* v. *Twarkins*, supra, 158; see also *Hill* v. *Jones*, 118 Conn. 12, 16, 170 A. 154 (1934) ("[o]uster will not be presumed from mere exclusive possession of the common property by one cotenant").

In discussing the type of conduct required to overcome the presumption, we explained in *Newell* v. *Woodruff*, supra, 30 Conn. 492, that acts "consistent with an honest intent to account to his co-tenant for his share

of the rents and profits, as the collection of all the rents, payment of all the taxes, occupation and enjoyment of the entire premises and the like, are termed 'equivocal,' because one may possess for all and be willing or compelled to account to all, [whereas] other acts necessarily evince an intent to exclude and hold adversely to his co-tenants, such as refusing to account on the ground that the co-tenant has no right in the property, making explicit claim to the whole and occupying under an avowed or notorious claim of right to the whole . . . denying the right of the co-tenant to possession, and refusing to acknowledge his right or to let him into possession upon demand made. . . . [T]he difference is only in the kind of evidence by which it may be proved in the two cases. As against a co-tenant it can not be proved merely by acts which are consistent with an honest intent to acknowledge and conform to the rights of the co-tenant, although such acts might be sufficient evidence of an ouster between the parties if there was no tenancy in common and each claimed the whole. Hence it has been deemed eminently proper and safe, before bringing an action of ejectment against a tenant in common, to test the intent with which the property is holden by a formal demand to be let into the enjoyment of the right claimed; and a refusal furnishes that clear evidence of ouster which a demand and refusal furnish of a conversion in trover." Id., 497–98.

Connecticut is not alone in establishing a very high bar to overcoming the presumption. It is generally agreed across jurisdictions that, because a relationship of trust between cotenants is presumed whereby one tenant in common holds the property for the benefit of the others, "there must be some hostile act, conduct, or declaration on the part of the possessor amounting to a *repudiation* of [the] cotenants' rights and an *assertion* of exclusive title in the possessor, of which the cotenants have knowledge or notice."[17] (Emphasis added.) 3 Am. Jur. 2d 245, supra, § 202. The mere unannounced intention or exclusive possession of one cotenant is not sufficient to support a claim of adverse possession in cases involving tenants in common. See id., §§ 203 and 204, pp. 245–47.

Other jurisdictions also have recognized, as we did in *Newell*, that, "[w]here one cotenant occupies the common property notoriously as the sole owner, using it exclusively, improving it, and taking to such cotenant's own use the rents and profits, or otherwise exercising over it such acts of ownership as manifest *unequivocally* an intention to ignore and repudiate any right in other cotenants, such occupation or acts and claim of sole ownership will amount to a disseisin of the other cotenants, and the possession will be regarded as adverse from the time they have knowledge of such acts or occupation and of the claim of exclusive ownership. However, leasing out the use and possession of the entire premises is not in itself an ouster or disseisin

of cotenants nor is it sufficient to establish an adverse possession against them. Whatever significance attaches to the making of improvements on the land depends on their nature and extent and on the particular situation presented, and the making of improvements does not in ordinary circumstances provide a decisive indication of possession adverse to other cotenants. Although payment of real estate taxes by the cotenant in possession may not be a prerequisite to acquiring title by adverse possession, it is proper to consider payment of taxes as a factor in determining whether a claim of ownership exists or a claim is knowingly adverse, but the fact of payment of taxes may be inadequate or not given much weight." (Emphasis added.) Id., § 209, p. 252; see also id., nn. 1 through 5 (surveying law of other jurisdictions).

Mindful of these principles, this court has considered claims of adverse possession by one cotenant against another on only a few occasions.[18] In *Lucas* v. *Crofoot*, supra, 95 Conn. 621, 623–27, we upheld a ruling of adverse possession in favor of a plaintiff who had held partial title to an island for twenty-one years. We first observed that, "[b]ecause of gaps in the record . . . the full legality of the plaintiff's title [could] only be made out by proof of all the elements of an adverse possession . . . ." Id., 623. We then explained that "[t]he first and vital step [in establishing such a claim] must be the proof of an entry upon the premises and an ouster of the other cotenants"; id.; and that "ouster" meant "a possession attended with such circumstances as to evince a claim of exclusive right and title, and a denial of the right of the other tenants to participate in the profits." (Internal quotation marks omitted.) Id. 624. We ultimately concluded that "the effect" of the quitclaim deed from the plaintiff's predecessor tenant in common "purporting to convey the whole title" to the plaintiff was "to assert his own title and to deny the title of the other cotenants. . . . When the grantees recorded this deed and entered and took possession thereunder, their possession [was] presumed to have been under the deed itself and not under the title of the cotenants. They entered under a claim and color of right, and this is equivalent to an ouster of the other cotenants, as to whom they thence held adversely. It showed an actual intent to exclude the cotenant permanently from his rights."[19] (Citation omitted; internal quotation marks omitted.) Id. We further concluded that the adverse possession had been "continuous and exclusive, open and notorious," for more than twenty years, although "much less actual use of [the] island [was] necessary to establish [a] claim of ownership than would have been [required in] the case of a tillable farm . . . ." Id., 626.

Similarly, in *Ruick* v. *Twarkins*, supra, 171 Conn. 149, we concluded that a cotenant had established entry on the premises and ouster sufficient to prevail on a claim

of adverse possession because she had obtained a probate decree declaring her to be the sole owner of the contested property, the decree had been registered on the land records and she had continued to occupy and improve the property for more than thirty years. See id., 154, 158. Consequently, we found initial ouster by a tenant in common in both *Lucas* and *Ruick* when title to the property had been recorded in her name. See id., 158; *Lucas* v. *Crofoot*, supra, 95 Conn. 624; see also *Hagopian* v. *Saad*, supra, 124 Conn. 257–59 (concluding that plaintiff had acquired land by adverse possession on basis of agreement executed by tenants in common, and recorded in same manner as deed, dividing property and granting disputed property to plaintiff, who had occupied property for more than fifteen years). This is consistent with our discussion in *Newell*, although we do not suggest that registration of title in the land records in the adverse possessor's name alone is the *only* way to demonstrate ouster when the parties are tenants in common.

For example, we concluded in *Camp* v. *Camp*, supra, 5 Conn. 291, that the trial court improperly failed to instruct the jury that it was authorized to presume an ouster of the plaintiff on the ground that, for a period of *fifty-seven years*, the defendants, members of an ecclesiastical society, had claimed the property as the society's own, had used it as a parsonage and had had sole and undisturbed possession of the property without the payment of rent and without any claim being made by the plaintiff for the land or the profits derived therefrom. Id., 298, 302. In reaching that conclusion, we relied on *Doe ex dem. Fishar* v. *Prosser*, 98 Eng. Rep. 1052 (K.B. 1774) (*Doe*), deemed "a leading case" on the subject, in which the Court of King's Bench in England had determined that "*thirty-six years'* sole and uninterrupted possession, by one tenant in common, without any account to, or demand made, or claim set up, by his companion, [was] a sufficient ground for a jury to presume an actual ouster of the co-tenant." (Emphasis added.) *Camp* v. *Camp*, supra, 302–303. In *Doe*, Lord Mansfield, the Chief Justice, first acknowledged that, generally, "[i]n the case of tenants in common . . . the possession of one tenant in common, eo nomine, as tenant in common, can never bar his companion . . . because such possession is not adverse to the right of his companion, but in support of their common title . . . and by paying him his share, he acknowledges him co-tenant. Nor indeed is a refusal to pay of itself sufficient, without denying his title. But if upon demand by the co-tenant of his moiety, the other denies to pay, and denies his title, saying he claims the whole and will not pay, and continues in possession . . . such possession is adverse and ouster enough." *Doe ex dem. Fishar* v. *Prosser*, supra, 1053. Lord Mansfield then determined that, even though there appeared to be no evidence in that case that the plaintiff had

sought ejectment of the adverse possessor or had made such demands, the jury had been "warranted by the length of time . . . to presume an adverse possession and ouster . . . ." Id. Joined by Justices Aston, Willes and Ashhurst, who expressed similar views in individual opinions, Lord Mansfield explained that an "undisturbed and quiet possession" of nearly forty years, which was "more than quadruple the time [allowed under the then existing] statute for tenants in common to bring their action of account," was a "sufficient ground for the jury to presume an actual ouster . . . ." Id.; see also id., 1053–54 (separate opinions of Aston, Willes and Ashhurst, Js.); see also *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 188 ("if one tenant in common . . . has been in possession a great number of years, without any accounting to his fellow commoners, this is proper evidence . . . from which the jury may infer an adverse possession"). *Camp* thus stands for the proposition that the passage of time, if sufficiently lengthy, may provide the basis for a claim of ouster and adverse possession by a tenant in common who occupies the property for a specific and obvious use, such as a parsonage.[20] See *Camp* v. *Camp*, supra, 298, 302.

In the present case, the trial court noted that the parties had submitted a stipulation of facts describing the conveyance of the lot following their father's death.[21] The court also made several additional factual findings in concluding that the plaintiff had overcome the presumption and had met her burden of proving adverse possession by a tenant in common. These findings included that (1) the plaintiff had asserted her intent to disseize the defendant and to maintain exclusive right and title to the lot from February 27, 1980, when she had acquired her mother's interest, (2) the defendant was on notice of the plaintiff's claim of exclusive right to the lot because of the parties' "bitter relationship," as reflected in their history of "prior acrimonious litigation" and lack of communication for twenty-five years, and (3) the plaintiff had satisfied the other elements of an adverse possession because, since 1980, she had paid all taxes on the lot, maintained it together with her husband, planted trees around its perimeter and given the town permission to use it for parking during the annual town fair. In rejecting the defendant's special defenses, the court further found that there was no evidence that the plaintiff had used the lot with the defendant's permission and that there had been no occasion for the plaintiff to take any action to exclude the defendant from the lot because the defendant herself had given no indication that she claimed an ownership interest. In addition, the court found that the defendant had not believed or claimed that she had such an interest until 1987, when the family discovered a cloud on the title.

We first conclude that the trial court's finding that

the plaintiff had asserted her intent to disseize the defendant and to maintain exclusive right and title to the lot from February 27, 1980, to the present was clearly erroneous because there was no evidence in the record to support it. See *Caminis* v. *Troy*, supra, 300 Conn. 306. As we stated in *Newell* when discussing the issue of intent, "actual intent implies actual knowledge, and there can be no wrongful dispossession or wrongful exclusion, no adverse intent and adverse holding, where one is in the enjoyment of that which he honestly supposes is his, and has no knowledge that any other person has, or claims to have, a right to participate in the possession of it. A person who has received by inheritance from his father an estate, and is in the enjoyment of it, is in one sense holding adversely to all the world; but not in the sense in which the term is used in the law of disseisin. He had done and is doing no wrongful act. He has not dispossessed any one, and is not wrongfully excluding any one of whose right or claim he has any knowledge. He is not guilty of any wrongful intent. . . . He is honestly in the enjoyment of an apparent clear right; he knows of no other right to which he should yield, and is conscious of no duty unperformed."[22] *Newell* v. *Woodruff*, supra, 30 Conn. 498; see also *Diamond* v. *Boynton*, supra, 38 Conn. Sup. 619 (concluding that, because defendant spouses believed that they owned entire property, they could not satisfy element of intent required for adverse possession of co-owner's interest).[23]

In the present case, the plaintiff conceded in her testimony at trial that she believed that she had acquired full title to the lot in 1980 and did not know that she had not acquired full title until 1987. Accordingly, we conclude, as a matter of law, that the plaintiff could not have had the requisite intent to wrongfully exclude the defendant from the lot before 1987 because she believed until that time that she was its sole and exclusive owner.[24]

There also is no evidence in the record that the plaintiff had the requisite intent to dispossess the defendant in 1987 when she learned that she was not the sole owner of the lot. The only evidence in the record regarding either party's intent in 1987 was of the *defendant's* intent, which consisted of undisputed evidence that the defendant had refused to relinquish her ownership interest in the property when the plaintiff asked her to sign the quitclaim deed, a fact that the trial court recognized when it noted in its memorandum of decision that "the defendant . . . gave no indication that she claimed an ownership interest . . . *until 1987*, when the family discovered there was a cloud on the title." (Emphasis added.) There is no countervailing evidence in the record of the plaintiff's intent to dispossess the defendant after receiving notice of the defendant's intent to retain ownership of the property.[25] The only evidence of the plaintiff's intent in 1987 or at any

other time thereafter is the evidence of conduct consistent with her right to possess the property as a tenant in common with the defendant. We therefore conclude that the trial court's finding on intent is clearly erroneous because it is unsupported by the evidence.

We also view as clearly erroneous the trial court's finding that the "bitter relationship between the parties," as reflected in their history of "prior acrimonious litigation" relating to a similar property, and their lack of communication for twenty-five years was proof of the plaintiff's notice to the defendant of her intent to claim exclusive possession sufficient to establish adverse possession by a tenant in common. The court specifically found that "the history between these litigants is strong evidence from which the court can readily infer that [the plaintiff] was claiming an exclusive right to the property and that, clearly, [the defendant] was under no illusion otherwise." We conclude, however, that the evidence on which the court relied was insufficient to support this finding. See *Caminis* v. *Troy*, supra, 300 Conn. 306.

The plaintiff conceded in her testimony that she did not give notice of her intent to claim an exclusive right to the lot until the defendant had initiated litigation to acquire full title to two other lots conveyed to the parties by their mother, a fact that the plaintiff's attorney emphasized during his closing argument when he stated that he had referred to the prior litigation initiated by the defendant "for the purpose of pointing out that the defendant certainly had notice."[26] Accordingly, even if we assume that the trial court's reference to the prior litigation as evidence of the parties' "bitter relationship" was permissible; cf. *Jewett* v. *Jewett*, 265 Conn. 669, 678 n.7, 830 A.2d 193 (2003) ("[t]here is no question that the trial court may take judicial notice of the file in another case" [internal quotation marks omitted]); the acrimony arising from the prior litigation could *not* have provided sufficient notice to the defendant because the record reveals that the complaint in the first action, *Larocque* v. *Percoski*, Superior Court, judicial district of Tolland, Docket No. CV-97-0063927-S (February 18, 2003), which involved the dispute concerning the two other lots, was not filed until 1997, and the complaint in the second action; see *Larocque* v. *O'Connor*, 90 Conn. App. 156, 876 A.2d 1229 (2005); which involved the probate dispute, was not filed until 2002. We therefore conclude that the trial court's finding that the plaintiff gave the defendant notice of her intent to possess the lot by way of the "prior acrimonious litigation" was clearly erroneous because the first action was commenced approximately ten years, and the second action approximately five years, before the filing of the present complaint, thus falling short of the fifteen year statutory requirement. See General Statutes § 52-575 (a).

Furthermore, there is no evidence in the record that the plaintiff's possession and use of the lot was so openly and notoriously hostile that the defendant had notice of her adverse possession claim because of that conduct alone. The trial court found that the plaintiff's adverse use of the lot consisted of her payment of property taxes, maintenance activities such as mowing and cleanup, the planting of trees around the perimeter of the lot and her granting the town permission to use the lot for parking during the annual town fair. All of these activities, however, were entirely consistent with the actions of a tenant in common who shares an interest in the property *without* an intent to dispossess. See *Newell* v. *Woodruff*, supra, 30 Conn. 497 (acts such as paying taxes, collecting rents, occupying and enjoying entire premises are " 'equivocal' " because they are consistent with right of cotenant to "possess for all and be willing or compelled to account to all"). In fact, the trial court determined that the foregoing activities constituted evidence of adverse possession only *after* relying on the "prior acrimonious litigation" and the parties' lack of communication to find that the plaintiff had overcome the presumption that possession by one cotenant is not adverse to the other. In other words, the trial court did not conclude that the plaintiff's use of the lot, standing alone, was sufficient to support a finding of notice, and neither does this court. The plaintiff did not make improvements to the lot and did not occupy the lot for any specific use after she acquired it from her mother in 1980. All that she did to physically occupy the lot was to mow and occasionally clear brush from the field, activities that hardly can be said to provide the type of clear and unmistakable notice required when a tenant in common is claiming exclusive and sole possession. Although the plaintiff also planted trees along two sides of the lot, there is no evidence that the trees could have been easily observed by the defendant because they were not adjacent to the road and were potentially blocked from view by a large section of woods. In addition, the trees were planted on the boundary of the lot in an area contiguous to the plaintiff's property such that an observer might have concluded that the plaintiff had planted the trees for the purpose of *separating* the lot from her other property. We thus conclude, as a matter of law, that the trial court's factual findings regarding intent and notice fall short of those deemed sufficient in past cases to support the conclusion that a tenant in common had acquired property by adverse possession.

In *Ruick*, for example, we found adverse possession by a tenant in common not only because she occupied the property for more than thirty years but because she had built a house on the property and lived there together with her daughters, made other improvements to the property, including the addition of a barn and garage, collected and retained rents on portions of the

property, mortgaged the property, paid taxes on the property and sold a portion of property to the state. *Ruick* v. *Twarkins*, supra, 171 Conn. 154–55. Likewise, in *Camp*, we found adverse possession by a tenant in common who had made active use of the property as a parsonage for fifty-seven years. *Camp* v. *Camp*, supra, 5 Conn. 298, 302.

In this case, none of the plaintiff's conduct after 1987, when the defendant refused to sign the quitclaim deed and thereby asserted her ownership interest in the property, differed from the plaintiff's conduct before 1987, when she believed that she held full title to the lot. In other words, the plaintiff's conduct before 1987 was consistent with her belief that she owned the lot adversely to the world, and she did nothing after 1987 that would have given the defendant notice that she intended to disseize her of her individual interest in the lot, such as building a fence with a lock on the gate or posting "No Trespassing" signs around its perimeter.[27] See *Newell* v. *Woodruff*, supra, 30 Conn. 498 (person who has received inheritance in one sense holds "adversely to all the world . . . but not in the sense in which [that] term is used in the law of disseisin" because there is no wrongful intent).

The present case is reminiscent of *White* v. *Beckwith*, 62 Conn. 79, 80–81, 25 A. 400 (1892), in which the plaintiff, a tenant in common who held a warranty deed to the property and paid all of the property taxes for more than forty years, brought an action for ejectment on the ground that he had held actual, open and exclusive possession from 1849 to 1890 and thus had acquired full title by adverse possession. We disagreed, concluding that neither the plaintiff nor his predecessors had physically occupied or made use of the premises during the time in question. Id., 82. We noted that no buildings had been erected on the property, no business had been conducted on the property, and the plaintiff, who lived in Rhode Island and employed someone else to look after the property, had never entered onto the property and actually possessed it. Id., 81. Both the plaintiff and his predecessors merely had assumed that he held full title to the property by virtue of his deed. Id. We thus determined that we could not deem the plaintiff in full possession under the claim and color of title but, rather, that he continued to possess the premises in common with the defendant, who recently had built a boathouse on the property and had claimed the premises in common with the plaintiff. Id., 81–82; see also *Newell* v. *Woodruff*, supra, 30 Conn. 499 (concluding that trial court properly granted "nonsuit" in plaintiff's action for ejectment on ground that there was insufficient evidence of ouster because plaintiff's letters to defendant made no specific claim to property or demand of possession, and, therefore, his letters were "equivocal," and because evidence that defendant believed property was her own, that she rented property, that she casually

spoke of it as hers and that she paid taxes was " 'equivocal' " and, standing alone, did not indicate intent to dispossess plaintiff).

In sum, each claim must stand or fall on its own facts. In the present case, there is absolutely no evidence, much less the "*unequivocal*" and "distinctly hostile" evidence required under our law; (emphasis added) *Ruick* v. *Twarkins*, supra, 171 Conn. 157; that the plaintiff expressly notified or conveyed a clear and unmistakable intent to disseize the defendant of her one-sixth interest in the lot fifteen years before she instituted the present action. See id. Rather, the plaintiff testified, and her attorney argued, that she gave the defendant notice in 1997, only ten years earlier. Nor did the plaintiff treat the undeveloped lot in such a manner that the defendant would have believed that the plaintiff intended to exclude her. Although the plaintiff paid taxes, occasionally mowed the lot and allowed the town to use it for parking during the town fair, those actions are minimal in the context of an adverse possession claim involving cotenants, which requires clear and unmistakable notice of the intent to disseize; see id.; such as building an impassable fence or posting "No Trespassing" signs around the property's perimeter. Accordingly, we conclude that the trial court improperly rendered judgment for the plaintiff on her adverse possession claim.

The dissent declares that "the trial court made the necessary factual findings to support a conclusion that: (1) the plaintiff took the lot in 1980 under color of title, with the full knowledge of the defendant; (2) neither party at the time was aware of the defendant's interest in the lot; (3) over the ensuing twenty-seven years the plaintiff acted as if she were the exclusive owner of the lot, without interference from the defendant; and (4) other unique circumstances of the case, in tandem with the plaintiff's more credible testimony, made clear that the defendant was aware that the plaintiff intended to hold the lot as the exclusive owner." Footnote 13 of the dissenting opinion. In other words, the dissent appears to believe that the trial court's factual findings support a conclusion of constructive notice.[28] The dissent, however, ignores the fact that the reviewing court is required to determine whether the trial court's findings as to intent and notice are supported by sufficient evidence, and that the trial court in the present case relied on the prior litigation, and not on the factors cited by the dissent, in determining that the plaintiff had given the defendant notice. Moreover, as previously discussed, the dissent disregards established Connecticut law that the cotenant must have knowledge of the cotenancy in order to give proper notice; see *Newell* v. *Woodruff*, supra, 30 Conn. 498–99; the defendant's express rejection of the plaintiff's request to sign the quitclaim deed, which represented an assertion of her own right to possess the property in 1987, and the plaintiff's concession and her attorney's argument that she

gave notice to the defendant by way of the prior litigation, which commenced in 1997.

The dissent attacks the relevance of the plaintiff's concession, claiming that the trial court made no finding that the plaintiff did not give notice of her intent to dispossess the defendant until 1997, that it is not the role of this court to make such a finding, that there is nothing in the plaintiff's testimony indicating that she "never provided any notice" to the defendant prior to 1997 and that the plaintiff's testimony does not support the conclusion that she did not give notice until 1997 or that none of her actions prior to that time afforded the defendant constructive notice. Footnote 13 of the dissenting opinion. We emphatically disagree with each of these claims. First, implicit in the trial court's reference to the "prior acrimonious litigation" was the date the litigation commenced. The fact that the court did not expressly refer to the date is irrelevant. Insofar as the dissent claims that there is nothing in the record indicating that the plaintiff "never provided any notice" to the defendant prior to 1997, the dissent neglects to consider that there must be clear and convincing evidence that the plaintiff *did* provide notice and that the lack of such evidence in the record is dispositive. As for the plaintiff's response to the question of "how" she told the defendant of her adverse possession, her response was unambiguous. Although the dissent contends that the question merely required the plaintiff to explain "how," rather than "when," she gave notice to the defendant, either question would have elicited the same response because the event to which she referred, namely, the prior litigation, commenced at a clearly discernable time. Moreover, the plaintiff's attorney specifically argued, on the basis of her testimony, that, because of correspondence between attorneys for the parties *at the time of the prior litigation*, it would be "disingenuous" of the defendant to claim that she did not know that the plaintiff intended to dispossess her. Finally, although the plaintiff testified as to how she made use of the lot after she acquired it in 1980, she never testified that her conduct was intended to give notice to the defendant or that the defendant even knew that she was using the lot. Finally, all of the plaintiff's activities before 1997 were consistent with the activities of a tenant in common who shares an interest in the property *without* an intent to wrongfully dispossess the other cotenant. Indeed, the trial court declined to conclude that the plaintiff had given notice solely on the basis of evidence regarding her use of the property before 1997. Accordingly, the only reasonable conclusion that can be drawn from the plaintiff's testimony is that she gave notice to the defendant in 1997 and did not give notice prior to that time.

The dissent also contends that the trial court's judgment should be affirmed on the basis of (1) principles[29] concerning notice that have not been adopted in Con-

necticut, and (2) theories that the plaintiff did not raise at trial and that the court did not consider. With respect to the former, the dissent relies on the principle that a cotenant may be deemed to have given proper notice of an intent to dispossess when the land is taken from the outset under an exclusive claim of right, as when the possessor is ignorant that the cotenancy exists, and that, under such facts, " 'much less evidence' " is needed to establish adverse possession. As previously discussed, the dissent also relies on the principle that there is "no minimum time frame" beyond the statutory period that a cotenant is required to occupy the property exclusively, without more, to establish notice and adverse possession. Text accompanying footnote 27 of the dissenting opinion; see footnote 20 of this opinion. The dissent finally relies on the principle that the law permits "the trier of fact [to] find ouster, in the absence of any affirmative act of notification, under any other circumstances indicating by clear and convincing evidence that the cotenant in possession intended to hold the property exclusively and the cotenants out of possession had actual or constructive notice thereof."[30] None of these principles has been recognized in Connecticut, and the dissent's reasoning as to notice in cases of ignorance, in particular, is in direct conflict with this court's clear statement of the law in *Newell*. See footnote 22 of this opinion.

Similarly, the dissent concludes that the judgment should be affirmed on the basis of theories that the plaintiff did not advocate and that the trial court did not consider. Among these theories and conclusions are: (1) the plaintiff's mistaken belief that she alone had acquired the lot from her mother in 1980, together with other acts consistent with possession such as insuring the property, paying the taxes, allowing parking during the annual town fair, and otherwise acting as if she was the sole owner, afforded the defendant sufficient notice of the plaintiff's adverse and exclusive possession of the property and that, once the parties discovered that there was a cloud on the title, "the onus lay on the defendant to indicate that she no longer intended to abide by the status quo," which the defendant failed to do; and (2) the plaintiff gave notice and acquired possession simply by occupying the property exclusively for twenty-seven years, beginning in 1980, when she acquired her mother's interest, until 2007, when she commenced the present litigation.

In reaching these conclusions, the dissent fails to acknowledge that this court is limited to reviewing whether the trial court's findings are clearly erroneous and whether, on the basis of those findings, the court properly concluded that the plaintiff acquired the lot by adverse possession. Nevertheless, the dissent's conclusions under each of the foregoing theories are defeated by the plaintiff's concession that she did not give notice to the defendant until 1997. Even if this

were not the case, however, the plaintiff did not plead or brief the theories on which the dissent relies, and the trial court made no findings and reached no conclusions in support of those theories. Accordingly, this court should not address the issue of a cotenant's responsibility to reassert ownership after the other cotenant takes possession under the mistaken belief that she is the sole owner of the property and the issue of whether exclusive possession for more than the statutory period, without more, is sufficient to prove adverse possession because the dissent's legal analysis is inapplicable and inappropriate in light of the circumstances in this case.

The judgment is reversed and the case is remanded with direction to render judgment for the defendant on the plaintiff's complaint and for further proceedings on the defendant's counterclaim seeking sale or partition of the lot.

In this opinion NORCOTT, McLACHLAN and VERTEFEUILLE, Js., concurred.

[1] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] John J. O'Connor was also a plaintiff, but he withdrew from the action and is not a party to this appeal. The trial court found that the named plaintiff, Theresa P. O'Connor, had acquired John J. O'Connor's interest in the property at issue and, therefore, rendered judgment in favor of Theresa P. O'Connor only. In the interest of simplicity, we refer to Theresa P. O'Connor as the plaintiff throughout this opinion.

[3] See Black's Law Dictionary (9th Ed. 2009) p. 1603 (defining "cotenancy" as "[a] tenancy with two or more coowners who have unity of possession" and giving as examples "a joint tenancy and tenancy in common"); see also, e.g., *White* v. *Beckwith*, 62 Conn. 79, 80, 25 A. 400 (1892).

[4] The defendant also claims that the trial court improperly (1) disregarded its own memorandum of decision on the defendant's motion for summary judgment with respect to her claim seeking equitable relief in reaching a decision on her first claim, and (2) took judicial notice of evidence from prior civil actions involving the parties. Because we conclude that the trial court improperly found that the plaintiff had overcome the presumption against adverse possession by a cotenant, despite its action in taking judicial notice, we need not address those claims.

[5] See General Statutes (Cum. Sup. 1967) § 46-12 (intestate distribution of one-third interest to surviving spouse); General Statutes (Rev. to 1958) § 45-274 (intestate distribution of residue to children).

[6] To the extent the dissent refers to the fact that the defendant prevailed in the prior litigation to bolster its contention that the trial court properly ruled in favor of the plaintiff in *this* case; see footnote 2 of the dissenting opinion; its reliance is misplaced for at least four reasons. First, the trial court expressly declined to consider the outcome in the prior litigation when it granted the defendant's motion for summary judgment on the second count of the plaintiff's complaint seeking equitable relief. Second, the trial court explained in its memorandum of decision that it had considered the prior litigation only as evidence of the parties' acrimonious relationship and notice, a point that the plaintiff expressly conceded in her brief to this court. Moreover, the court could not have done otherwise in light of its observation, in granting the summary judgment motion, that the outcome in the prior litigation involving mirror image allegations did *not* mean that the plaintiff was "entitled to prevail on [her] reciprocal claims in the present case as a matter of " 'fairness,' without having to meet the rigors of proving adverse possession." Third, the trial court in the prior litigation did not address the effect of the parties' relationship as cotenants in its adverse possession analysis, and, therefore, the outcome in that litigation is irrelevant in the present context, in which the cotenant relationship has been placed directly in issue. Fourth, because the plaintiff did not appeal from the judgment in

the prior litigation, in which she was the losing party, it has no precedential value. Accordingly, insofar as the dissent indirectly relies on the outcome in the prior adverse possession litigation in support of its analysis, such reliance is improper.

The dissent also claims that "the pleadings offered and the positions taken by the present defendant in [the prior litigation] are highly relevant [to this case]"; footnote 2 of the dissenting opinion; because the trial court, in granting the defendant's motion for summary judgment on the plaintiff's equitable claim, stated that "certain aspects of the previous litigation among the parties may have a bearing on the resolution of the present [action], such as by way of collateral estoppel, judicial admissions or evidentiary admissions . . . ." We first note that the plaintiff has made no such claim. Second, the trial court made no reference to the effect of the prior litigation by way of collateral estoppel, judicial admissions or evidentiary admissions on its resolution of the claim in the present action. The court merely explained that the history of acrimonious litigation between the parties was strong evidence from which it could conclude that the plaintiff had given notice to the defendant that she was claiming an exclusive right to the property. The court neither stated nor implied that it had relied on the pleadings and the parties' positions in the prior litigation in reaching its conclusion, even when the defendant asked the court in her motion for articulation to explain how it had utilized the record in the prior litigation when deciding the present action. Accordingly, the dissent's claim that the trial court relied on the pleadings and the parties' positions in the prior litigation to resolve the plaintiff's adverse possession claim has no basis in the record and is, at best, highly speculative.

Furthermore, in citing the defendant's allegations and claims in the prior litigation to discredit her claim in the present case that the plaintiff did not give notice of her intent to occupy the property exclusively, the dissent fails to consider our law on judicial notice. According to an authoritative treatise on Connecticut evidence, "[c]ourt records may be judicially noticed for their existence, content and legal effect. . . .

"Care should be taken [however] to avoid noticing judicial records in one case as evidence upon which to find facts in another case. For example, one can judicially notice that certain testimony was given in a case, but not that it was true.

"Similarly, a judgment in one case cannot be used to establish facts in another case without complying with the hearsay rule." (Citations omitted.) C. Tait & E. Prescott, Connecticut Evidence (4th Ed. 2008) § 2.3.4 (d), p. 97.

Thus, when a court takes judicial notice of a prior case, it is not all inclusive but is directed to specific records that must be carefully construed in the subsequent litigation. In the present case, the trial court did not take judicial notice of the defendant's allegations and claims in the prior litigation but of the general fact that the parties had been involved in two previous lawsuits. Moreover, although the dissent relies on the allegations in one of those actions to support its conclusion that the defendant had contended that she gave notice to the plaintiff of her exclusive possession of another property in exactly the same manner that the plaintiff contends that she gave notice to the defendant in this action, the trial court made no determination regarding notice in the prior action and did not apply the legal standard employed when the parties are tenants in common. We thus regard the dissent's reliance on the defendant's allegations and claims in the prior action as a distraction that has no relevance in the present case.

[7] The plaintiff entered exhibits at trial establishing that taxes on the property between 1987 and 2007 were: 1987, $403.28; 1988, $419.74; 1990, $436.20; 1991, $465.82; 1992, $498.74; 1993, $510.26; 1994, $510.26; 1995, $17.05; 1996, $17.34; 1997, $17.75; 1998, $18.27; 1999, $18.88; 2000, $19.65; 2001, $20.46; 2002, $21.27; 2003, $27.53; 2004, $28.85; 2005, $20.45; 2006, $21.22; 2007, $21.78.

[8] In its articulation, the trial court stated that the plaintiff had prepared a quitclaim deed immediately prior to the litigation "in an effort to reach a settlement of the property issues between the parties." Thus, the quitclaim deed to which the plaintiff's attorney referred was not the quitclaim deed that the plaintiff had asked the defendant to sign in 1987.

[9] In its memorandum of decision, the trial court noted by way of background that, although the parties were sisters, there was "nothing sisterly about their relationship." The court further explained: "They have been involved in at least two previous lawsuits before this court. In *Larocque* v. *Percoski*, [Superior Court, judicial district of Tolland, Docket No. CV-97-0063927-S (February 18, 2003)], Larocque sued O'Connor both as the executrix of their mother's estate and individually, seeking to quiet title to two parcels of land . . . . Interestingly enough, in that case, Larocque prevailed, successfully proving her title to [those two lots] by adverse possession under a factually similar scenario.

"The second litigation involved a [law]suit brought by Larocque against O'Connor, claiming that O'Connor unduly influenced their mother to disinherit her (Larocque). This court, after [a] trial, [rendered] judgment for O'Connor finding no undue influence. That decision was appealed to the Appellate Court, which affirmed the judgment. *Larocque* v. *O'Connor*, 90 Conn. App. 156 [167, 876 A.2d 1229] (2005)."

[10] Many of our sister states also apply this standard. See, e.g., *Lines* v. *State*, 245 Ga. 390, 396, 264 S.E.2d 891 (1980); *Davis* v. *Mayberry*, 241 P.3d 663, 667 (Okla. App. 2010); *Peeples* v. *Bellingham*, 93 Wn. 2d 766, 771, 613 P.2d 1128 (1980); *Perpignani* v. *Vonasek*, 129 Wis. 2d 478, 490, 386 N.W.2d 59 (App. 1986), rev'd in part on other grounds, 139 Wis. 2d 695, 408 N.W.2d 1 (1987).

[11] The dissent claims that it is not clear whether "the majority considers the conclusion that a particular element of adverse possession such as notice or intent is satisfied in a given case to be a factual finding, subject to deferential appellate review, or, [alternatively], a legal conclusion, subject to de novo review." Footnote 3 of the dissenting opinion. The dissent states that, in its view, reversal is warranted, "even under a deferential standard of review," only if "(1) there is no evidence to support the trial court's factual findings; (2) the evidence is so slight that no reasonable fact finder could find the elements of adverse possession satisfied by clear and convincing evidence; or (3) the [trial court's] factual findings fail to satisfy the established legal standards for adverse possession." Id.

We disagree that this opinion is unclear. As we stated in *Caminis*, a factual finding in an adverse possession case will be deemed by a reviewing court to be clearly erroneous, and thus insufficient as a matter of law, when there is either no evidence in the record to support it or when there is *insufficient* evidence to support it and "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed . . . ." *Caminis* v. *Troy*, supra, 300 Conn. 306. Accordingly, it would seem that the principal difference between our view and that of the dissent is that the dissent would defer to the trial court's conclusions on the elements of adverse possession even when the court's factual findings are supported by evidence that a reviewing court would consider insufficient under *Caminis*.

[12] To the extent we may have characterized findings of adverse possession in some of our prior cases as questions of fact, we also recognized that such findings must be legally consistent with the facts found. See, e.g., *Wildwood Associates, Ltd.* v. *Esposito*, supra, 211 Conn. 43 ("[a]dverse possession is a question of fact, and when found by the trial court will not be reviewed by this court as a conclusion from evidential facts, unless it appears that these facts, or some of them, are *legally* or logically *necessarily inconsistent* with that conclusion" [emphasis added; internal quotation marks omitted]); *Wadsworth Realty Co.* v. *Sundberg*, 165 Conn. 457, 461, 338 A.2d 470 (1973) ("[t]he conclusions which the court reached must stand unless they are *legally* or logically *inconsistent* with the facts found or unless they involve the application of some erroneous rule of law material to the case" [emphasis added]). As we explained in *Davis* v. *Margolis*, 107 Conn. 417, 140 A. 823 (1928), a conclusion or inference that results from applying a legal standard to the facts found "is often called one of fact; [but] strictly speaking it is one of law and fact, involving, first, the ascertainment of the standard, and then its application to the case in hand." Id., 420–21. The accepted rule is that, when the factual findings are settled, "[a] judgment rendered [on] facts found will not be reversed or set aside unless some erroneous rule of law material to the case has been applied, or unless a conclusion has been reached, or an inference drawn, from a fact, many facts, or the facts found, which affects the judgment rendered in material degree and is legally or logically inconsistent with that or those facts, or is so illogical or unsound, or so violative of the plain rules of reason, as to be unwarranted in law." Id., 422; see also *Winsted Hosiery Co.* v. *New Britain Knitting Co.*, 69 Conn. 565, 575, 38 A. 310 (1897) ("[t]he judgment or ultimate conclusion of a court [on] the special facts in issue, as ascertained from the evidence and settled by the trier, is a conclusion of law, and as such reviewable by this court; and this is true whether such facts are settled by a special verdict of a jury or a special finding of a judge").

Thus, because the dissent repeatedly characterizes the trial court's findings of fact in adverse possession cases as subject to deferential review without acknowledging the reviewing court's role in determining whether such findings are legally insufficient, either because they are inconsistent with an established rule of law or because they are supported by a complete lack of evidence or by insufficient evidence, its analysis is seriously flawed.

[13] The dissent claims that the majority improperly relies on *Bristol* "for the proposition that plenary review of the trial court's factual conclusions is warranted in the present case" because the standard of review articulated

in *Bristol*, namely, that a " 'trial court's conclusions must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case,' " is highly deferential. Footnote 6 of the dissenting opinion. The dissent misunderstands our citation to *Bristol*. As we previously discussed, adverse possession is a mixed question of law and fact. We thus cite *Bristol* for the proposition that the trial court's *legal* conclusions regarding adverse possession are subject to plenary review. To the extent that the dissent also claims that the foregoing language from *Bristol* is by its very nature deferential, we note that reviewing courts have used similar language countless times in describing the plenary standard of review. See, e.g., *Fisher* v. *Big Y Foods, Inc.*, 298 Conn. 414, 423–24, 3 A.3d 919 (2010) ("[w]hen . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record" [internal quotation marks omitted]); *Crews* v. *Crews*, 295 Conn. 153, 161, 989 A.2d 1060 (2010) ("[W]hen an appellant's claim alleges that the facts found by the court were insufficient to support its legal conclusions, we are presented with a mixed question of fact and law to which the plenary standard of review applies. . . . Our task is to determine whether the court's conclusions are legally and logically correct and find support in the facts that appear in the record." [Internal quotation marks omitted.]); *PJM & Associates, LC* v. *Bridgeport*, 292 Conn. 125, 133, 971 A.2d 24 (2009) ("[w]hen . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record" [internal quotation marks omitted]); *Gateway Co.* v. *DiNoia*, 232 Conn. 223, 229, 654 A.2d 342 (1995) ("[w]hen . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record" [internal quotation marks omitted]); *Altray Co.* v. *Groppo*, 224 Conn. 426, 431, 619 A.2d 443 (1993) ("[o]ur review of [the] claims is plenary . . . and we will reverse the trial court if its conclusions are legally or logically incorrect or find no support in the facts that appear in the record" [citation omitted]); *Morton Buildings, Inc.* v. *Bannon*, 222 Conn. 49, 53, 607 A.2d 424 (1992) ("[w]hen . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record"); *Auto Glass Express, Inc.* v. *Hanover Ins. Co.*, 98 Conn. App. 784, 792, 912 A.2d 513 (2006) ("[b]ecause the resolution of [the] claim involves a question of whether the facts found were insufficient to support the court's legal conclusion, this issue presents a mixed question of law and fact to which we apply plenary review"), cert. denied, 281 Conn. 914, 916 A.2d 55 (2007); *Winchester* v. *McCue*, 91 Conn. App. 721, 726, 882 A.2d 143 ("[a]s the plaintiff asserts that the facts found were insufficient to support the court's legal conclusion, this issue presents a mixed question of law and fact to which we apply plenary review"), cert. denied, 276 Conn. 922, 888 A.2d 91 (2005).

[14] Although the scheme of adverse possession in Connecticut, like that of all other states, is based on a statute of repose for actions against an adverse possessor, the mere existence of such statutes does not compel the existence of adverse possession in the form that we know today. To the contrary, "[b]y their terms, most statutes of limitation [including Connecticut's] merely terminate the record owner's access to judicial assistance in recovering possession of his land. The doctrine of adverse possession takes these statutes one conceptual step further by providing that the adverse possessor . . . actually gains legal title, displacing the record owner . . . . This result does not flow ineluctably from the language of the statutes." J. Stake, "The Uneasy Case for Adverse Possession," 89 Geo. L.J. 2419, 2421–22 (2001).

[15] General Statutes § 52-575 (a) provides: "No 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; and no such entry 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. The limitation herein prescribed shall not begin to run against the right of entry of any owner of a remainder or reversionary interest in real estate, which is in the adverse possession of another, until the expiration of the particular estate preceding such remainder or reversionary estate."

[16] See An Act for Limitation of Actions, and for Avoiding of Suits in Law, 21 Jac. I, c. 16 (1623–24). That statute provided in relevant part: "For quieting of Mens Estates and avoiding of Suits . . . . That all Writts of Formedon in Descender, Formedon in Remainder and Formedon in Reverter, at any tyme hereafter to be sued or brought of or for any Mannors Lands Tenements or Hereditaments whereunto any pson or psons now hath or have any Title, or cause to have or pursue any such Writt, shall be sued and taken within Twentie yeares next after the end of this . . . Session of Parliament; and after the said Twentie yeares expired, no pson or psons, or any of their heires, shall have or mayntayne any such Writt of or for any of the said Mannors Lands Tenements or Hereditaments; and that all Writts of Formedon in Descender Formedon in Remaynder and Formedon in Reverter of any Mannors Lands Tenements or other Hereditaments whatsoevr, at any tyme hereafter to be sued or brought by occasion or meanes of any Title or cause hereafter happening, shalbe sued and taken within Twentie yeares next after the Title and Cause of Accion first descended or fallen, and at no tyme after the said Twentie years: And that no pson or psons that now hath any Right or Title of Entry into any Mannors Lands Tenements or Hereditaments nowe held from him or them, shall thereunto enter but within Twenty yeares next after the end of this . . . Session of Parliament, or within twenty yeares next after any other Title of Entrie accrued; and that no pson or psons shall at any tyme hereafter make any Entrie into any Lands Tenements or Hereditaments, but within Twentie yeares next after his or their Right or Title which shall hereafter first descend or accrue to the same; and in default thereof such psons so not entring, and their Heirs, shalbe utterlie excluded and disabled from such Entrie after to be made; Any former Law or Statute to the contrary notwithstanding."

[17] The dissent states that "the majority . . . appears to believe that there can be adequate notice of a cotenant's intent to dispossess only when there is either an express notification or something closely akin to it, [but] a thorough review of the cases reveals that there is no such requirement." Text accompanying footnote 8 of the dissenting opinion. We reject this reading of our opinion. This court has never stated, nor do we suggest, that notice necessarily must be express, or closely akin to express. To the contrary, although the court in *Newell* observed that actual, or express, notice by way of refusing to allow a cotenant entry on the property in response to a formal demand would furnish clear evidence of ouster, it also stated that notice may be demonstrated by "any acts which show an actual intent to exclude the co-tenant permanently from his rights." *Newell* v. *Woodruff*, supra, 30 Conn. 497. Our case law thus has determined that actual notice is not the only, or even the preferred or most often used, method by which one cotenant in possession of the property may convey an intent to dispossess the other, and we have said nothing in this opinion to cast doubt on the continued viability of that principle. We add that, to the extent the dissent distinguishes between the adverse possessor's "giving notice" and the ousted party's "hav[ing] notice"; footnote 8 of the dissenting opinion; it is a distinction without a difference.

[18] We note that, in well over 200 years, approximately nine cases have been decided by this court, which demonstrates the strength of the presumption against adverse possession, and that, of those nine cases, only five have been decided in favor of the claimant.

[19] The dissent relies on *Lucas*, among other sources, in claiming that "a cotenant is placed on constructive notice when she is aware that the adverse possessor takes common land from the outset under an exclusive claim of right, rather than as an avowed cotenant" and that, "[i]n those situations, the majority rule is that 'in the case of an entry hostile in its inception much less evidence is needed to establish that the possession is legally adverse to the possessor's cotenants . . . .' " Aside from the fact that constructive notice of this kind is irrelevant in the present case, given the plaintiff's concession that she did not know that she was a tenant in common until 1987 and did not notify the defendant of her intent to occupy the lot exclusively until 1997 through the court and her attorneys, we deem *Lucas* and the quoted law clearly inapplicable in this factual context for another reason. Although the court in *Lucas* determined that a cotenant's quitclaim deed

purporting to convey full title was tantamount to notice, such that the grantees held the land adversely to the other cotenants; see *Lucas* v. *Crofoot*, supra, 95 Conn. 624–25; the dissent well knows that the quitclaim deed to the plaintiff from her mother in the present case did *not* purport to convey the entire lot but only such interest as her mother held, which was a partial interest described in a certificate of devise or descent from her father's estate that *previously had been recorded in the land records*. Moreover, both the plaintiff and the trial court expressly acknowledged that the quitclaim deed did not convey full title to the plaintiff. In contrast, title to the property in *Lucas* was recorded in the adverse possessor's name alone. See id., 621–24. In that case, the court observed that one of several predecessors in title who had been a cotenant explicitly stated in deeding his portion of the property to his successor in title that "all of the other [co]tenants had conveyed [their interests] to him," and that the deed to the other portion of the property "expressly warranted the title to that portion of the island against the claims of all other persons." Id., 625. Accordingly, any legal principle or Connecticut case regarding the effect of a quitclaim deed purporting to convey the entire interest in property to the cotenant in possession is inapposite in the present circumstances, and the dissent's insistence that "*Lucas* . . . established the broader proposition that taking under color of *any* quitclaim deed can provide at least some indication of the grantee's intent to hold the property exclusively" is misplaced. (Emphasis added.) Footnote 14 of the dissenting opinion. Indeed, the court in *Lucas* expressly rejected this exact argument when it stated: "The defendants urge that the deeds under which the north part of the island was conveyed were quitclaim deeds, and that a quitclaim of all the grantor's 'right, title and interest' is not inconsistent with the existence of an interest in cotenants, and does not deny that interest. This distinction between the effect of a warranty and a quitclaim deed generally, is doubtless valid; but a deed which, though in form a quitclaim, contains in express terms a disclaimer and disavowal of any interest in cotenants or others, is of as much value as a warranty deed could be in giving notice of the adversary character of the entry and possession thereunder." *Lucas* v. *Crofoot*, supra, 624–25.

The dissent, while recognizing the distinction between the present case and *Lucas*, states that "the relevant question [in this case] is whether a conventional quitclaim deed, which is nevertheless believed by all parties to convey full title to the property, provides any evidence to support the trial court's finding that the plaintiff intended to hold the land exclusively . . . ." The dissent specifically claims that "[a]t the very least, as we explained in *Lucas*, holding under color of title of a quitclaim deed places an affirmative duty on cotenants out of possession to make a 'hostile move in support of their own title . . . .' " The dissent's framing of the question, however, disregards an essential legal fact of significance in this case, namely, that a certificate of devise or descent (certificate) reflecting the respective interests of various family members in the lot had been recorded on the land records. This court cannot follow an approach that disregards essential legal facts. Although the mother's deed to the plaintiff resembled a conventional quitclaim deed, it had to be considered in light of the certificate, which preceded the deed on the land records and could have been discovered quite easily. The dissent also misapplies *Lucas* because that case did not involve a conventional quitclaim deed, but, rather, an *unconventional* quitclaim deed that expressly conferred full title to the property on the adverse possessor. It is for this reason, and not because the deed was a quitclaim deed in form, that the court in *Lucas* concluded that the lack of any "hostile move [by the nonpossessing cotenants] in support of their own title" permitted the trial court properly to conclude that the requirements of adverse possession had been satisfied. *Lucas* v. *Crofoot*, supra, 95 Conn. 626. Accordingly, the dissent's analysis is inapplicable in this context because the court in *Lucas* premised its conclusion on its understanding that the deed was, in effect, a warranty deed. In any event, the dissent's analysis under *Lucas* regarding the quitclaim deed and the plaintiff's belief that she intended to hold the lot exclusively from the time she took possession in 1980, and the cases from other jurisdictions concerning conventional quitclaim deeds on which the dissent relies, are irrelevant in the present context because this court must follow *Newell* in concluding that the plaintiff could not have given notice before 1987, when the parties first learned that they were tenants in common. See footnote 22 of this opinion and accompanying text.

[20] The dissent relies on *Doe* and *Camp* for the proposition that there is no "minimum time frame" beyond the statutory period that a cotenant is required to occupy the property exclusively, without more, to establish ouster and adverse possession. Text accompanying footnote 27 of the dissenting opinion. We reject this broadly worded principle. *Doe* is not a Connecticut case, and it involved a tenant in common who had occupied the property for a period of approximately forty years, almost *quadruple* the

time required to establish ouster under the governing English statute. See *Doe ex dem. Fishar* v. *Prosser*, supra, 98 Eng. Rep. 1053. Moreover, although the court in *Camp* relied on *Doe* with respect to the element of time, it considered the length of time *together with* the use of the property as a parsonage in finding for the adverse possessor. See *Camp* v. *Camp*, supra, 5 Conn. 298, 302. Accordingly, although we agree with the dissent that this court never has established a "minimum time frame beyond the statutory requirement for adverse possession"; text accompanying footnote 27 of the dissenting opinion; we do not agree that *Camp* necessarily can be construed to mean that a lengthy possession, without more, is sufficient to prove ouster and adverse possession.

We also do not agree with the dissent that such a rule was adopted in *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 181. In that case, the court, citing *Doe*, merely noted in passing that, "if one tenant in common . . . has been in possession a great number of years, without any accounting to his fellow commoners, this is proper evidence . . . from which the jury may infer an adverse possession." Id., 188. The court did not apply that principle to the facts of that case, in which the property occupied by the adverse possessor consisted of one acre of land together with a house, a barn, a store and other buildings from which he had derived rents and profits. Id., 182–83 (rendition of facts). Moreover, the court's passing reference to adverse possession for "a great number of years"; id., 188; cannot be regarded in the same category as the holding in *Camp*, in which we concluded, under the facts of that case, that adverse possession had been proven because the property had been occupied for a lengthy period of time and used as a parsonage. See *Camp* v. *Camp*, supra, 5 Conn. 298, 302. We therefore disagree with the dissent's claim that the majority has conceded that lengthy acquiescence, without more, is an accepted part of Connecticut law on adverse possession, although we remain open to the possibility that, in some future case, we might reach that conclusion under appropriate facts.

Finally, even if this court had adopted the rule articulated in *Doe*, the rule would not have been applicable to this case because the plaintiff in the present case did not give notice to the defendant until 1997. Thus, to the extent her possession may have been adverse from that time forward, it did not meet the statutory requirement, much less the requirement established in *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 188, that the possession be maintained for "a great number of years . . . ."

[21] The parties stipulated that (1) "The plaintiff . . . has an ownership interest in a piece or parcel of land situated in the town of Somers shown and designated as Lot #54 on a map or plan of lots entitled: 'PROPERTY OF C.A. PERCOSKI WEST SIDE OF FIELD ROAD' . . . hereinafter referred to as '343 Billings Road,' " (2) "[t]he plaintiff and her husband acquired an interest in 343 Billings Road from the plaintiff's mother, Doris Percoski, pursuant to a quitclaim deed dated February 27, 1980, which was recorded in the land records of the town [of] Somers . . . on February 28, 1980," (3) "Doris Percoski acquired her interest in the property from her late husband, Constanty Percoski, who was the sole owner of the property when he died intestate in 1971," (4) "[b]y statute, a one-third interest in the subject property passed to Constanty Percoski's widow, Doris Percoski, at the time of his demise in 1971," and (5) "[b]y statute, a one-sixth interest in the subject property passed to each of Constanty Percoski's four children: [the plaintiff, the defendant] Timothy Percoski and Richard Percoski."

[22] The dissent claims that adverse possession was not an issue in *Newell* and that the legal principles articulated in that case apply only in the context of an ejectment action because it would be unjust to find a cotenant liable for damages resulting from an alleged ouster without a mens rea requirement, and there is no indication in *Newell* that the court would have applied the same standard in an action seeking to quiet title. See footnote 17 of the dissenting opinion. We disagree for numerous reasons. First, the passage in *Newell* containing the language on intent immediately follows, and is part of, the court's discussion of the general legal principles that apply in adverse possession actions involving cotenants. See *Newell* v. *Woodruff*, supra, 30 Conn. 497–98. Second, although not authoritative, the syllabus in *Newell* states, in its very first paragraph, that "[a]n actual intent to exclude the cotenant from the enjoyment of the property must be shown, and no evidence on this point is so satisfactory as a refusal to admit him to possession, or to account for profits received, on a demand made"; id., 492 (syllabus); thus clearly implying knowledge of the cotenancy by the party in possession. Third, the dissent appears to misunderstand that a party bringing an action for ejectment must allege wrongful dispossession of his property by the other party in much the same manner that a plaintiff seeking to quiet title in an adverse possession action must allege wrongful dispossession of the

defendant's interest in the property. See, e.g., *Simmons* v. *Parizek*, 158 Conn. 304, 305, 259 A.2d 642 (1969); see also *Potter* v. *New Haven*, 35 Conn. 520, 522 (1869) (there is no right of action in ejectment unless defendant is disseizor when action is brought). Indeed, there is such a close connection between proof of wrongful possession, other than the statutory time frame, in actions of ejectment and actions to quiet title that adverse possession has been raised as a defense in actions of ejectment. See, e.g., *Kiley* v. *Doran*, 105 Conn. 218, 225, 134 A. 792 (1926) (defendant raised defense of adverse possession in action of ejectment in which plaintiff claimed that he had been wrongfully dispossessed of property). Fourth, although the court in *Newell* did not state that the same principle concerning knowledge applies in actions to quiet title, it also did not state that the principle applies *only* in ejectment actions. Fifth, the rationale for applying the principle in other actions, namely, that cotenants have an equal right to possess the property and, therefore, that the standard for finding notice and intent must be higher in such cases to protect the rights of the cotenants, is more persuasive than the rationale pertaining to damages cited by the dissent. Sixth, in the only case since *Newell* that appears to have applied this principle, *Diamond* v. *Boynton*, supra, 38 Conn. Sup. 619, the Appellate Session of the Superior Court concluded, in an action alleging breach of the covenants contained in certain warranty deeds, that the defendants lacked the requisite intent to possess adversely against the plaintiff because the defendants, who were spouses, admitted that they thought they owned the entire property. The court specifically quoted from *Newell* that "[a]ctual intent implies actual knowledge, and there can be no wrongful dispossession or wrongful exclusion, no adverse intent and adverse holding, [when] one is in the enjoyment of that which he honestly supposes is his, and has no knowledge that any other person has, or claims to have, a right to participate in the possession of it." (Internal quotation marks omitted.) Id., 619, quoting *Newell* v. *Woodruff*, supra, 498. We therefore disagree with the dissent that this principle is inapplicable in the present context.

The dissent further argues that knowledge of the cotenancy is not required because, in four cases subsequent to *Newell*, this court repeatedly upheld findings of adverse possession among cotenants without such knowledge. See footnote 18 of the dissenting opinion. In three of those cases, however, the names of the parties in exclusive possession were the only names listed in the public records as the property owners during the time of possession, and the court in each case determined that that fact was conclusive in resolving the dispute. See *Ruick* v. *Twarkins*, supra, 171 Conn. 155, 157–58 (recording of probate decree provided notice of possessor's intent to disseize); *Hagopian* v. *Saad*, supra, 124 Conn. 257 (ownership interest was set forth in "article[s] of agreement . . . recorded like a deed of land" [internal quotation marks omitted]); *Harrison* v. *International Silver Co.*, 78 Conn. 417, 419, 62 A. 342 (1905) (recitation of facts) (possessor and predecessors in title had actual, exclusive, and uninterrupted possession and use of land for more than twenty-six years prior to action under warranty deed and based on claim of title in fee simple). In the fourth case, the court did not decide whether there had been an ouster and ordered a new trial. See *Standard Co.* v. *Young*, 90 Conn. 133, 139, 96 A. 932 (1916). Accordingly, the three cases that actually were decided involved special circumstances in which the recording of the possessors' names in the public records was an essential consideration, and they cannot be compared with *Newell*, in which the court did not consider whether those circumstances existed.

Even without this compelling distinction, the dissent's citation to the foregoing cases for the proposition that Connecticut law permits adverse possession among cotenants without knowledge of the cotenancy is unpersuasive. In *Ruick*, for example, the court concluded that the plaintiff adverse possessor and her husband had purchased the property as tenants in common, that the plaintiff's application for a probate decree declaring her to be sole owner of the property, which commenced the period of exclusive possession, "was clearly for the purpose and with the intent of eliminating [the husband's] interest in the land"; (internal quotation marks omitted) *Ruick* v. *Twarkins*, supra, 171 Conn. 158–59; and that the plaintiff's ouster of her husband "was clearly and unmistakably demonstrated by the recording of the certificate of distribution, her assumption of exclusive possession of the property, her remarriage, and the construction of a new house on the land." Id., 158. The principal holding in *Ruick* thus was based on a recognition that the plaintiff had knowledge that she was dispossessing her husband when she assumed exclusive possession of the property. The court further held that the plaintiff's adverse possession, which had begun against her then living husband, "continued against his other heirs, their daughters"; id., 160; and that, because the plaintiff's title by adverse possession was complete long before the children asserted any right to an interest in the property, they were barred from entry. Id., 160–61. Accordingly, *Ruick* merely held, with respect to the children, that, because they had failed to

assert their rights in a timely manner, the plaintiff had acquired title by adverse possession. The court made no finding as to the effect of the children's ignorance on the ultimate disposition of that case.

The dissent also mistakenly relies on *Harrison*. In that case, the issue before the court was whether the plaintiffs, who were claiming to own the land as tenants in common with the defendant, had lost the right to bring an action for partition of the property by sale because of the defendant's exclusive possession of the property for many years; see *Harrison* v. *International Silver Co.*, supra, 78 Conn. 417, 419 (rendition of facts); and the court did not consider, or reach any conclusion regarding, the defendant's knowledge as to its ownership of the property when the ouster commenced. See id., 419–22. Finally, although the dissent relies on language in *Hagopian* that "[a] wrongful intent to disseize the true owner is not a necessary element of adverse possession"; *Hagopian* v. *Saad*, supra, 124 Conn. 259; we regard that case as an outlier and do not follow it for the reasons set forth in footnote 23 of this opinion.

A final problem with the dissent's reliance on the foregoing cases is that none addresses the question, as the court did in *Newell*, of whether a cotenant without knowledge of the cotenancy may dispossess the other cotenant or cotenants. The dissent simply draws its own legal conclusions on the basis of the facts presented. Accordingly, we disagree with the dissent that adverse possession is not barred in cases in which the tenant in possession lacks knowledge of the cotenancy because no reviewing court has disavowed the principle articulated in *Newell* in the nearly 150 years since that case was decided, and one reviewing court has applied it.

[23] A person's mistaken belief that he or she is the lawful owner is immaterial in an action seeking title by adverse possession when the parties are *not* cotenants, as long as the other elements of an adverse possession have been established. See, e.g., *Loewenberg* v. *Wallace*, 151 Conn. 355, 357–58, 197 A.2d 634 (1964); *Ahern* v. *Travelers Ins. Co.*, 108 Conn. 1, 5, 142 A. 400 (1928); *Searles* v. *DeLadson*, 81 Conn. 133, 135–36, 70 A. 589 (1908); *Paletsky* v. *Paletsky*, supra, 3 Conn. App. 588. This is because, unlike tenants in common, an adverse possessor in such a case has no legal right to possess the property, and, therefore, the possession itself is sufficient to claim title. In contrast, tenants in common have an equal right to possess the property. Thus, as we previously explained, a tenant in common who wishes to claim property by adverse possession must give the other cotenant clear and unmistakable notice of an intent to do so. The only Connecticut case stating otherwise is *Hagopian* v. *Saad*, supra, 124 Conn. 259, which relied on *Searles* v. *DeLadson*, supra, 136, in asserting that "[a] wrongful intent to disseize the true owner is not a necessary element of adverse possession." The *Hagopian* court's reliance on *Searles*, however, was improper, because the parties in *Searles* were not tenants in common, and the court in *Searles* was not discussing adverse possession in that context. Moreover, to our knowledge, no other appellate case involving cotenants has followed *Hagopian*'s statement of the law on that issue. Accordingly, we regard *Hagopian* as an outlier.

[24] We thus disagree with the dissent, which rejects *Newell* out of hand and contends that the plaintiff's mistaken belief that she was the sole owner of the lot has no effect on the analysis other than to lower her burden of proving intent and notice and to require "the defendant to indicate that she no longer intended to abide by the status quo" after the parties discovered in 1987 that there was a cloud on the title.

[25] The dissent's contention that the defendant's unwillingness to sign the quitclaim deed supports, rather than undermines, the plaintiff's claim is inexplicable. As we indicated in the preceding discussion, there is no evidence in the record that the plaintiff informed the defendant in 1987 that she intended to dispossess the defendant if the defendant refused to sign the quitclaim deed. The only evidence in the record as to the parties' intentions in 1987 is that the defendant refused to sign the quitclaim deed, thus indicating that the plaintiff was aware of the defendant's ownership interest in the property and of the defendant's intent to retain it.

[26] We note that, although the trial court found that the lot was conveyed to the plaintiff by her mother in 1980 and that all of her children, including the plaintiff and the defendant, believed that their mother was the sole owner of the lot, that finding does not amount to a finding that the defendant was aware of the conveyance to the plaintiff. Thus, there are no factual findings of notice in 1980, when their mother conveyed her interest in the lot to the plaintiff.

[27] The dissent's characterization of such measures as "extreme" is itself extreme, as is its assertion that building a fence or posting "No Trespassing" signs around the property was unnecessary in light of the parties' lack of communication over the past several decades. Footnote 8 of the dissenting

opinion. It was *because* of the parties' lack of communication that it was important for the plaintiff to give the defendant "clear and unmistakable" notice of her intent. *Ruick* v. *Twarkins*, supra, 171 Conn. 157. The dissent has not pointed to a single finding of fact, or set of facts, by the trial court that could reasonably be construed as an action "of such an unequivocal nature and so distinctly hostile to the rights of the other cotenants that the intention to disseize [was] clear and unmistakable." Id. Accordingly, we disagree that the plaintiff would not have been required to demonstrate her intent by building a fence, posting signs or taking some other equivalent action.

[28] We find it ironic that the dissent believes the defendant should have been aware of the so-called evidence of "constructive notice" of the plaintiff's intent to dispossess the defendant but steadfastly refuses to recognize that the certificate of devise or descent, *which was recorded in the land records*, did not give the plaintiff constructive notice that she was not the sole owner of the property. See *PNC Bank, N.A.* v. *Kelepecz*, 289 Conn. 692, 701, 960 A.2d 563 (2008) ("the purpose of the land records is to give constructive notice to the world of instruments recorded therein"); *Kopylec* v. *North Branford*, 130 Conn. App. 146, 163 n.18, 23 A.3d 51 (2011) ("It is well established . . . that [e]very person who takes a conveyance of an interest in real estate is conclusively presumed to know those facts which are apparent upon the land records concerning the chain of title of the property described in the conveyance . . . . The law implies notice on the ground that it is conclusively presumed that a person will not purchase an interest in a piece of land without examining the condition of the record. Such an act would be required by common prudence." [Internal quotation marks omitted.]).

[29] The dissent all too frequently departs from Connecticut precedent and repeatedly relies on an annotation published approximately fifty years ago; see W. Allen, annot., "Adverse Possession Between Cotenants," 82 A.L.R.2d 5 (1962); which in turn relies on cases from other jurisdictions decided in the nineteenth and early twentieth centuries. Thus, to the extent that the annotation refers to any majority rule or trend in the case law, such a rule or trend does not reflect more current developments in the law over the last fifty years. In addition, the annotation contains only a handful of citations to Connecticut law, which we find significant in light of the dissent's representation that the annotation is based on a review of more than "1100 American cases . . . ." Text accompanying footnote 9 of the dissenting opinion. Accordingly, the dissent would have this court apply principles relating to notice that in some instances are not only unfamiliar in this jurisdiction but are in conflict with established Connecticut law, such as the requirement articulated in *Newell* that actual intent to dispossess requires actual knowledge that the other cotenant has an equal right to possession. *Newell* v. *Woodruff*, supra, 30 Conn. 498–99.

[30] Even if this principle has been recognized, which is arguable, it is not applicable here in light of the plaintiff's concession that she gave notice to the defendant through the court and her attorneys when the prior litigation commenced in 1997.