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LEGAL BLOG

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THE 21-YEAR CLOCK: ADVERSE POSSESSION TIME IS TICKING

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CAN THE TIMEFRAME TO ESTABLISH ADVERSE POSSESSION BEGIN BY MOWING YOUR NEIGHBOR'S LAWN?

That is the question that was presented to the Supreme Court of Ohio in *NC Enterprises, LLC, v Norfolk and Western Railway Company, et al.* – a case which could reshape how adverse possession claims are evaluated in Ohio.

Adverse possession – sometimes referred to as "squatter's rights" – is a legal doctrine almost as old as time. Dating back to the Roman Empire's concept of *usucapio*, adverse possession is the mechanism by which a person may obtain ownership over land without having title to it. The principle of adverse possession is a favorite among first-year law students because the fact-driven analysis on five distinct elements makes every case uniquely nuanced.

Succeeding on a claim for adverse possession is a high bar because the adverse possessor (the person seeking to obtain ownership of land from the titleholder) must prove by clear and convincing evidence open, notorious, exclusive, and hostile possession of the land for a continuous period of 21 years. *Grace v. Koch*, 81 Ohio St.3d 577, 579 (1998).

Traditionally, adverse possession disputes arise from a person placing a fence or driveway onto a neighbor's abutting property after improperly assuming the location of the boundary line between the adjacent parcels and leaving it that way for decades. In Ohio, the law has remained stable that "mere maintenance of land, such as mowing grass, cutting weeds, and planting a few seedlings, and minor landscaping" is not sufficient to establish a claim for adverse possession. *Murphy v. Cromwell*, 2004-Ohio-6279, ¶ 55 (5th Dist.).

MORE PROPERTY IMPROVEMENTS

But what if years of land maintenance was immediately followed by the installation of a fence (an activity usually sufficient to establish adverse possession) that was present for only 20 years? That is precisely what happened in *NC Enterprises*. From 1998-2020, NC Enterprises performed landscaping activities on 1.5 acres of land abutting its property on Munroe Falls Road in Tallmadge

titled to Norfolk and Western Railway, who was an absent landowner. But NC Enterprises did not perform any non-landscaping activities on the adjacent parcel until it installed a chain link fence on September 5, 2000. NC Enterprises continued to make improvements to the property for two decades totaling more than $150,000.00. It was not until July 22, 2020, when Norfolk and Western Railway attempted to sell the property (twenty years after NC Enterprises installed the chain link fence and 22 years after NC Enterprises began performing maintenance activities on the property), that Norfolk and Western Railway disputed NC Enterprises' claim to the property.

SUMMIT COUNTY COURT DECISION

The Summit County Court of Common Pleas sided with NC Enterprises, granting its motion for summary judgment finding that NC Enterprises successfully showed that its claim for adverse possession began to run in 1998 when it began performing land maintenance on the property. The Ninth District Court of Appeals affirmed the trial court's ruling.

A LONG, PENDING APPEAL

Norfolk and Western Railway appealed the Ninth District's decision to the Supreme Court of Ohio. Oral arguments were held on May 14, 2025, and the decision remains pending. The Supreme Court of Ohio's decision on whether land maintenance is sufficient to trigger the 21-year clock for adverse possession could materially alter what has long been the doctrine of adverse possession in Ohio.

For more information or guidance in the classification of workers, please contact a member of Hahn Loeser's Real Estate Group.

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