

IN THE COURT OF APPEALS  
AT KNOXVILLE

**FILED**  
December 17, 1998  
Cecil Crowson, Jr.  
Appellate Court  
Clerk

BROMLEY SAMMONS , ) HAMILTON CHANCERY  
 ) C.A. No. 03A01-980  
Plaintiff - Appellant )  
 )  
vs. ) HON. R. VANN OWENS  
 ) CHANCELLOR  
 )  
 )  
FLETCHER MILLER and JEAN MILLER ,  
 )  
 )  
Defendants - Appellants ~~AFFIRMED~~ AND REMAN

D. MITCHELL BRYANT, Cleveland, for App  
ARVIN H. REINGOLD, Chattanooga, for Ap

O P I N I O N

McMurray, J

The appellant, Bromley Sammons, Fletcher and Jean Miller, own adjoining tracts Tennessee. Sammons' easement adjoins the west property line. Mr. Sammons first the subject boundary line in 1983, but for failure to prosecute, that action was and then dismissed several times before trial court in November 1997.

Mr. Sammons contends that the Miller property should be divided. The Millers have acquired title to the real property in dimensions of approximately one-tenth of an acre, by prescription. After a bench trial, the court resolved the issues in favor of the Millers.

The sole issue on appeal is whether the court should find that the Millers had acquired title to the property through adverse possession. The court found in favor of the Millers on the judgment of the trial court.

The Millers bought their property in Hamilton County, Tennessee, in 1957. At that time, Mr. Cagle owned the property where Mr. Sammons now lives. The Millers bought the property from Mr. Cagle's property from the Hamilton County Courthouse. In 1692, the Millers approached Mr. Cagle and asked him to extend the old fence between their two properties because the Millers wanted an expansion of their property. Mr. Cagle was buying for their daughter for Christmas. Mr. Cagle acknowledged that he was not the owner of the property and that the boundary was not known. However, when the fence was erected, it was placed on the boundary.

they were establishing a "line fence" c  
line.

In 1977, Mr. Sammons moved to the pr  
Miller's property. Mr. Sammons l  
purchased in March 1979. According  
discussed Miller the matter regarding  
between the property Mr. Miller had  
where the boundary line was. Mr. Miller  
agreed with the prior owner of the prop  
During his testimony, Mr. Sammons admitte  
there was some discrepancy" about the fence  
purchased his property.

Numerous witnesses testified regarding  
placement of the fence. After considering the  
testimony of the witnesses, the trial  
Miller. The trial court concluded that t  
early 1960s property owners ca  
actual location of the boundary line  
that the fence was also on property line  
further concluded that "the fence was  
partially in place many years p  
Although a way or ditch by Mr. Sammons in 1979  
fence was entirely on property, the trial court

Millers have "refused to acquiesce in  
have held the property adversely to the  
Therefore, court concluded that it should be  
to the property in question. (Toon, et al.  
necessitated further trial. The court also held  
to Mr. Sammons' predecessor in title.  
sufficient to support such a finding.)

The appellant argues that the evidence  
the trial court's finding that the Millers  
the property by adverse possession and  
that the Millers offered no proof to rebut  
is approximately thirty-seven feet on  
asserted that they had acquired title  
adverse possession. The appellant argues that  
he did not acquire the land until 1979  
the Millers in 1983, he was within the  
limitations of adverse possession<sup>1</sup> (T.C.  
Further, the appellant asserts that it is not  
Miller would have been required to prove  
evidence, their adverse possession of  
until at least 1963, prior to the filing  
initial lawsuit."

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<sup>1</sup>There would be some merit in this argument except  
of the Millers as to Mr. Sammons' predecessor in

The Millers argue that title to the adverse possession can only be acquired by the person who erected the fence in 1962 for a pony Christmas. They assert that title to the property was not acquired until after the fence was erected. They dispute the contention that the elements of adverse possession were established in respect to him. They contend that, if they acquired title to the property, their title "remained defective" against the property which included Mr. Sammons. Mr. Sammons' contention that their title was not acquired until 1983 is rejected. The Millers maintain that the fence was erected twenty years before Mr. Sammons' lawsuit in 1983. The Millers maintain that the fence was erected twenty years before Mr. Sammons' lawsuit regarding the boundary.

Our standard of review under the Tennessee Appellate Procedure, is "[u]nless otherwise provided by the trial court in a case involving a question of law, the appellate court shall not disturb the findings of the trial court. There is a presumption of the correctness of the findings of the trial court. The evidence is to be viewed in the light most favorable to the trial court's findings. See Farmer's Mut. Ins. Co. v. American Sm. & Mfg. Co., 209 Tenn. 136 (1969). The principle of law contained in Rule 13(d) is that where the evidence

the trial which are dependent in the  
 of witnesses are entitled to great weight  
 the judge had the opportunity to observe  
 of the witnesses which are liberty § 114. Sr. Ws. 2  
 88, 91 (Tenn. 1900) People v. ... of Alamo v., Forc. 2  
 205 Tenn. 478, 483, 327 S.W.2d 47, 49 (1959)  
 will not be reversed on an issue which is  
 "unless it is found in the record clear  
 convincing evidence to the contrary of  
 which contradict the trial" (Circuit Court  
 omitted).

Since our Supreme Court decided in  
 575 S.W. 794 (1889), the law in Tenn.  
 a purchaser of land accidentally or  
 contiguous to his land he is placing the  
 boundary, he has a closed strip for [seven  
 possession adverse, and will avail against  
LeMay v. Adams, 70, 72 (Tenn. 1900)  
Hagan, 398, 403, 215 S.W.2d 194  
 Further, sufficient possession was  
 ignorant mistake or omission of the  
Liberto v. ..., 529, 533, 221 S.W.2d  
 1949 Foster v. ..., 520, 522 (Tenn. 1954)  
 Title is not vested in an adverse holder

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 t h e   t r i a l   c o u r t .   A f f i r m i n g   t h e   j u d g m e n t   o  
 c o u r t   i n   a l l   r e s p e c t s .   C o s t s   o f   t h i s   a  
 a p p e l l a n t ,   a n d   t h i s   c a s e   i s   r e m a n d e d   t

Don T. McMurray, Judge

CONCUR :

Houston M. Goddard, Presiding Judge

Herschel P. Franks, Judge



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JUDGMENT

This appeal came on and out the record from  
Chancery Court in Hamilton County, a brief of  
Upon consideration thereof, this Court find  
no reversible error in the trial court  
We affirm the judgment of the trial  
Costs of this appeal are taxed to the  
remanded to the trial court.

PER CURIAM