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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0577**

Stephen Sawyer, et al.,
Respondents,

vs.

Trustee(s) of the Patricia A. Boland Revocable Trust Agreement
Dated June 4, 2012, et al.,
Appellants.

**Filed January 6, 2025
Affirmed
Schmidt, Judge**

Dakota County District Court
File No. 19HA-CV-22-1987

Tamara O'Neill Moreland, Larkin Hoffman Daly & Lindgren, Ltd., Minneapolis,
Minnesota (for respondents/cross-appellants Stephen Sawyer, et al.)

Stuart T. Alger, Alger Property Law, P.L.L.C., Minneapolis, Minnesota; and

Timothy J. Prindiville, Prindiville Law, PA, Minneapolis, Minnesota (for appellants/cross-
respondents Trustee(s) of the Patricia A. Boland Revocable Trust Agreement Dated June
4, 2012, et al.)

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this appeal from a final judgment, appellants and cross-respondents, the Trustees
of the Patricia A. Boland Revocable Trust (Boland Trustees), argue the district court erred

in determining that respondents and cross-appellants, Stephen and Wendy Sawyer (the Sawyers), gained title to a portion of the Boland Trustees' property through adverse possession. The Boland Trustees further argue that the district court abused its discretion by not granting their motion for a new trial and by granting the Sawyers costs and disbursements. In a related appeal, the Sawyers argue that the district court abused its discretion by not granting their motion for sanctions. Because we conclude the district court neither erred nor abused its discretion, we affirm.

FACTS

The Sawyers and the Boland Trustees dispute ownership of an 8.5' by 117' strip of land on the east side of the Boland Trustees' property and the west side of the Sawyers' property (the Adverse Possession Parcel). Depictions of the disputed area were introduced as exhibits at trial:

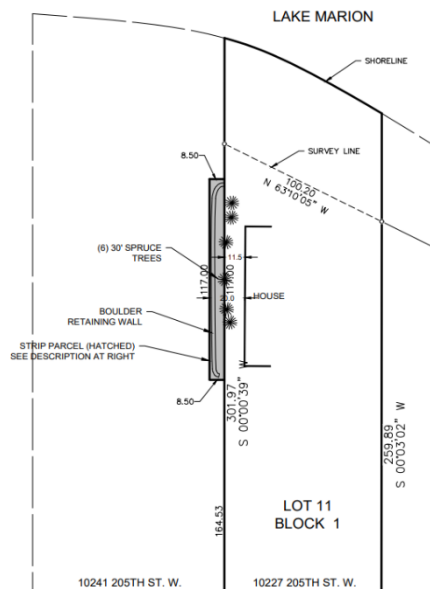


Figure 1: Survey map with the Boland Parcel on the left, the Sawyer Parcel on the right, and the Adverse Possession Parcel in gray.



Figure 2: Photograph of Adverse Possession Parcel.

In 1966, the Boland family acquired property on Lake Marion (the Boland Parcel). In 1973, a couple purchased the adjacent property to the east (the Sawyer Parcel). After moving in, the couple planted spruce trees on the Sawyer Parcel, near the border of the Boland Parcel. A neighbor east of the Sawyer Parcel testified that the branches of the spruce trees “were down like they were touching the ground” and extended “5 feet on each side.” Subsequent owners of the Sawyer Parcel testified that they put down mulch around the base of the trees, picked weeds, trimmed branches, and planted a garden under the trees.

Witnesses for the Boland Trustees testified about the Bolands parking boats and cars near a slope under the tree branches. In 2016, the Bolands built a boulder retaining wall that bordered the garden space under the spruce trees’ branches on their property.

The Sawyers purchased the parcel in July 2018. The Sawyers added a trellis and pavers in the area below the trees. The Sawyers also gardened the area. In May 2022, Kathryn Boland Weston told Wendy Sawyer that the Adverse Possession Parcel belonged to the Bolands. Kathryn Boland Weston asked that the trellis and pavers be removed from the Adverse Possession Parcel.

The Sawyers sued the Boland Trustees, asserting claims of adverse possession and trespass, and seeking an injunction. The Boland Trustees answered and asserted counterclaims for a declaratory judgment, quiet title, ejectment, trespass, nuisance, slander of title, and tortious interference with prospective business advantage. The Sawyers gave the Boland Trustees notice that the Sawyers would be filing a motion for sanctions on the nuisance, slander of title, and tortious interference counterclaims. The Boland Trustees later withdrew their tortious interference claim.

The Sawyers brought motions for summary judgment and for sanctions for the allegedly frivolous claims of nuisance, slander of title, and tortious interference. The district court granted the Sawyers' motion for summary judgment on the slander of title claim but denied the other motions for summary judgment and sanctions.

The district court held a bench trial in which the parties, surveyors, neighbors, and prior owners of the Sawyer Parcel testified. At the end of the trial, the district court granted the Boland Trustees' motion to dismiss their counterclaims for nuisance and trespass.

In a written order with findings of fact and conclusions of law, the district court found that the Sawyers—and the prior owners of the Sawyer Parcel—had adversely possessed “an area at least 6-feet wide and 104-feet long” (the Modified Adverse Possession Parcel). The court determined that the adverse possession was open and actual for at least 15 years, exclusive, and hostile. The district court made numerous credibility determinations against individuals who testified on behalf of the Boland Trustees and found those who testified in support of the Sawyers to be credible.

The district court granted injunctive relief to the Sawyers and permanently enjoined the Boland Trustees “from using, entering, possessing, or otherwise interfering with the Sawyers' ownership of the” Modified Adverse Possession Parcel. The district court also found in favor of the Sawyers on their trespass claim but did not award damages because the Sawyers had presented no evidence of monetary damages.

The district court ruled in favor of the Boland Trustees on part of their ejectment claim. The court found the claim included the boulder retaining wall and the southern part of the Adverse Possession Parcel.

The Boland Trustees moved for a new trial and amended findings. They argued that the district court clearly erred in its findings about the spruce trees. They also sought a new trial on whether the spruce trees constituted a boundary line between the properties. After a hearing, the district court amended one factual sentence in its order and denied the remaining Boland Trustees' motions. The district court granted the Sawyers' application for \$5,856.77 in costs and disbursements against the Boland Trustees.

The Boland Trustees appealed. The Sawyers filed a notice of related appeal.

DECISION

I. The district court did not err in determining the Sawyers proved their adverse possession claim by clear and convincing evidence.

The Boland Trustees argue that the district court's order finding in favor of the Sawyers on their adverse possession claim following a bench trial should be reversed. "In an appeal from a bench trial, we do not reconcile conflicting evidence." *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *rev. denied* (Minn. June 26, 2002). "We give the district court's factual findings great deference and do not set them aside unless clearly erroneous." *Id.* "When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal." *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

The Boland Trustees assert three reasons for reversing the district court's ruling in favor of the Sawyers on their adverse possession claim: (1) the Sawyers did not establish open and actual possession for fifteen years; (2) the Sawyers' use of the area was not

exclusive; and (3) the Sawyers did not establish the requisite hostility needed to prove their claim. A plaintiff alleging adverse possession “must show, by clear and convincing evidence, an actual, open, hostile, continuous, and exclusive possession for the requisite period of time[.]” *SSM Invs. v. Siemers*, 291 N.W.2d 383, 384 (Minn. 1980). Adverse possession requires that “the plaintiff, the plaintiff’s ancestor, predecessor, or grantor was seized or possessed of the premises in question within 15 years before the beginning of the action.” Minn. Stat. § 541.02 (2022). The “fact-intensive adverse-possession determinations rely largely on the credibility of witnesses and the weight, if any, to be given to their testimony.” *Ganje v. Schuler*, 659 N.W.2d 261, 269 (Minn. App. 2003).

A. Open and actual possession

The Boland Trustees argue that the Sawyers failed to prove their possession was open and actual. We have construed “open” within the adverse possession context to mean “visible from the surroundings, or visible to one seeking to exercise his rights.” *Hickerson v. Bender*, 500 N.W.2d 169, 171 (Minn. App. 1993). The manner of “actual” possession “must give unequivocal notice to the true owner that [someone] is in possession in hostility to his title.” *Ganje*, 659 N.W.2d at 266 (quotation omitted).

The district court found that the Modified Adverse Possession Parcel was openly and actually possessed from the time the first owners purchased the Sawyer Parcel through when the Sawyers purchased the property. First, the court found a neighbor’s testimony credible that the first owners of the Sawyer Parcel maintained the area around the trees. Second, the district court found credible the second owner’s testimony that he trimmed the tree branches and put mulch around the trunks. Third, the court found credible the third

owner of the Sawyer Parcel's testimony that she gardened the Modified Adverse Possession Parcel. Fourth, the district court found credible the testimony from various witnesses that the Bolands did not maintain the Modified Adverse Possession Parcel. Finally, the court did not find the Bolands' testimony about their maintenance or gardening in the Modified Adverse Possession Parcel to be credible. Our standard of review requires us to defer to the district court's credibility findings. *Alam*, 764 N.W.2d at 89. The district court's factual findings in this "fact-intensive adverse-possession" analysis are not clearly erroneous because the record evidence supports the findings. *Ganje*, 659 N.W.2d at 269.

The Boland Trustees cite *Romans v. Nadler* in arguing for reversal. 14 N.W.2d 482 (Minn. 1944). In *Romans*, the supreme court determined that occasionally and sporadically entering a property was insufficient for adverse possession. *Id.* at 485. The Boland Trustees equate the "occasional and sporadic" trespasses from *Romans* to the use of the disputed parcel by the prior owners of the Sawyer Parcel. *Id.* at 486.

But *Romans* is distinguishable from this case because the district court found that the tree branches prevented the Bolands from being in actual possession of the Modified Adverse Possession Parcel. In addition, the district court made detailed factual findings and credibility determinations that the prior owners of the Sawyer Parcel established actual possession by maintaining and improving the Modified Adverse Possession Parcel in a manner that was both "open" and "actual." Unlike in *Romans*, this use was neither occasional nor sporadic. The district court did not clearly err in finding that the Sawyers' possession was open and actual.

B. Exclusive use of the area

The Boland Trustees argue the district court erred in finding that the Sawyers and their predecessors exclusively used the Modified Adverse Possession Parcel. “The exclusivity requirement of adverse possession is satisfied if the disseizor possesses the land as if it were his own with the intention of using it to the exclusion of others.” *Ganje*, 659 N.W.2d at 267 (quotations omitted); *see also Ehle v. Prosser*, 197 N.W.2d 458, 462 (Minn. 1972) (holding adverse possessor must “intend to exclude all others”).

The district court found that the planting of the spruce trees created an exclusive use of the Modified Adverse Possession Parcel because the branches made the area below them “of almost no utility and largely unreachable[.]” The court found that the trees prevented the Bolands from using the Modified Adverse Possession Parcel and that the current and previous Sawyer Parcel owners maintained the area by trimming the branches, mowing the lawn, and gardening the area. As the district court found, the evidence of the Sawyers’ and previous owners’ use of the area constituted a visible indication of the “intention of permanent occupation and appropriation.” *In re Reg. Title in St. Louis County*, 147 N.W. 655, 657 (Minn. 1914). The district court did not clearly err in finding that the use of the Modified Adverse Possession Parcel was exclusive.¹

¹ Notably, the district court did not give the Sawyers the entire portion of the parcel that they sought. For example, the court excluded the boulder retaining wall, which accounts for the Boland Trustees’ arguments about their parking boats and cars alongside the slope. The district court appropriately considered the Boland Trustees’ contentions and evidence about exclusive use of the parcel—or lack thereof—and modified the parcel accordingly.

C. Requisite hostility

The Boland Trustees argue the district court should be reversed as to the hostility finding. Hostility does not require animosity between the parties, but instead requires that the adverse possessor have the intention “to claim exclusive ownership as against the world and to treat the property in dispute in a manner generally associated with the ownership of similar type property in the particular area involved.” *Ehle*, 197 N.W.2d at 462. Hostility may be demonstrated through “a great variety of acts,” such as “by cultivation, by the erection of buildings, or by other improvements, or by any visible, open use, clearly indicating an actual appropriation of the land to the permanent and exclusive dominion and benefit of the invader[.]” *Costello v. Edson*, 46 N.W. 299, 301 (Minn. 1890).

The Boland Trustees argue that the tree branches did not demonstrate an adverse claim of right. But the district court’s hostility finding was not limited to the trees. The court did find that the trees occupied the Modified Adverse Possession Parcel and prevented the Bolands from accessing that area. But the court also found that the Sawyers and their predecessors maintained and improved the parcel, which, the court found, was sufficient to meet the hostility element. The district court noted that “[e]ven in their answers to the interrogatories, the Bolands describe *no* activity in the Adverse Possession Parcel prior to July 2016.” The district court did not clearly err in its findings, including that the requisite hostility for adverse possession was satisfied.

II. The district court acted within its discretion in denying the Boland Trustees' motion for a new trial.

The Boland Trustees argue the district court abused its discretion by not granting their posttrial motion because a new trial—or allowing new testimony—was warranted to determine whether the trees constituted a boundary line between the properties. The Boland Trustees assert that as a boundary line, owned by the Bolands and Sawyers as tenants-in-common, the trees could not constitute a hostile use by the prior owners of the Sawyer Parcel. “We review a district court’s decision to grant or deny a new trial for an abuse of discretion.” *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018).

But the Boland Trustees did not raise the boundary-line-tree argument until after trial. The Boland Trustees forfeited this argument by raising it for the first time in a posttrial motion after years of discovery and after a lengthy trial. *See Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (“The claim came too late when suggested for the first time by plaintiff’s motions for a new trial.”). In addition, the Boland Trustees cited no authority on appeal to support their argument that the district court abused its discretion in denying their posttrial motion. *See Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017) (noting a party forfeits a claim by failing to support it with authority); *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived.”). Because the Boland Trustees asserted the claim too late and failed to cite any authority to support their argument on appeal for reversal, we deem the argument forfeited.

III. The district court did not abuse its discretion when it ruled that the Sawyers were the prevailing party entitled to costs and disbursements.

The Boland Trustees argue that the Sawyers do not qualify as the prevailing party because some of the district court's dispositions favored the Boland Trustees. We review a district court's decision as to which party, if any, qualifies as the prevailing party for an abuse of discretion. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998). In making that determination, the court should consider the general result and "who has, in the view of the law, succeeded in the action." *Haugland v. Canton*, 84 N.W.2d 274, 280 (Minn. 1957) (quotation omitted).

In awarding costs and disbursements to the Sawyers, the district court acknowledged the claims that each side had succeeded on in the action and the claims that each side had lost. The district court found that the Sawyers "obtained more property than the [Boland Trustees] retained," and that the court ruled in favor of the Sawyers on their declaratory judgment, ejectment, and trespass claims. The district court concluded that "Under the applicable law, [the Sawyers] have succeeded in the action."

The Boland Trustees assert that the Sawyers cannot be the prevailing party because the Sawyers did not prevail on their entire adverse possession claim. But the Boland Trustees cite no case to support the proposition that a party must prevail on the entire claim before it can be considered to have prevailed. Further, the Boland Trustees started the litigation with seven claims and were partially successful on three. Whereas, the Sawyers started with three claims and succeeded, at least in part, on all three. The district court did not abuse its discretion in ruling that the Sawyers were the prevailing party.

IV. The district court did not abuse its discretion by denying the sanctions motion.

In the related appeal, the Sawyers argue the district court abused its discretion by denying their motion for sanctions because the Boland Trustees' claims for tortious interference, slander of title, and nuisance were frivolous. We review an order denying a motion seeking sanctions for an abuse of discretion. *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 432 (Minn. App. 2000), *rev. denied* (Minn. Apr. 18, 2000).

Minnesota law requires an attorney to certify that “to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:” (1) a document is not presented to the court for an improper purpose; (2) the “legal contentions are warranted by existing law”; and (3) the allegations and factual contentions have—or will after reasonable discovery have—evidentiary support. Minn. Stat. § 549.211, subd. 2 (2022). A district court may sanction an attorney for violating one of the above provisions. *Id.*, subd. 3. “Sanctions should not be imposed when counsel has an objectively reasonable basis for pursuing a factual or legal claim or when a competent attorney could form a reasonable belief a pleading is well-grounded in fact and law.” *Leonard*, 605 N.W.2d at 432 (quotation omitted).

Although the district court did not analyze the merits of the motion for sanctions, we conclude that the court acted within its discretion in denying the motion. *See State Fund Mut. Ins. v. Mead*, 691 N.W.2d 495, 502-03 (Minn. App. 2005) (affirming a district court’s decision to summarily deny a motion for sanctions “without discussion in its opinion”). Our review of the record reveals that the attorney for the Boland Trustees had a reasonable basis for pursuing each claim. First, Kathryn Boland Weston claimed that she

planned to sell the property—and if she could not find a buyer, she would purchase the property. This provided a reasonable basis for the attorney to bring a tortious interference with prospective business advantage claim. After investigating the claim,² the attorney voluntarily dismissed it early in the litigation process.

Second, although the Boland Trustees did not prevail on the merits of their slander of title claim, it does not mean that the district court was mandated to impose sanctions. *Radloff v. First Am. Nat'l Bank*, 470 N.W.2d 154, 157 (Minn. App. 1991), *rev. denied* (Minn. July 24, 1991). Although the district court determined that the undisputed facts produced at summary judgment were enough to disprove the malice factor of the claim, the Boland Trustees were not unreasonable for asserting the claim.

Finally, the Boland Trustees raised a nuisance claim, which survived summary judgment. Although at trial the Boland Trustees' attorney dismissed the claim, it was not unreasonable to pursue the claim through trial. The district court did not abuse its discretion in denying the motion for sanctions.

Affirmed.

² The Sawyers also served the attorney with notice of their intent to seek sanctions if the Boland Trustees continued to pursue the claim. The fact that the Boland Trustees and their lawyer did not dismiss the claim until after the safe-harbor time expired, *see* Minn. Stat. § 549.211, subd. 4 (2022), did not require the district court to sanction them.