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## Clark v. Buttonwoods Beach Association., 226 A.3d 683 (R.I. 2020)

Brooke E. Pearsons

*Candidate for Juris Doctor, Roger Williams University School of Law*

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**Property Law.** *Clark v. Buttonwoods Beach Association.*, 226 A.3d 683 (R.I. 2020). A party that claims title via adverse possession must be able to demonstrate by clear and convincing evidence that they maintained all elements of adverse possession simultaneously for the ten-year statutory period. The period is broken if any owner recognizes they do not have the best title to the property. A party acknowledges that they do not have best title to the property if they ask permission to improve the land. Furthermore, there can be no adverse possession if possession by any one party is not hostile.

#### FACTS AND TRAVEL

In June 2009, the Clarks purchased two properties in Warwick’s Buttonwoods neighborhood.<sup>1</sup> One property was a residential lot, including a residence and carriage house at 243 Promenade Avenue, and the other was a residence on Cooper Avenue.<sup>2</sup> The Buttonwoods neighborhood also includes common areas owned and operated by the defendant in this suit, Buttonwoods Beach Association (BBA).<sup>3</sup> The Clarks, believing the Promenade Avenue property (the Property) extended all the way to the waterfront, posted “no trespassing/private property” signs at the waterfront.<sup>4</sup> The BBA requested that these signs be removed, as the BBA owned the land, not the Clarks.<sup>5</sup>

These events led to a dispute between the BBA and the Clarks as to who the legal owner of the property on Promenade Avenue was, and the Clarks filed suit for quiet title in Kent County

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1. *Clark v. Buttonwoods Beach Ass’n.*, 226 A.3d 683, 685 (R.I. 2020).

2. *Id.* The Clarks tore down the Cooper Avenue residence, merged the two lots, and moved into the residence at 243 Promenade Avenue. *Id.* at 685–86. The residential and waterfront lots are “separated by a paved street, approximately twenty feet in width.” *Id.* at 686.

3. *Id.* at 685.

4. *Id.* at 686.

5. *Id.*

Superior Court in March 2014, claiming ownership by adverse possession and acquiescence of the BBA.<sup>6</sup> The title and claim of adverse possession was traced through previous owners to determine if the Clarks could establish a valid ten-year period of adverse possession.<sup>7</sup>

The trial court considered two potential ten-year periods of adverse possession: 1986 through 1996 and 2002 through 2012.<sup>8</sup> During the period from 1986 until 1996, the Promenade Avenue property was first owned by Peter Weichers, and then by Guy Hurley.<sup>9</sup> Weichers testified that the real estate agent he purchased the property through told him he would own the entire waterfront lot in addition to the residential lot.<sup>10</sup> Weichers planted shrubs, installed a gate, removed and replaced the sea wall, and maintained the waterfront for the three years he owned the property.<sup>11</sup> During this time, he was not contacted by the BBA about the work he did on the property.<sup>12</sup>

Hurley purchased the property from Weichers in 1989.<sup>13</sup> During this time, Hurley assumed the waterfront lot included the area from the hedge to the beach and hired landscapers to maintain that area.<sup>14</sup> He also built a fence to prevent people from falling.<sup>15</sup> Hurley paid taxes on both properties separately and also served as the President of the BBA.<sup>16</sup>

The Zigerellis purchased the property in 1999, and installed a concrete walkway, bench, gate, and underground sprinkler system on the waterfront area.<sup>17</sup> Mrs. Zigerelli testified that the BBA granted permission for each of those projects, but could not produce

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6. *Id.*  
7. *Id.* at 686–90.  
8. *Id.* at 692.  
9. *Id.* at 686.  
10. *Id.*  
11. *Id.*  
12. *Id.*  
13. *Id.* at 686.  
14. *Id.* at 686–87.  
15. *Id.* at 686.  
16. *Id.* at 686–87.  
17. *Id.* at 687.

records of her requests.<sup>18</sup> Both Mr. and Mrs. Zigerelli testified that they knew they did not own the waterfront because of a pamphlet from the BBA and the realtor's disclosure of the property lines, that the gate was intended to keep children safe not to prevent access to the property.<sup>19</sup>

From 2002 to 2012, the property was owned by the Freemans and subsequently, the current owners, the Clarks.<sup>20</sup> Mrs. Freeman testified she knew the BBA owned some of the communal properties, citing the tennis courts, baseball field, and a beach area as examples.<sup>21</sup> The Freemans hired landscapers for the waterfront property and had a tree cut down without seeking permission from the BBA.<sup>22</sup> Mrs. Freeman stated she was not aware of any policy requiring the owners of the Promenade Avenue property to ask permission to do work on the property.<sup>23</sup> When the property was listed for sale, photographs of the waterfront were included and listed as a part of the residential lot.<sup>24</sup> The Freemans also indicated that before they had purchased the property, they had asked the previous owner's permission before using the beach and occasionally before using the seawall for fishing.<sup>25</sup>

During the period since the Clarks purchased the property in 2009, the only significant change to the property was the addition of the "no trespassing/private property" signs.<sup>26</sup> Mrs. Clark testified that she kept the signs in place after the BBA instructed her to remove them in an attempt to, "protect[] what she continued to believe she had purchased."<sup>27</sup> The Clarks commissioned a survey of the property which revealed they did not own the waterfront lot.<sup>28</sup> However, the surveyor commented that "there was no way a layperson would have been able to accurately determine the

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18. *Id.*

19. *Id.*

20. *Id.* at 685, 687.

21. *Id.* at 687.

22. *Id.*

23. *Id.*

24. *Id.* at 688.

25. *Id.*

26. *Id.* at 686.

27. *Id.* at 688.

28. *Id.*

location . . . using visual markers or cues at the physical property.”<sup>29</sup> A BBA board member further indicated there has been no record that the rule of asking permission to modify the waterfront property had been followed for the Promenade Avenue property and that he had had no communications with any of the former owners about such requests.<sup>30</sup> The BBA President from 2003 through 2006 testified that a letter was sent out in 2001 advising homeowners to determine exactly what land made up their property because it had become “common knowledge” that many owners did not actually own everything they thought they did.<sup>31</sup>

The case was heard as a nonjury trial in September 2016, spanning six days.<sup>32</sup> The trial justice, after hearing from the witnesses discussed above, issued a decision finding that the Clarks had not established the required elements and that they were not entitled to quiet title to the waterfront property through adverse possession or acquiescence.<sup>33</sup> The trial justice found that the testimony of Mr. Freeman and Mr. Zigerelli lacked credibility.<sup>34</sup> The Court found that the Clarks were unable to establish that each element of adverse possession was simultaneously in effect for either ten-year period alleged and that no owner had claimed ownership of the waterfront property.<sup>35</sup> Final judgement was entered in September 2017, and the Clarks appealed the trial court decision.<sup>36</sup>

On appeal, the Clarks argued that the Hurleys acquired the waterfront property through adverse possession in 1996 and that possession transferred to each subsequent owner, eventually conferring the property to the Clarks.<sup>37</sup> They asserted that the BBA’s inability to show documentation of requests to improve the

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29. *Id.* at 688–89.

30. *Id.* at 689.

31. *Id.* at 689–90. The BBA President continued that, “certainly anyone who looked into it in Buttonwoods, knew that very often, they didn’t own, for example, their front lawn.” *Id.*

32. *Id.* at 686.

33. *Id.* at 686, 690.

34. *Id.* at 691.

35. *Id.* at 691–92.

36. *Id.* at 690.

37. *Id.* at 692.

property and failure to enforce such a policy showed acquiescence to the adverse possession.<sup>38</sup> The BBA on the other hand, argued that no person could have gained adverse possession of land belonging to the public and that their filing of a notice of interruption in April 2012 would block a claim of adverse possession.<sup>39</sup>

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court reviewed the trial justice's findings for clear error or overlooked material evidence.<sup>40</sup> According to the Court, in order to obtain property via adverse possession, the claimant must prove "actual, open, notorious, hostile, continuous, and exclusive use of said property under a claim of right for at least a period of ten years."<sup>41</sup> The Court explained that the party who claims a right to property via adverse possession must establish the required elements with strict proof.<sup>42</sup> Strict proof, the Court explains, is proof by clear and convincing evidence.<sup>43</sup> The Court recognized that multiple periods of adverse possession by different owners of the Property could be considered together under the principle of tacking to build up to the ten-year requirement.<sup>44</sup>

The Court held that the trial justice did not misconceive or misconstrue the evidence introduced at trial.<sup>45</sup> The Court further held that "based on the findings of the trial justice . . . there was not a ten-year period of 'actual, open, notorious, hostile, continuous, and exclusive use of the property under a claim of right' across the four predecessors in title to the Clarks."<sup>46</sup> The Court reasoned that neither period reviewed established adverse possession.<sup>47</sup> The Court found that Hurley's possession of the waterfront was not

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38. *Id.*

39. *Id.* at 693.

40. *Id.* at 690.

41. *Id.* (quoting *DiPippo v. Sperling*, 63 A.3d 503, 508 (R.I. 2013)).

42. *Id.* (quoting *DiPippo*, 63 A.3d at 508).

43. *Id.* at 690–91 (quoting *DiPippo*, 63 A.3d at 508).

44. *Id.* at 693.

45. *Id.*

46. *Id.*

47. *Id.* at 694.

hostile because he had installed the steps leading to the beach solely for others to have ease of access to the beach, not to claim the land as his own.<sup>48</sup> The Zigerellis, who owned the property after Hurley, said they knew they needed permission from the BBA before they could make any improvements on the waterfront portion of the land.<sup>49</sup>

The Court upheld the trial court's determination that the 2002 to 2012 period did not establish adverse possession because the Zigerellis were not hostile or exclusive in their possession of the property.<sup>50</sup> The Court also ultimately upheld the trial justice's determination that the Zigerellis failed to claim ownership of the waterfront property because they did not represent to the neighbors that they owned the property and allowed neighbors to use the land.<sup>51</sup> Further, the Court did not overrule the trial court's finding that exclusivity had not been shown during the Freemans' ownership of the property either.<sup>52</sup>

While the Court restated its earlier holding that adverse possessors do not need to "vigorously assert [their] right at every opportunity," it ultimately upheld the trial justice's determination, based on the trial justice's findings, there was no ten-year period in which all elements of adverse possession were met.<sup>53</sup> No series of owners sustained actual, open, notorious, hostile, continuous, and exclusive possession of the property for the required statutory period.<sup>54</sup> The Supreme Court affirmed the judgment of the Superior Court.<sup>55</sup>

#### COMMENTARY

The Court stressed the importance of all elements of adverse possession persisting for the entire ten-year period.<sup>56</sup> While it

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48. *Id.*

49. *Id.*

50. *Id.* at 692–93.

51. *Id.*

52. *Id.*

53. *Id.* at 693–94 (quoting *Carnevale v. Dupee*, 783 A.2d 404, 412 (R.I. 2001)).

54. *Id.* at 693.

55. *Id.* at 694.

56. *Id.* at 693.

recognized that the apparent owners do not need to actively assert their rights to the property for the entire statutory period, the Court emphasized that all elements must be clearly and consistently established during that time.<sup>57</sup> More importantly in the context of this case, the Court made clear that the neighbors occasional use of the waterfront property, with or without the owners' permission, was not sufficient to break exclusive possession of the property.<sup>58</sup> Instead, the various owners' recognition that they were not the sole owners of the property by requesting permission from the BBA for improvements and reference to improvements as public safety measures for the neighborhood children interrupted exclusive and hostile occupation of the property.<sup>59</sup>

The Court takes a very realistic approach to this case. Its recognition that neighbors could access a waterfront property without breaking an adverse possessor's exclusive possession represents a true-to-life view of how individuals interact with their property. Only when the property owners explicitly stated that they sought permission for improvements or described their reasoning for such improvements as a means of improving access to the waterfront for others was the exclusivity and hostility of the adverse possession called into question.<sup>60</sup> Ultimately, the Court's conclusion that the elements of the adverse possession claim were not met through clear and convincing evidence was grounded in clear examples of various owners of the Promenade Avenue waterfront property blatantly recognizing that they did not have exclusive possession of the property.

#### CONCLUSION

The Rhode Island Supreme Court held that when no series of property owners had met the ten-year requirement of actual, open, notorious, hostile, continuous, and exclusive possession of the waterfront property, adverse possession was not achieved.<sup>61</sup> The various owners' recognition that the BBA and neighbors had some

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57. *Id.* at 693–94.

58. *Id.*

59. *Id.* at 694.

60. *Id.* at 692–93.

61. *Id.* at 694.

interest in the property meant that the exclusive and hostile elements were not achieved to satisfy a claim of adverse possession.<sup>62</sup>

Brooke E. Pearsons

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62. *Id.*