

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0755, Bonnie Dunbar, Trustee of the Bonnie Dunbar Trust and Beaver Brook Beaches, LLC v. Averill Babson and James A. Babson, Trustees of the Babson Family Lake Winnepesaukee Realty Trust, the court on October 26, 2007, issued the following order:

The respondents (the Babsons) appeal the superior court's determination, after a bench trial and view, that there was insufficient evidence to support a finding that the respondents had acquired title to the tract at issue through acquiescence or adverse possession. The Babsons argue: (1) the overwhelming weight of the evidence establishes their claim of boundary by acquiescence; and (2) the trial court erred in requiring them to prove open and notorious use of the boundary to prove adverse possession because the petitioners (the Dunbars) had actual knowledge of the Babsons' claim. We affirm.

"We review a trial court's application of law to facts *de novo*. We accord deference to a trial court's findings of historical fact, where those findings are supported by evidence in the record." Blagbrough Family Realty Trust v. A & T Forest Prods., 155 N.H. 29, 33 (2007) (citations omitted).

We first address the Babsons' contention that the weight of the evidence established their claim of boundary by acquiescence. "Acquiescence may establish a boundary where the parties for twenty years or more have recognized a certain boundary as being the true one and have occupied their respective lots accordingly. The bound thus acquiesced in will prevail even over the description in the deeds." Rautenberg v. Munnis, 108 N.H. 20, 23 (1967) (citation omitted).

At trial, the Babsons asserted that both parties had recognized an extension of the Brooks Line, a line going through the middle of the rocks, as the proper boundary between their properties. The trial court disagreed, finding that neither the Dunbars nor the Babsons had acquiesced to this location of the boundary for twenty years or more. Even assuming the trial court erred in finding that the Dunbars had not recognized the extended Brooks Line as the correct boundary for twenty years or more, the record supports the trial court's finding that the Babsons themselves had not acquiesced to that boundary location for twenty years or more.

Averill Babson testified that she used both rocks and believed that they were the boundary between the properties. She also explained that the Babsons "didn't go beyond the rocks." Her husband, Gregory Sohns, testified that he never focused on whether the dividing line between their properties was to the

west, in the middle, or to the east of the rocks, but that he believed both rocks were part of the Babsons' property. He further testified that the Babsons used both rocks and "didn't go beyond the western side of the rocks." This testimony supports the trial court's finding that the Babsons had not recognized a line going through the middle of the rocks, that is, the Brooks Line, as the proper boundary, or occupied their property according to that line. Accordingly, the evidence supports the trial court's finding of no boundary by acquiescence.

We next address the Babsons' contention that the trial court erred in finding no adverse possession. "[T]o obtain title by adverse possession, the adverse possessor must prove, by a balance of probabilities, twenty years of adverse, continuous, and uninterrupted use of the land claimed so as to give notice to the owner that an adverse claim is being made." *Blagbrough*, 155 N.H. at 33 (citation omitted). Additionally, "adverse use is trespassory in nature, and the adverse possessor's use of the land must be exclusive." *Id.* (citations omitted). In evaluating the merits of an adverse possession claim, we construe evidence of adverse possession of land strictly. *Id.*

The Babsons argue that they were not required to show that their occupation of the land up to the extended Brooks Line was open and notorious because the Dunbars had actual knowledge of their possession of that land. See *Pease v. Whitney*, 78 N.H. 201, 204 (1916) ("A possession which is adverse and actually known to the true owner is equivalent to a possession which is open and notorious and adverse." (quotation omitted)). The trial court, however, found that "Bonnie Dunbar credibly testified that in the thirty years of her occupancy, she ha[d] never seen the Babsons using the rocks nor ha[d] she seen evidence of use," and that "Ms. Dunbar was unaware of the Babsons [*sic*] use of the area until 2002" (Emphasis added.) The record supports this finding. Thus, the Babsons' claim that the Dunbars had actual knowledge of their use of the disputed area fails.

To the extent the Babsons also challenge the trial court's determination that their use of the property was not sufficiently open and notorious, we find no error in this conclusion. "The law requires more than occasional, trespassory maintenance in order to perfect adverse title; the use must be sufficiently notorious to justify a presumption that the owner was notified of it." *Blagbrough*, 155 N.H. at 34. We agree with the trial court that "[l]eaving boats for only short periods of time, and something as small as a towel even for a longer period, is not sufficiently open and notorious to give proper notice to the property owners of an adverse claim of right." Accordingly, we uphold the trial court's finding that the Babsons failed to acquire title to the tract at issue through adverse possession.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**