IN THE SUPERIOR COURT OF DELAWARE

KATHY LINGO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	C.A. No. S24C-08-028 CAK
JOSEPH GORDON AND	)	
HOLLIE GORDON,	)	AN ACTION IN EJECTMENT
	)	
Defendants.	)	

Submitted: June 2, 2026
Decided: June 12, 2026

DECISION AFTER TRIAL

Dean A. Campbell, Esquire, 703 Chestnut Street, Milton, DE 19968, Attorney for Plaintiff/Counterclaim Defendant.

Paul G. Enterline, Esquire, 113 South Race Street, P.O. Box 826, Georgetown, DE 19947, Attorney for Defendants/Counterclaimants.

KARSNITZ, R.J.

I. INTRODUCTION

"Men tighten the knot of confusion into perfect misunderstanding."
T.S. Eliot

This is a case about what can happen when a relatively small, even innocent, mistake is allowed to persist over many years and grow into a significant misunderstanding, in this case between neighbors. What was assumed to be a property line between parcels turned out to be incorrect, and a series of actions taken over the years by the neighbors compounded the mistake. Now the neighbors have turned to the law to untie the knot.

II. THE PROPERTIES

A. The Parties and Undisputed Record Title

In their Pretrial Stipulation, the parties stipulated to the following facts. Kathy Lingo ("Plaintiff") is the owner in fee simple absolute of Sussex County Parcels 135-19.00-50.00 and 135-19.00-50.06, which are located along East Trap Pond Road, near Georgetown, Delaware (the "Lingo Parcels"). The Lingo Parcels are bordered by Sussex County Parcel 135-19.00-50.05 (the "Gordon Parcel"), which is owned in fee simple absolute by Joseph Gordon and Hollie Gordon (collectively, "Defendants"). Both Plaintiff's and Defendants' surveys agree on the location of the property line between the Lingo Parcels and the Gordon Parcel (the "*de jure* property line").

B. The Disputed Property

The disputed property in this case (the "Property") is a strip of land along the edge of the Lingo Parcels, situated between the *de jure* property line and the previously, incorrectly assumed property line between the Lingo Parcels and the Gordon Parcel (the "*de facto* property line"). It includes a portion of the gravel driveway, the concrete parking area, and the area around the office, shown in blue on the survey attached hereto as Exhibit A, but not the area extending to the rear property lines, shown in pink and green on Exhibit A.

III. PROCEDURAL HISTORY

Plaintiff filed a Petition for Ejectment against Defendants on August 20, 2024. Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction (the "Motion to Dismiss") on September 24, 2024, to which Plaintiff responded on September 25, 2024. I held oral argument and denied the Motion to Dismiss from the bench on October 4, 2024. Discovery commenced.

Defendants filed their Answer and Affirmative Defenses on September 27, 2024. On February 9, 2026, Defendants filed a Motion to Amend the Answer to Assert a Counterclaim (the "Motion to Amend"), together with an Amended Answer Asserting Counterclaim. Plaintiff objected to the Motion to Amend on February 10, 2026. I held oral argument on the Motion to Amend on February 12, 2026, and

granted it from the bench on February 12, 2026. The Amended Answer Asserting Counterclaim asserts that Defendants are entitled to a declaratory judgment that they have acquired an easement on the Property that runs with the land "for access, egress, parking and maintenance, in the area between their property line and 'originally assumed property line.'"

Plaintiff filed a Motion for Summary Judgment on September 23, 2025. Defendants filed their Answer to the Motion for Summary Judgment on October 31, 2025. Plaintiff filed her Reply on December 1, 2025. I heard oral argument and denied the Motion for Summary Judgment from the bench on February 12, 2026.

The parties continued to conduct discovery.

In the presence of the parties and their counsel, I visited the Property for a visual inspection on March 19, 2026.

I signed a Pretrial Stipulation submitted by the parties on March 25, 2026.

The matter was tried before me on April 20, 2026, and I asked the parties to submit their closing arguments to me in writing, which Defendants and Plaintiff filed on May 11, 2026, and June 2, 2026, respectively.

This is my decision after trial. Because I find that, by clear and convincing evidence, Defendants have proved that they have acquired a prescriptive easement with respect to the Property, I hereby direct the parties to prepare such an easement for my review. My reasoning is explained below.

IV. STANDARD AND BURDEN OF PROOF

Delaware's adverse possession statute[1] does not prescribe a standard of proof. Delaware law requires proof of acquisition of a prescriptive easement by clear and convincing evidence.[2] However, Delaware law requires proof of a forfeiture of title by adverse possession only by a preponderance of the evidence.[3] Although it might seem incongruous to require proof by clear and convincing evidence for an easement while only requiring proof by a preponderance of the evidence to work a forfeiture of title by adverse possession, *Phillips v. State* and its Chancery Court progeny like *Ayers v. Pave It* remain controlling Delaware law. As such, I will apply the clear and convincing evidence standard to Defendants' counterclaim that they have acquired a prescriptive easement to the Property.

Defendants initially bear the burden of proving a prescriptive easement by clear and convincing evidence. If they carry that burden, the burden of proof then shifts to Plaintiff to establish that the possession or use was permissive.[4] Plaintiff has not done so in this case.

V. THE EVIDENCE

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[1] 10 *Del. C.* §§ 7901-7904.
[2] *Lickle v. Diver, Inc.*, 238 A.2d 326, 329 (Del.1968); *Cartanza v. LeBeau*, 2006 WL 903541 (Del. Ch. Apr. 3, 2006).
[3] *Phillips v. State ex. rel. Dep't of Natural Res.*, 449 A.2d 250, 255 (Del.1982); *Ayers v. Pave It, LLC*, 2006 WL 2052377, at *2 (Del. Ch. July 11, 2006); *Dickerson v. Simpson,* 792 A.2d 188 (Del. 2002); *Edwards v. Estate of Muller*, 1993 WL 489381 (Del. Ch. Oct. 18, 1993); *Cox v. Lakshman*, 1989 WL 34984 (Del. Ch. Apr. 13, 1989).
[4] *David v. Steller*, 269 A.2d 203, 204 (Del. 1970).

The following facts were elicited by the evidence presented at trial.

Plaintiff had a survey performed on January 8, 2001, a month before Charles and Phyllis Hayes conveyed the Gordon Parcel to Plaintiff and Linda Spencer, as joint tenants with right of survivorship, on February 28, 2001. Plaintiff testified that she and Ms. Spencer purchased the Gordon Parcel together because Ms. Spencer was unable to obtain financing on her own. Once financing for Ms. Spencer was approved, on June 18, 2001, Plaintiff conveyed her interest in the Gordon Parcel to Ms. Spencer. Plaintiff testified that she, as general contractor for construction of the septic system and the house on the Gordon Parcel, did not want to start construction of any sort until after financing was complete and she had transferred her interest in the Gordon Parcel to Ms. Spencer.

Likewise, Plaintiff filed a Septic Permit Application with DNREC on March 19, 2001, which was issued on March 23, 2001, but construction of the septic system did not begin until June 27, 2001, after the separation of the interests of Plaintiff and Ms. Spencer in the Gordon Parcel. Therefore, on June 18, 2001, when the interests of Plaintiff and Ms. Spencer in the Gordon Parcel were separated, there was no septic system (although the permit had been issued by DNREC) and no house – just land.

One of the first acts of construction after separation of ownership

was to build a driveway to provide access to the land, the septic system area, and the to-be-constructed house. The septic system plan as approved by DNREC required a 20-foot distance from the vent pipes, or 15 feet from the 5-foot fill perimeter to the *de facto* property line. This created a 15-foot minimum buffer zone between the septic drain field on the Gordon Parcel and a line 20 feet away running parallel to the line of the drain field vent pipes for the length of the Lingo Parcels. The purpose of this design was to ensure there was adequate space for vehicles and equipment to drive around the drain field, because vehicles and heavy equipment can damage a drain field and vent pipes. The septic plan was approved by DNREC and built based on the *de facto* property line.

Although Plaintiff's and Ms. Spencer's joint ownership of the Gordon Parcel was short lived, it had lasting effect. The placement of the septic system guided the actions of Plaintiff, Ms. Spencer and Defendants in the years to come. Defendants assert that Plaintiff and Ms. Spencer, during the time of their joint ownership in 2001 and continuously thereafter, used their properties in ways that were consistent with the 15-foot buffer zone or corridor created by the septic plan, based on the *de facto* property line. A multi-car parking area existed extending to the *de facto* property line and was used continuously for over 20 years, from Plaintiff's and Ms. Spencer's joint ownership in 2001 until the filing of this action in 2024. There was testimony from a neighbor that both Ms. Spencer and Defendants had their social guests park

in this area. Beyond the parking area, Defendants maintained a play area, landscaping, storage and other uses within the Property.

During her ownership of the Gordon Parcel, Ms. Spencer constructed an office within inches of the *de jure* property line without the benefit of a building permit or a survey, in violation of the Sussex County Code requirements. Neither Plaintiff nor Ms. Spencer were aware of the set-back violation when the office was constructed. Defendants assert that the office was placed where it was because both Plaintiff and Ms. Spencer assumed that the *de facto* property line governed.

During Ms. Spencer's lifetime, Ms. Spencer's and Plaintiff's homes were separated by a wooded area and were connected by a lighted path through those woods which Plaintiff created for their mutual benefit. However, during Plaintiff's testimony, she seemed uncertain as to the location of a light pole for the path in relation to the *de jure* property line, even though it was shown on the survey. Nor could Plaintiff accurately place the fencepost on the survey. It was not until the physical property line markers were installed by the surveyor that Plaintiff realized the location of the *de jure* property line and asserted encroachment.

Ms. Spencer died, and Defendants purchased the Gordon Parcel on September 30, 2009, from the Estate of Linda Spencer. Defendants did not obtain a survey of the Gordon Parcel when they purchased it.

In 2020, Plaintiff had a survey of the Lingo Parcels completed for

subdivision planning and the construction of a fence along the Lingo Parcels, at which time she discovered that the office was within the *de jure* property line set-back requirements established by the Sussex County Code. Also, a portion of Defendants' concrete parking pad was encroaching on the Lingo Parcels.

Defendants received a violation notice from Sussex County for the office set-back encroachment. Defendants obtained a variance regarding this encroachment from the Sussex County Board of Adjustment. Plaintiff did not object to the variance which Defendants requested and obtained. Defendants also voluntarily removed the concrete pad which had been installed on the Lingo Parcels.

However, other materials owned by Defendants continued to be stored on the Lingo Parcels, vehicles were being parked on the Lingo Parcels, and Defendants' playground equipment and other personal property were being kept on the Lingo Parcels.

VI. ANALYSIS

A. Plaintiff's Case-in-Chief -- Ejectment

Plaintiff's case-in-chief was initiated as an ejectment action.[5] To maintain an ejectment action, a plaintiff must show a present right to possess the property, which includes establishing legal ownership, and that the Plaintiff is out of

[5] Under 10 *Del. C.* 6701.

possession of the disputed property.[6] Ownership of the Lingo Parcels and Gordon Parcel, and an accurate boundary line between them, were stipulated in the Pretrial Stipulation. However, Defendants did not defend against these claims of ownership in their Answer, at trial, or in their Post Trial Memorandum. Rather, in their Counterclaim and Post Trial Memorandum, they assert that their continued use of the Property is consistent with the use of prior owners, including Plaintiff and Ms. Spencer, thereby entitling them to a prescriptive easement on the Property. I therefore turn to the Counterclaim.

B. Prescriptive Easement

Defendants must show, by clear and convincing evidence, that they used and possessed the Property in a manner (1) open and notorious, (2) hostile and adverse, (3) exclusive, (4) actual possession, (5) that was continuous for twenty years.[7] In my view, the evidence shows that Defendants have satisfied each of these elements. I address each element below.

1. Open and Notorious Use

"Open and notorious means that the possession must be public so that the owner and others have notice of the possession. If possession was taken furtively or

[6] *Taylor v. Vanhorn*, 2023 WL 3946342 (Del. Super. June 9, 2023).
[7] *Tubbs v. E & E Flood Farms, L.P.*, 13 A.3d 759(Del. 2011), *Tumulty v. Schreppler*, 132 A.3d 4, 23–24 (Del. Ch. Mar. 30, 2015) (quoting *Taraila v. Stevens*, 1989 WL 110545, at *1 (Del. Ch. Sept. 18, 1989)).

secretly, it would not be adverse, and no title possession could be acquired."[8] The question is whether Plaintiff and the public would notice that Defendants are in possession of the land.

There is no evidence that Defendants possessed all or part of the Property furtively or secretly. They used the Property openly and notoriously so that both Plaintiff and the public at large in Georgetown, Delaware could have seen the driveway, parking area, septic field, play area, stored items, landscaping, and office. During my site visit, the Gordon Parcel and the Lingo Parcels appeared to be relatively small and contiguous, and the encroachments by Defendants on the Property were clearly visible. Yet Plaintiff never asked Defendants about their use of the Property or posted signs or other warnings on the Property advising Defendant or other persons to keep off the Property or introduced themselves to neighbors as the owner of the Property.

I therefore give Defendants' testimony and other evidence more weight than that of Plaintiff on this element.

2. Hostile and Adverse Use

"A hostile claim goes against the claim of ownership of all others, including the record owner."[9] This element simply requires Defendants to use the property

[8] *Tumulty*, 132 A.3d at 27 (quoting *Walker v. Five N. Corp.*, 2007 WL 2473278, at *4 (Del. Super. Ct. Aug. 31, 2007)) (internal quotations omitted).

[9] *Id.* (quoting *Ayers v. Pave It, LLC*, 2006 WL 2052377, at *2 (Del. Ch. July 11, 2006)) (internal

"as if it were [their] own, to the exclusion of all others."[10]

Defendants' use of the Property is clearly hostile and adverse to Plaintiff's legal ownership of record. Defendants testified that they used the Property as their own, for the benefit of themselves, their family, and their guests, and that they so used the Property to the exclusion of Plaintiff or any others. There is no significant evidence to the contrary. There was no evidence that Plaintiff used the Property as her own or sought to exclude Defendants from their use of the Property.

While Plaintiff and Ms. Spencer were friends, Ms. Spencer's use of the Property must also be considered hostile. She used it for her benefit by building the office and using the parking area. Plaintiff offered no evidence which I find sufficient to rebut Ms. Spencer's use.

I therefore give Defendants' testimony and other evidence more weight than that of Plaintiff on this element.

3. Exclusivity

The "exclusivity" element of adverse possession requires that Defendants show "exclusive dominion over the land and an appropriation of it to [their] benefit."[11] Defendants must have acted as if they were the owners of the Property. This, however, does not require "absolute exclusivity."[12] The fact that third parties

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quotations omitted).
[10] *Id.*
[11] *Id.* at 26.
[12] *Id.*

sometimes use the Property does not necessarily void the exclusivity element.

Plaintiff presented no evidence of any use of the Property by her which constituted a demonstrable, continuous, unambiguous act of dominion, control, and ownership of the Property or that, conversely, Defendants took any action which was inconsistent with any claim of their exclusive use of the Property.

I therefore give Defendants' testimony and other evidence more weight than that of Plaintiff on this element.

4. Actual Possession

"The requirement of actual possession overlaps to a large extent with open and notorious possession:"[13] As a general rule, it will be sufficient if the land is so used by the adverse claimant as to apprise the community in its locality that it is in his exclusive use and enjoyment, and to put the owner on the inquiry as to the nature and extent of the invasion of his rights and this is especially true where the property is so situated as not to admit of permanent improvement.[14] In such cases, if the possession comports with the usual management of similar lands by their owners, it will be sufficient.[15] As discussed above with respect to the element of open and notorious possession, in my opinion Defendants' use of the Property was adequate to apprise the community of Georgetown, Delaware that the Property was in their

[13] *Id.* at 30.
[14] *Id.*
[15] *Marvel v. Barley Mill Rd. Homes,* 104 A.2d 908, 912 (Del. Ch. Apr. 28, 1954).

exclusive use and enjoyment, so as to put Plaintiff on inquiry notice as to the nature and extent of the invasion of her ownership rights. Defendants' possession of the Property comported with the usual management of back yards by owners of improved property and was therefore sufficient.

I therefore give Defendants' testimony and other evidence more weight than that of Plaintiff on this element.

5. Continuity of Possession

The events discussed above began in 2001 when Plaintiff and Ms. Spencer jointly acquired the Gordon Parcel, until later in 2001 when Ms. Spencer acquired the Gordon Parcel, until 2009 when Defendants acquired the Gordon Parcel, until today, for a total of 25 years. This more than satisfies the 20-year required period of continuous possession.

Moreover, Plaintiff, Ms. Spencer, and Defendants were all in privity, and Delaware law expressly permits tacking of successive users where privity exists.[16]

I therefore give Defendants' testimony and other evidence more weight than that of Plaintiff on this element.

C. Attorneys' Fees

In her Motion for Summary Judgment, Plaintiff requested an order awarding Plaintiff reasonable attorneys' fees. In their Answering Brief, Defendants objected

[16] *Treherne v. Forsight, LLC*, 2022 WL 2057563, at *7 (Del. Ch. June 6, 2022).

to such an award.

Delaware courts award attorneys' fees for bad faith litigation only in exceptional cases.[17] This is not one of them. Defendants have not acted in bad faith in asserting a colorable counterclaim and equitable defenses against Plaintiff, supported by evidence and longstanding use. Thus, it is unnecessary for me to determine the amount of any such fees.[18]

VII. CONCLUSION

For the reasons discussed above, I find that Defendants have satisfied each element of adverse possession, by clear and convincing evidence, for purposes of acquiring a prescriptive easement on the Property. Defendants shall, at their own expense, but with review by Plaintiff, prepare documents of title consistent with this Opinion. The parties should submit to me a form of Order consistent with this Opinion within thirty (30) days hereof.

No attorneys' fees and costs will be awarded to Plaintiff in this case.

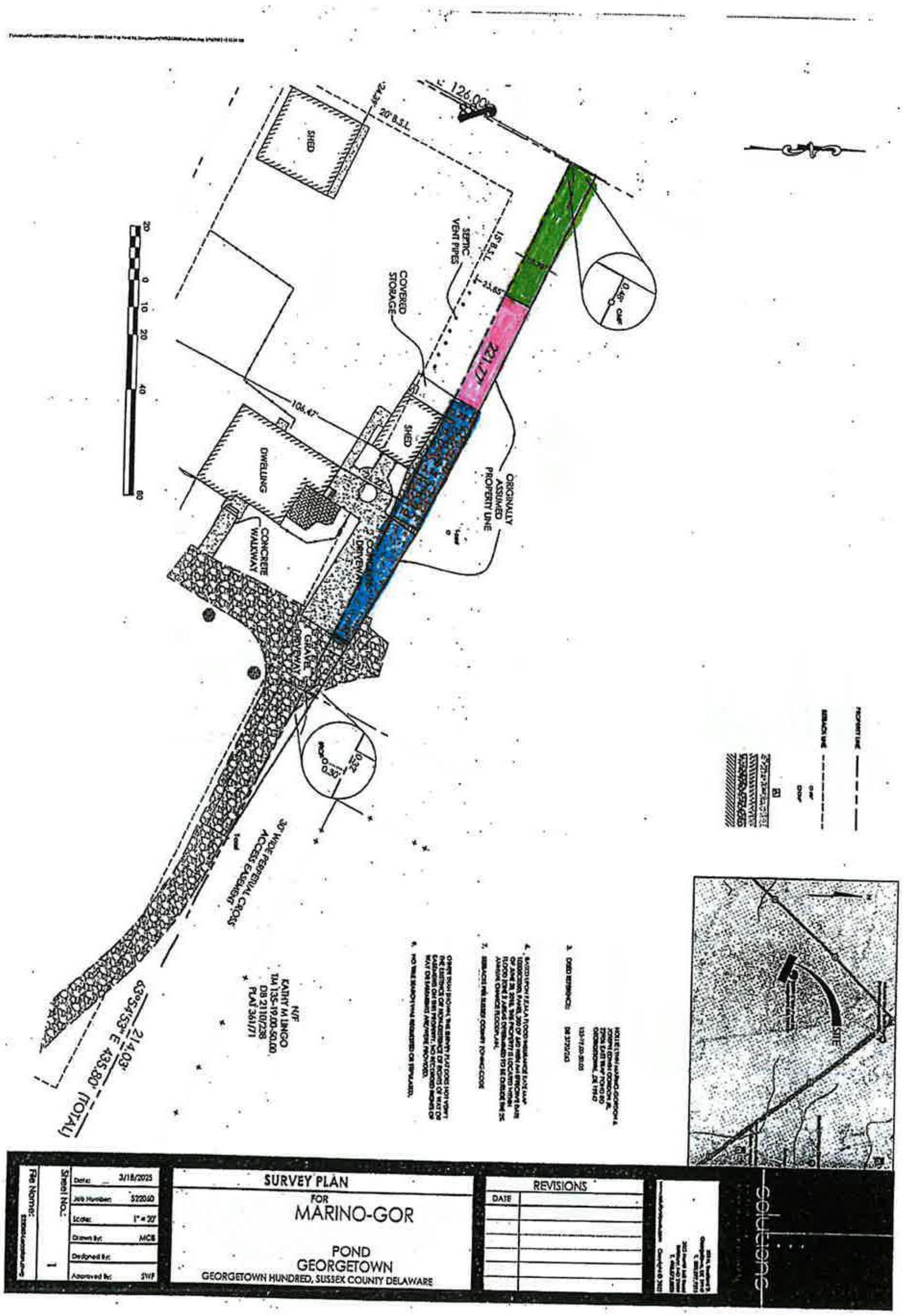
IT IS SO ORDERED.

/s/ Craig A. Karsnitz

cc: Prothonotary

[17] *Beck v. Atl. Coast PLC*, 868 A.2d 840, 851 (Del. Ch. Feb. 11, 2005).
[18] Under the ten factors of *General Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973).

EXHIBIT A


SURVEY PLAN
FOR
MARINO-GOR
POND
GEORGETOWN
GEORGETOWN HUNDRED, SUSSEX COUNTY DELAWARE
REVISIONS
DATE
Date: 3/18/2025
Sheet No.
1
File Name:
DWELLING
SHED
COVERED STORAGE
SEPTIC VENT PIPES
ORIGINALLY ASSUMED PROPERTY LINE
CONCRETE WALKWAY
GRAVEL DRIVEWAY
30' WIDE PERPETUAL CROSS ACCESS EASEMENT
20' B.S.L.
15' B.S.L.
126.00'
106.47'
221.77'
N/F
KATHY M LINGO
214.03'
435.80' (TOTAL)