

ADVERSE POSSESSION
IN THE TEXAS OIL PATCH

BY

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I. Introduction

Texas courts have long recognized that the policy behind adverse possession statutes is to settle land titles. *Republic Nat'l Bank v. Stetson*, 390 S.W.2d 257, 262 (Tex. 1965)(citing *Wilson v. Daggett*, 88 Tex. 375, 31 S.W. 618 (1895)). Generally, case law provides that both the surface and mineral estates may be adversely possessed by actions on the surface prior to the severance of the mineral estate. *Rio Bravo Oil Co. v. Staley Oil Co.*, 138 Tex. 198, 158 S.W.2d 293, 295 (1942). Following the severance of the mineral estate, however, different rules apply and adverse possession of the mineral estate occurs under limited circumstances, e.g., conducting continuous drilling and production operations. *Natural Gas Pipeline Co. of Am. v. Pool*, 124 S.W.3d 188 (Tex. 2003).

Litigants may assert claims to acquire title by adverse possession in both law (statutory trespass to try title claim) and equity (suit to quiet title). Additionally, litigants oftentimes assert affirmative defenses based upon the various adverse possession statutes in response to what may be stale claims. It should be noted that the question of adverse possession is normally a question of fact. *Bywaters v. Gannon*, 686 S.W.2d 593, 595 (Tex.1985). Additionally, to acquire title by adverse possession, the claimant must establish all of the required

elements, and inferences are never indulged in the claimant's favor. *Id.* "In determining what will amount to actual possession of land, considerable importance is attached to the nature of the land and its uses." *Wall v. Carrell*, 894 S.W.2d 788, 800 (Tex. Civ. App. – Tyler 1994, writ denied). Ultimately, if a judge or jury finds in favor of an adverse possession claimant, he should be awarded title to the property in dispute.

Having evolved through decisions over the past 100 years, the body adverse possession law in Texas is extensive. A number of core principles continue to guide Texas courts as they decide adverse possession cases, but questions about the practical effects of some principles do remain. This paper will examine these core principles, the statutory framework surrounding them and current case law.

II. The Texas Statutes

The Texas Civil Practices and Remedies Code provides for three-, five-, ten- and twenty-five year adverse possession statutes. All of the statutes require peaceable adverse possession, which amounts to actual possession. The statute defines "Adverse possession" as "an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person." TEX. CIV. PRAC. & REM. CODE § 16.021.

The statutory framework provides for the various adverse possession sections, along with related provisions, such as those

related to tacking and attorneys' fees. Selected statutes will be examined below, followed by summaries of recent case law applying same.

A. Three-year statute

Under the three-year statute, “[a] person must bring suit to recover real property held by another in peaceable and adverse possession under title or color of title not later than three years after the day the cause of action accrues.” TEX. CIV. PRAC. & REM. CODE § 16.024. “Peaceable possession,” as referenced in the adverse possession statutes, is defined as “possession of real property that is continuous and is not interrupted by an adverse suit to recover the property.” TEX. CIV. PRAC. & REM. CODE § 16.021(3). Interruptions in continuous possession typically defeat an adverse possession claim.

For the purposes of the three-year statute, “color of title” is defined as “a consecutive chain of transfers to the person in possession that is not regular because of a muniment that is not properly recorded or is only in writing or because of a similar defect that does not want of intrinsic fairness or honesty; or is based on a certificate of headright, land warrant, or land scrip.” TEX. CIV. PRAC. & REM. CODE § 16.021(2)(A),(B).

Distinct to the three-year statute is the requirement that adverse possession be held under title or “color of title.” Two recent appellate court decisions which examined the “color of title” standard under

the three-year statute are *Capps v. Gibbs*, No. 10-12-00294-CV, 2013 WL 1701772 (Tex. App.-Waco Apr. 18, 2013, pet. denied) and *Wilhoite v. Sims*, 401 S.W.3d 752, 758 (Tex. App. – Dallas 2013, no pet.).

1. *Capps v. Gibbs*

In *Capps*, the court addressed the types of transfers that can support a color of title claim under the three-year statute. *See Capps*, 2013 WL 1701772 at *5. Gibbs, the claimant, initially acquired the disputed property pursuant to a tax-resale deed. *Id.* Harris then redeemed the disputed property via a tax-sale redemption deed and conveyed it to Capps by warranty deed. *Id.* Finally, Capps entered into an agreement with Gibbs for Gibbs to reacquire the disputed property. *Id.*

Relying upon the holding in *Oncale v. Veyna*, 798 S.W.2d 802 (Tex. App.-Houston [14th Dist.] 1990, no writ), the Waco court found that Gibbs established he had color of title under the statute. *Capps*, 2013 WL 1701772 at *5. The court acknowledged that “Section 16.024 was intended to cover cases in which the evidence of right, though in writing, was not executed in the manner prescribed by law; so long as the document is not lacking in intrinsic fairness and honesty.” *Id.* (quoting *Oncale*, 798 S.W.2d at 805). The court also found that Gibbs was in peaceable and adverse possession for at least three years, affirming the trial court’s judgment that he obtained legal and equitable title to the disputed property. *Id.* at *6.

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