

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOSEPH W.C. MURRAY, JR. and
DANIELLE F. MURRAY,

Plaintiffs,

V.

NIKOLA PRERADOVIC, RADE
PRERADOVIC, and ZELJKA
PRERADOVIC,

Defendants.

C.A. No. 2023-0601-LM (KSJM)

MEMORANDUM OPINION

Submitted: August 17, 2026

Decided: October 30, 2026

Josiah R. Wolcott, CONNOLLY GALLAGHER LLP, Newark, Delaware; *Counsel for Plaintiffs Joseph W.C. Murray, Jr. and Danielle F. Murray.*

Nikola Preradovic, Rade Preradovic, and Zeljka Preradovic, Self-Represented.

McCORMICK, C.

The parties are neighbors. A fence separates their backyards, but it does not trace the property line. Rather, it encroaches at an angle into the defendants' yard, forming a triangular strip of disputed land. Although the fence encloses much of the disputed area, a portion lies outside of the fence, extending to the cross street. This open area of the disputed land contains a raised planter enclosed by stacked stones flanked by a small strip of grass. The plaintiffs filed this action for quiet title over the disputed area based on a claim of adverse possession. The parties tried this case before a Magistrate Judge, who recommended judgment for the plaintiffs as to the fenced-in portion of the property but not as to the open area with the planter and strip of grass. The parties filed exceptions to the Magistrate's report, beginning what is in essence an intra-court appellate process. Before me on exceptions, the plaintiffs argued that the Magistrate erred in denying them ownership of the unfenced land. The defendants argued that the Magistrate erred in dividing the property and ruling in the plaintiffs' favor on any portion of the land. I have considered the record *de novo*, as I must,¹ and augmented the record through a site visit, during which I studied the disputed property. Through this decision, I enter judgment for the plaintiffs on all issues.

¹ See *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999) (“[T]he standard of review for a master's findings—both factual and legal—is *de novo*.”).

I. FACTUAL BACKGROUND

This decision draws facts from the evidence presented to the Magistrate Judge at trial, including 52 trial exhibits and testimony from eight witnesses, and from my observations during a site visit conducted after reassignment.²

A. The Parties

Spouses Joseph W.C. Murray, Jr. and Danielle F. Murray (together, “Plaintiffs”) moved into the home at 23 Pinedale Road, Newark, Delaware around December 1, 1998.³ They purchased 23 Pinedale from the Burkerts, who had lived there for the preceding 18 years.⁴

Spouses Rade Preradovic and Zeljka Preradovic purchased the property at 234 South Dillwyn Road, Newark, Delaware in December 2022 with their son, Nikola Preradovic (collectively, “Defendants”).⁵ They purchased 234 South Dillwyn from the Orths, who bought the property in 1964.⁶ Nikola lives at 234 South Dillwyn, and Rade and Zeljka live nearby.⁷

² I conducted a site visit to the disputed area on August 17, 2026. This decision cites to: C.A. No. 2023-0601-LM docket entries (by docket “Dkt.” number); Plaintiffs’ trial exhibits (by “PX-” number); Defendants’ trial exhibits (by “DX-” number); the trial transcript, Dkt. 86 (“Trial Tr.”); and the site visit transcript, Dkt. 102 (“Site Visit Tr.”). For clarity, this decision uses first names or initials to identify the Murrays and the Preradovics when relevant. I intend no familiarity or disrespect.

³ Trial Tr. at 30:23–31:2 (D. Murray); *id.* at 174:17–21 (J. Murray).

⁴ PX-1 at M0001–02; Trial Tr. at 24:7–25:4 (D. Murray); *id.* at 107:22–108:6 (Burkert).

⁵ DX-1 at P1; Trial Tr. at 227:23–228:3 (Z. Preradovic).

⁶ DX-1 at P1–2.

⁷ Trial Tr. at 227:19–228:7 (Z. Preradovic).

B. The Disputed Area

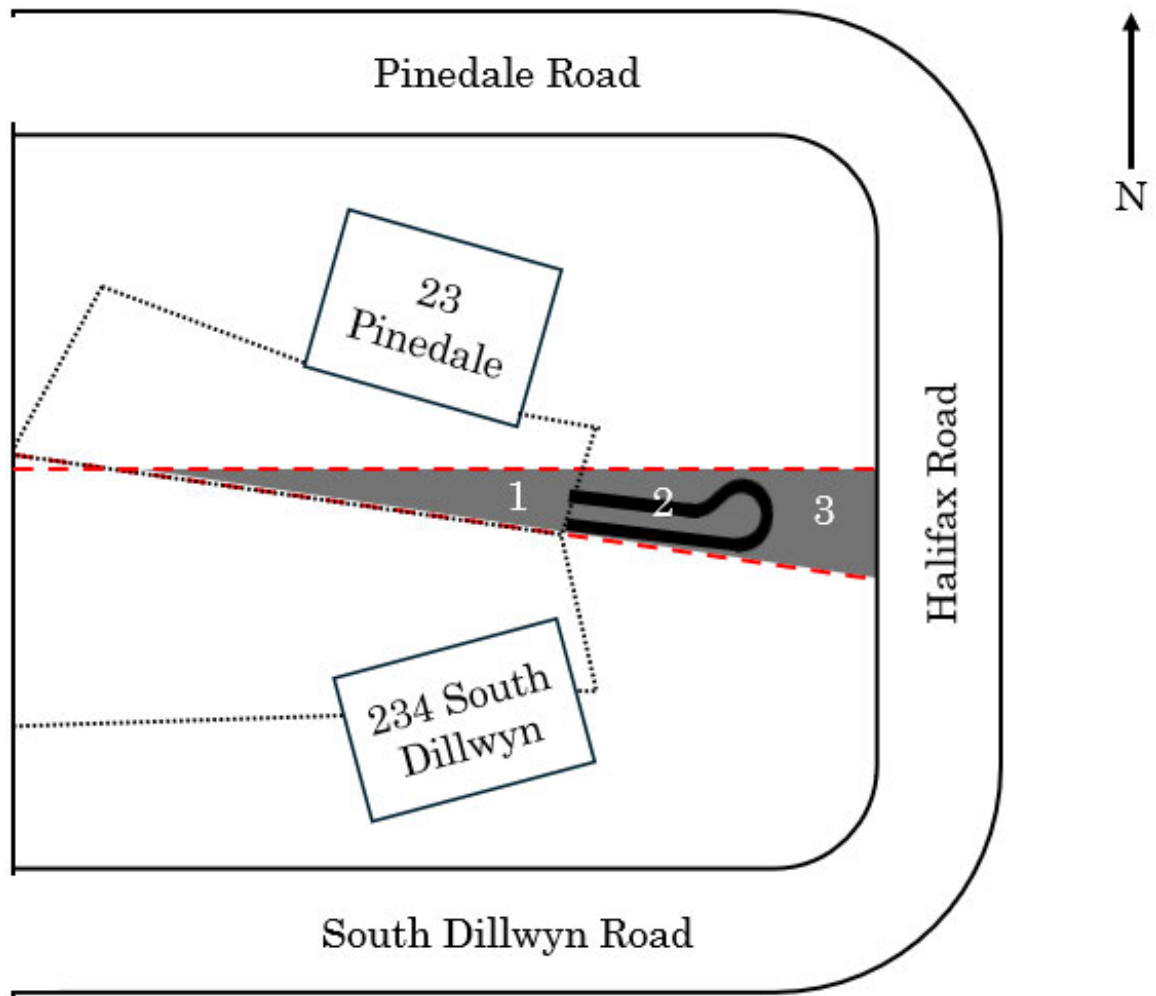
The land in dispute is a triangular area between 23 Pinedale (to the north), 234 South Dillwyn (to the south), and Halifax Road (a public road abutting both properties to the east).⁸ The first side of the triangle is the property line, running due east from the properties' western boundaries to Halifax Road.⁹ The second side of the triangle follows the line drawn by a fence through 234 South Dillwyn, running east-southeast and extending in a straight line toward Halifax Road.¹⁰ The triangle's third side runs roughly north to south along Halifax Road.¹¹ The court-created diagram included below, which is not to scale, marks the triangular area in dispute with grey shading.

⁸ PX-5 at M0052; DX-2 at P3; DX-7 at P23–26; DX-8 at P45, 48; PX-23 at M215; PX-26 at M234; Trial Tr. at 183:8–24 (J. Murray).

⁹ PX-2 at M003.

¹⁰ *Id.*; PX-5 at M0052.

¹¹ PX-2 at M003; DX-8 at P48; *see also* PX-26 at M234 (diagram depicting a proposed lot line adjustment between 23 Pinedale and 234 South Dillwyn).



Part of the disputed area (marked with a “1” on the diagram) is enclosed by a fence that encroaches into 234 South Dillwyn at an angle before turning back toward the driveway of 23 Pinedale, fencing in a backyard and patio area abutting the Murrays’ home.¹² Below and a several inches inside the fence is a stone retaining wall, which faces 23 Pinedale.¹³

¹² See PX-2 at M0003 (lot inspection depicting the encroaching fence); PX-20 at M212 (aerial photo of the property depicting the fence); PX-21 at M213 (depicting the same).

¹³ Trial Tr. at 26:3–10 (D. Murray); PX-7 at M0175, 0181, 0183.

Outside the fence, the remainder of the disputed area contains a planter (marked with a “2” on the diagram) and a narrow strip of grass that runs along the sidewalk parallel to Halifax Road (marked with a “3” on the diagram).¹⁴ The planter is about a foot tall and is made of the same stone as the retaining wall, and the structures share a drainage system.¹⁵ From a bird’s-eye view, the planter’s back edge appears to be an extension of the retaining wall, although the fence divides it from the retaining wall.¹⁶ The back edge of the planter (closest to 234 South Dillwyn) runs in a straight line from the fence toward the sidewalk before curving slightly toward 234 South Dillwyn and then back toward 23 Pinedale, creating a circular bump-out in the shape of a question mark.¹⁷

C. History Of The Disputed Area

The Burkerts purchased 23 Pinedale in 1980 and lived there until they sold it to the Murrays in December 1998.¹⁸ When the Burkerts purchased the property, the encroaching fence was a post-and-rail style.¹⁹ They replaced it with a wooden privacy fence.²⁰ The planter was already located on the property.²¹ The Orths lived in 234

¹⁴ Trial Tr. at 26:3–27:11 (D. Murray); PX-7 at M0180.

¹⁵ Trial Tr. at 26:3–10, 28:14–29:18 (D. Murray); *id.* at 182:23–183:7 (J. Murray); Site Visit Tr. at 35:20–36:9; DX-15 at P419–20.

¹⁶ Trial Tr. at 29:9–18, 270:13–271:2 (D. Murray); *id.* at 182:4–8 (J. Murray).

¹⁷ *Id.* at 27:2–11, (D. Murray); Site Visit Tr. at 4:22–5:4.

¹⁸ Trial Tr. at 107:22–109:13 (Burkert); PX-1 at M0001–02.

¹⁹ Trial Tr. at 112:1–9 (Burkert).

²⁰ *Id.* at 112:5–23 (Burkert).

²¹ *Id.* at 113:11–21 (Burkert).

South Dillwyn, next door to the Burkerts.²² The Orths did not maintain any part of the disputed area and only maintained the grass up to the back of the planter.²³

When considering whether to purchase the property, the Murrays hired Zebley & Associates, who conducted an inspection dated August 28, 1998.²⁴ The inspection showed that the fence from 23 Pinedale encroached nearly nine feet into 234 South Dillwyn.²⁵ During the settlement process, the Burkerts represented to the Murrays that a fence had encroached on 234 South Dillwyn since the houses on the properties were built.²⁶ Behind the wooden fence, on the 234 South Dillwyn property, stood a chain-link fence and a bamboo thicket.²⁷ The Orths or their tenants removed the chain-link fence and the bamboo sometime around 2011.²⁸

When the Murrays purchased the property, there was a six-foot-tall wooden privacy fence in essentially the same location as the current structure.²⁹ At that time,

²² *Id.* at 151:17–152:11 (Orth).

²³ *Id.* at 116:13–22 (Burkert); *id.* at 153:16–155:12, 169:20–170:1 (Orth).

²⁴ PX-2 at M003; Trial Tr. at 25:9–18 (D. Murray).

²⁵ PX-2 at M003.

²⁶ Trial Tr. at 77:22–78:9, 88:2–6 (D. Murray).

²⁷ *Id.* at 31:11–17, 34:12–35:2, 37:6–12; (D. Murray); *id.* at 112:1–4 (Burkert); *id.* at 158:6–13 (Orth); PX-7 at M0067, 0071.

²⁸ Trial Tr. at 49:1–8 (D. Murray); *see also id.* at 158:6–13 (Orth) (recalling that at some point the Orths removed the chain-link fence and bamboo behind 234 South Dillwyn); *id.* at 193:10–11 (J. Murray) (“The bamboo was removed by whoever was living in 234 [South Dillwyn] in around 2011.”); PX-7 at M0095 (picture from August 2012, showing there was no chain-link fence or bamboo in the back of 234 South Dillwyn).

²⁹ *See* Trial Tr. at 29:21–30:3 (D. Murray) (testifying that “there was a fence in roughly the same location that [the Murrays] currently have a fence”); *id.* at 35:24–

the retaining wall and planter were already in place, and the planter contained trimmed ivy, two azaleas, a Japanese Maple tree closer to the fence, and another tree in the bump-out area near the sidewalk.³⁰ Behind the planter, on the 234 South Dillwyn property, were several trees that were occasionally overgrown.³¹ The Preradovics removed the trees in 2023.³²

Inside the fenced-in portion of the disputed area are flower beds that Danielle has maintained since she moved in.³³ That area contained a large tree, which was struck by lightning in 2012, causing damage that the Murrays' insurance paid to repair.³⁴ The Murrays removed or replaced several other trees within the fenced-in portion of the disputed area.³⁵ Joseph also removed bamboo shoots that grew inside the fence and retaining wall area.³⁶

In 2007, the Murrays replaced portions of the fence with a similar design in roughly the same location as the fence that was on the property when they purchased

36:2 (D. Murray) (testifying that the Murrays did not move the fence between 1998 and 2006); PX-7 at M0067–73 (photographs depicting the fence before 2007).

³⁰ Trial Tr. at 27:19–28:3 (D. Murray).

³¹ *Id.* at 41:20–43:8, 91:4–15 (D. Murray); *id.* at 191:2–9 (J. Murray); PX-7 at M0136, 0183; DX-6 at P20–22.

³² Trial Tr. at 74:15–76:4 (D. Murray); *id.* at 240:24–242:22 (Z. Preradovic); *id.* at 247:18–248:5 (R. Preradovic).

³³ *Id.* at 45:19–46:9, 51:15–19 (D. Murray); PX-7 at M0073, 0145.

³⁴ Trial Tr. at 31:9–24, 38:22–39:15, 40:21–41:8 (D. Murray); PX-7 at M0067, 0069, 0073, 0095.

³⁵ Trial Tr. at 92:21–93:9, 94:21–95:6 (D. Murray).

³⁶ *Id.* at 177:10–23 (J. Murray).

it.³⁷ In 2022, the Murrys again replaced portions of the fence and made repairs to the retaining wall.³⁸

After moving in and before May 2007, Joseph would mow and edge 23 Pinedale's lawn, including in the area around the planter and the strip of grass adjacent to the sidewalk.³⁹ Since May 2007, the Murrys have paid Martin Foster to maintain their yard, including mowing the grass in the disputed area and weed whacking around the planter.⁴⁰ Except in the winter months, Foster has continuously performed this work.⁴¹ When it snowed, the Murrys would shovel the sidewalk up to a point in line with the back of the planter.⁴²

With the help of landscapers, Danielle would periodically maintain the ivy inside the planter so it would not get too overgrown.⁴³ Since moving in, she has maintained the existing plants and placed additional plants inside the planter.⁴⁴

³⁷ *Id.* at 36:3–10 (D. Murray); PX-7 at M0082–92; *see also* PX-9 at M0080–81 (September 24, 2006 letter to the Murrys from a contractor regarding the replacement of the fence at 23 Pinedale).

³⁸ Trial Tr. at 44:21–45:5, 47:1–5, 48:22–49:21 (D. Murray); PX-13 at M0170–72.

³⁹ Trial Tr. at 60:16–61:8 (D. Murray); *id.* at 176:11–177:6 (J. Murray).

⁴⁰ *Id.* at 15:19–22, 18:10–20:1, 23:14–16 (Foster).

⁴¹ *Id.* at 20:2–13 (Foster); *see also* PX-25 at M226 (spreadsheet listing the Murrys' 2023–2025 payments to Foster for lawn care services, indicating that Foster worked between April and September).

⁴² Trial Tr. at 43:16–44:3 (D. Murray); *id.* at 176:11–177:6 (J. Murray).

⁴³ *Id.* at 53:14–54:14, 56:24–57:15, 84:19–85:3 (D. Murray); *see also* PX-24 at M225 (listing payments by the Murrys to RT Skinner Landscaping for home gardening services beginning in September 2005).

⁴⁴ Trial Tr. at 190:10–17 (J. Murray) (describing the Murrys' maintenance of the planter, including removing bamboo and cutting back the ivy); Site Visit Tr. at 7:18–22 (describing Danielle's efforts to trim back the ivy).

Joseph would remove bamboo that grew in the planter area and trim the Japanese Maple.⁴⁵ The Murrays also removed the tree from the bump-out area of the planter.⁴⁶

Sometimes, the ivy and trees behind the planter would get “a little wild,” which the Murrays did not mind because the growth acted as a privacy screen between 23 Pinedale and 234 South Dillwyn.⁴⁷ Between 1998 and late 2022, the Murrays or someone they hired were the only people to undertake maintenance or landscaping inside the disputed area.⁴⁸

D. Attempts To Resolve The Dispute

In 2022, the Preradovics commissioned a survey in connection with their purchase of 234 South Dillwyn.⁴⁹ The survey showed that the wooden fence encroached beyond the property line of 234 South Dillwyn.⁵⁰ The Orths’ realtor for the sale of 234 South Dillwyn sent a letter to the Murrays dated December 19, 2022, informing them that their fence was over the property line and that the Preradovics were prepared to correct the fence line.⁵¹ The letter also relayed statements by former

⁴⁵ Trial Tr. at 177:10–178:15 (J. Murray).

⁴⁶ *Id.* at 92:21–24 (D. Murray).

⁴⁷ *Id.* at 85:11–21, 87:3–6 (D. Murray); Site Visit Tr. at 26:20–27:4; *see also* DX-6 at P20–22 (photographs depicting vegetation overgrowth in the area behind the planter).

⁴⁸ Trial Tr. at 71:19–72:12, 79:15–24 (D. Murray); *id.* at 184:15–22 (J. Murray); *id.* at 247:9–17 (R. Preradovic); *see also id.* at 153:16–155:12 (Orth) (testifying that he had no recollection of himself or his parents maintaining the planter or mowing the grass in the disputed area).

⁴⁹ DX-2 at P3.

⁵⁰ *Id.*

⁵¹ DX-4 at P325.

tenants at 234 South Dillwyn asserting that the fence was recently installed.⁵² The Preradovics provided the Murrays with three options to resolve the issue: leave the fence as is and purchase the land for \$30,000, move the fence, or remove the fence.⁵³

The Murrays responded on January 15, 2023, stating that the former tenants at 234 South Dillwyn were misinformed because the fence had been in place for over 20 years.⁵⁴ The Murrays indicated that they were confident that they would prevail on an adverse possession claim but recognized that this issue should have been resolved before the sale of 234 South Dillwyn to the Preradovics.⁵⁵ The Murrays offered either to pay for a surveyor and fees to have the property line redrawn or to pay \$3,000 for a permanent easement; otherwise, they were prepared to sue for adverse possession.⁵⁶ The Murrays also discovered that the Preradovics knew of the fence issue and had negotiated \$3,000 off their purchase price.⁵⁷

The Preradovics responded on February 1, 2023, rejecting the proposals to redraw the property lines or create a permanent easement, but they indicated that they were open to a sale of the land.⁵⁸ The Preradovics also requested the Murrays' attorney's contact information in the event litigation began.⁵⁹

⁵² *Id.*

⁵³ Trial Tr. at 229:5–9 (Z. Preradovic).

⁵⁴ PX-5 at M0049.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*; Trial Tr. at 185:18–186:12 (J. Murray).

⁵⁸ PX-6 at M0053.

⁵⁹ *Id.*

Through March 2023, the neighbors continued to discuss a possibility of an easement or outright purchase.⁶⁰ The Preradovics elected to represent themselves in the dispute (and have done so quite admirably).⁶¹ They also confirmed they would not take any action regarding the fence until they reviewed any proposed easement agreement.⁶² The Preradovics wanted to cut the trees behind the planter because one was leaning toward their house, causing damage to the roof from squirrels.⁶³ The Murrays asked them to refrain from removing any trees until the parties could resolve the situation.⁶⁴

On March 31, 2023, the Preradovics offered to sell the land for \$10,000 or to rent it to the Murrays for \$1,500 annually.⁶⁵ The Preradovics gave a deadline of April 15, 2023, for the Murrays to accept either offer.⁶⁶ The Murrays responded on April 3, 2023, explaining that the deadline was unrealistic because it would take several more weeks to complete a survey.⁶⁷

The Murrays also stated they were now okay with the Preradovics removing any trees behind the planter but requested that the Preradovics mark the trees they

⁶⁰ DX-14 at P17–19.

⁶¹ *Id.* at P18–19.

⁶² *Id.* at P18.

⁶³ Trial Tr. at 228:12–21 (Z. Preradovic); DX-14 at P18.

⁶⁴ *Id.* at P17.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at P16.

intended to remove.⁶⁸ The Murrays informed the Preradovics that they would be liable for any damage incurred during removal.⁶⁹ The Murrays reiterated that their preference was to purchase the disputed area for \$10,000 but proposed that the Preradovics should split the fees related to reforming the deed.⁷⁰ The Murrays stated they would immediately file a lawsuit if the Preradovics removed the fence or any vegetation from the planter.⁷¹

E. This Litigation

The Murrays filed their complaint on June 7, 2023, seeking to establish ownership of the disputed land either through adverse possession, a prescriptive easement, or an easement by necessity.⁷² They also sought expedited proceedings and a temporary restraining order.⁷³

The Magistrate granted the motion to expedite and the temporary restraining order to preserve the status quo.⁷⁴

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Dkt. 1 at 10–12.

⁷³ Dkts. 2, 3.

⁷⁴ Dkts. 17, 21, 22.

The Murrays then agreed to settle this litigation and purchase the disputed area from the Preradovics for \$10,000, reduced to \$7,500 after extra incurred costs.⁷⁵ The parties signed a settlement agreement, but the deal ultimately fell through.⁷⁶

In September 2023, the Murrays asked the Magistrate to enforce the settlement agreement or to order specific performance of the agreement of sale.⁷⁷ They also filed a motion for contempt.⁷⁸ The Magistrate denied the motion for contempt but granted an amended TRO and took the motion regarding the settlement under advisement.⁷⁹ The Magistrate issued a report on May 2, 2024, denying the Murrays' motion, determining that the agreement was unenforceable.⁸⁰ The Murrays entered an exception to the 2024 report.⁸¹ I issued a letter decision on December 9, 2024, adopting the recommendations of the 2024 report.⁸² Not long after, the Preradovics filed a motion to dismiss, which the Magistrate denied.⁸³

⁷⁵ Trial Tr. at 203:22–204:7 (J. Murray); *id.* at 231:7–23 (Z. Preradovic); Dkt. 23, Ex. D.

⁷⁶ Site Visit Tr. at 22:8–11.

⁷⁷ Dkt. 23.

⁷⁸ Dkt. 24.

⁷⁹ Dkts. 36, 38.

⁸⁰ Dkt. 39 at 17–22.

⁸¹ Dkt. 40.

⁸² Dkt. 49 at 1.

⁸³ Dkts. 50, 55.

F. The Magistrate's Report

Trial took place on October 14, 2025, with eight witnesses testifying.⁸⁴ The Murrays submitted 28 exhibits.⁸⁵ The Preradovics submitted 24 exhibits.⁸⁶ The Magistrate took the matter under advisement on November 25, 2025, after submission of closing summations.⁸⁷ The Magistrate issued her final report on March 6, 2026.⁸⁸

The Final Report addressed the land in three categories: (1) the fence and the land enclosed within the fence, (2) the planter, and (3) the grass strip between the planter and Halifax Road.⁸⁹

The Final Report held that the Murrays established the required elements of adverse possession for the enclosed area of the backyard but not for the planter or the grass strip.⁹⁰

As to the area enclosed by the wooden fence abutting the Murrays' home, the Magistrate held that the Murrays met the requirements for open and notorious possession because they and their predecessors maintained a visible, enclosed

⁸⁴ Dkt. 82.

⁸⁵ Dkt. 78, Ex. A.

⁸⁶ *Id.*, Ex. B.

⁸⁷ Dkt. 83 (Plaintiffs' Closing Argument); Dkt. 84 (Defendants' Closing Statement); Dkt. 87 (letter confirming receipt of closing summations and that the matter was taken under advisement).

⁸⁸ Dkt. 89.

⁸⁹ *Id.* at 3.

⁹⁰ *Id.* at 10, 20–23.

backyard.⁹¹ The Murrays demonstrated continuous possession of the enclosed area for well over twenty years as they regularly used and maintained the area inside the fence.⁹² The Magistrate also held that the enclosed area was in their exclusive possession.⁹³ The Murrays established hostile ownership because they consistently maintained and improved the area within the fence, treating it as their own without seeking permission from the true owner.⁹⁴

In the Final Report, the Magistrate held that the Murrays failed to establish open and notorious possession over the planter because the Murrays' maintenance of the front diminished over time and was not continuous as evidenced by the overgrown ivy.⁹⁵ The Magistrate also held that the inconsistent maintenance was not sufficient to prove exclusive possession.⁹⁶ Additionally, the Murrays had not demonstrated exclusivity or hostility because others could access the area in a manner inconsistent with the Murrays exercising true ownership.⁹⁷

As to the grass strip between the planter and Halifax Road, the Magistrate likewise held that the Murrays failed to establish the necessary elements of adverse possession.⁹⁸ The Magistrate found that the Murrays periodically mowed the grass

⁹¹ *Id.* at 10–12.

⁹² *Id.* at 13–16.

⁹³ *Id.* at 17–18.

⁹⁴ *Id.* at 19.

⁹⁵ *Id.* at 12–13, 16–17.

⁹⁶ *Id.* at 18–20.

⁹⁷ *Id.* at 20.

⁹⁸ *Id.* at 20–23.

area but held that was insufficient use for adverse possession.⁹⁹ The Magistrate reasoned that mowing grass does not communicate an assertion of ownership and found that the grass area remained open and sometimes overgrown and was used or accessed by the Preradovics.¹⁰⁰

Likewise, the Magistrate denied the Murrays' claim for a prescriptive easement over the planter and grass strip because the Murrays did not establish continuity, adversity, and exclusivity.¹⁰¹ The Magistrate further found that the Murrays had not established an easement by necessity because the parcel was not landlocked.¹⁰²

G. These Exceptions

The Preradovics noticed exceptions on March 13, 2026.¹⁰³ The Murrays noticed exceptions on March 17, 2026.¹⁰⁴ The Preradovics argued that the Magistrate erred in dividing the disputed property into three separate portions to evaluate, that the Murrays failed to establish each of the elements of adverse possession, and that the Magistrate relied on improper testimony.¹⁰⁵ The Murrays argued that the Magistrate

⁹⁹ *Id.* at 21–22.

¹⁰⁰ *Id.* at 22.

¹⁰¹ *Id.* at 27.

¹⁰² *Id.* at 29–30.

¹⁰³ Dkt. 90.

¹⁰⁴ Dkt. 92.

¹⁰⁵ Dkt. 90 at 2–4; Dkt. 93 at 4–6.

erred in concluding that the Murrays failed to establish adverse possession as to the planter and the grass strip.¹⁰⁶

I reassigned the matter for the limited purpose of resolving these exceptions.¹⁰⁷ The parties presented their arguments on exceptions on July 20, 2026.¹⁰⁸ I conducted a site visit at the Murrays' request on August 17, 2026.¹⁰⁹ I walked and observed the properties, starting with the 23 Pinedale side of the wooden fence before moving to 234 South Dillwyn.¹¹⁰ Both parties were given the opportunity to speak about their properties.¹¹¹ At my direction, court staff took measurements in the disputed area.¹¹² Upon the conclusion of the site visit, I took the matter under advisement.

II. LEGAL ANALYSIS

The core dispute between the parties is ownership over the disputed area. The Preradovics argue that it was improper for the Final Report to subdivide its analysis and award the Murrays possession of the fenced-in portion.¹¹³ The Murrays counter that they have established adverse possession over the entire disputed area.

¹⁰⁶ Dkt. 94 at 19–38.

¹⁰⁷ Dkt. 91.

¹⁰⁸ Dkt. 100.

¹⁰⁹ Dkt. 99; Site Visit Tr at 3:1–24.

¹¹⁰ *See generally id.*

¹¹¹ *See generally id.*

¹¹² *See, e.g., id.* at 16:7–13 (court staff measuring the distance from the encroaching fence to the retaining wall).

¹¹³ To the extent the Preradovics argue the Final Report erred by relying on improper or speculative testimony, this opinion resolves that exception by citing only to the portions of the record containing competent evidence.

A. Whether To Subdivide

The Preradovics argue that the Magistrate erred by subdividing the disputed land to analyze the Murrays' adverse possession claim.¹¹⁴ It is unclear whether the Preradovics argue that the Magistrate committed an error of law or of fact or both.

The Magistrate did not err as a matter of law in subdividing the disputed land. Adverse possession is a common law doctrine that Delaware has codified.¹¹⁵ Courts applying the common law doctrine have done exactly what the Magistrate did—subdivided a disputed area, awarding title only to the subsection where the claimant meets the elements of adverse possession.¹¹⁶ So too has this court when applying Delaware's adverse possession statute.

In *Justice v. McGinn*, for example, neighboring families contested ownership over a triangular tract of land between their properties.¹¹⁷ Petitioners and respondents each claimed formal title, offering competing survey lines as the correct boundary between their properties.¹¹⁸ Each argued in the alternative that the

¹¹⁴ Dkt. 90 at 2.

¹¹⁵ 10 *Del. C.* § 7901; *Acierno v. Goldstein*, 2005 WL 3111993, at *2 n.23 (Del. Ch. Nov. 16, 2005) (“The common law cause of action for adverse possession is codified at 10 *Del. C.* § 7901 . . .”).

¹¹⁶ See, e.g., *Lisiewski v. Seidel*, 899 A.2d 59, 69 (Conn. App. Ct. 2006) (affirming in part and reversing in part a trial court judgment that granted adverse possession to the entire claimed parcel after the appeals court held that the plaintiff had only satisfied the elements of adverse possession as to the southern portion of the parcel); *HSBC Bank (USA) v. Nefedova*, 2013 WL 6870025, at *6 (Mass. Land Ct. Dec. 31, 2013) (allowing in part and denying in part a claim for adverse possession and awarding title to a subsection of the disputed land).

¹¹⁷ *Justice v. McGinn*, 2001 WL 1088760, at *1 (Del. Ch. Aug. 29, 2001).

¹¹⁸ *Id.*

disputed tract was theirs by adverse possession.¹¹⁹ After trial, the court adopted the survey line advocated by the respondents.¹²⁰ The court then evaluated the petitioners' adverse possession claim.¹²¹ Although the petitioners claimed adverse possession over the entire disputed area, the court held that the petitioners satisfied the elements of adverse possession as to only a portion of the disputed land.¹²² The court thus entered judgment for the petitioners as to that subdivided portion.¹²³

The Magistrate committed no legal error, therefore, in doing exactly what the court did in *McGinn*—awarding the Murrys the portion of the disputed land over which, in her view, they had proven the elements of adverse possession.

Yet having observed and walked the area firsthand, I reach a different conclusion than the Magistrate concerning the factual propriety of subdividing the land. On my site visit, I witnessed the reality—that portion of the disputed land outside of the fence forms a cohesive whole with the area inside the fence. The planter outside the fence and the retaining wall inside the fence are effectively one contiguous landscaping feature that share a drainage system and extend into the grassy area.¹²⁴ Given the physical connectedness of the disputed area, I do not believe it is appropriate to subdivide it. If the use and enjoyment, exclusivity, possession, or other

¹¹⁹ *Id.*

¹²⁰ *Id.* at *3–4.

¹²¹ *Id.* at *4.

¹²² *Id.* at *4–5.

¹²³ *Id.* at *5.

¹²⁴ *See Site Visit Tr.* at 35:20–36:9 (describing the arrangement of the fence, retaining wall, and the planter).

aspects relevant to the elements of the Murrays' adverse possession claim differed between the land inside the fence and the unfenced area, perhaps I would reach a different conclusion. As I discuss next, however, the Murrays succeed in proving the elements of their claim as to the entire disputed area.

B. The Elements Of Adverse Possession

The Murrays claim that they have adverse possession over the entire disputed area, not just the fenced-in portion. To gain title to the disputed area by adverse possession, Plaintiffs must demonstrate that their possession over the disputed area was: (1) continuous for twenty years, (2) open and notorious, (3) hostile and adverse, (4) exclusive, (5) and actual.¹²⁵ Many of these elements overlap. The Murrays must satisfy these elements by a preponderance of the evidence,¹²⁶ which requires proof that something is more likely than not.¹²⁷ The Murrays have offered sufficient evidence to carry their burden for each element of their adverse possession claim over the entire disputed area.

1. Continuous For Twenty Years

Continuous use does not require constant use.¹²⁸ If the adverse possessor has access to the property to use when desired, "[t]emporary breaks in cultivation" do not

¹²⁵ *Tumulty v. Schreppler*, 132 A.3d 4, 24 (Del. Ch. 2015).

¹²⁶ *Id.* (citing *Ayers v. Pave It, LLC*, 2006 WL 2052377, at *2 (Del. Ch. July 11, 2006)).

¹²⁷ *Agilent Techs., Inc. v. Kirkland*, 2010 WL 610725, at *13 (Del. Ch. Feb. 18, 2010) (quoting *Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002)).

¹²⁸ *Lewes Tr. Co. v. Grindle*, 170 A.2d 280, 282 (Del. 1961).

destroy continuity absent an intent to abandon ownership.¹²⁹ To interrupt the possession period, the true owner must “oust” the adverse possessor by “entering the disputed property in a way that excludes him.”¹³⁰ Once the twenty-year period has elapsed, a break in possession will not defeat the adverse possessor’s title.¹³¹

Since the Murrays moved into 23 Pinedale in December 1998, and likely for many years prior, a fence has stood in substantially the same location, encroaching at an angle into 234 South Dillwyn. The Murrays provided testimony and photographs of their continued use of this area over time.¹³² They easily meet their burden as to the fenced-in portion of the disputed area.

And for the rest, the evidence adduced at trial supports the finding of continuous possession for the requisite period. Since they moved into their home, the Murrays or their landscapers maintained the area by removing bamboo, trimming nuisance tree branches, mowing the lawn, cutting back ivy, and planting flowers.

The only fact offered at trial that the Murrays’ possession was not continuous was that the vegetation in and behind the planter occasionally appeared overgrown. The Murrays credibly testified that they did not mind the overgrowth as a privacy screen and that they would still trim back the ivy and mow the grass around the

¹²⁹ *Id.*

¹³⁰ *Acierno v. Goldstein*, 2004 WL 1488673, at *6 n.41 (Del. Ch. June 25, 2004).

¹³¹ *See Marvel v. Barley Mill Rd. Homes*, 104 A.2d 908, 913 (Del. Ch. 1954) (“The acquirement of title by right of adverse possession . . . creates a new legal title though not a record title and that title would not be lost by a cessation of possession and continued exclusive possession is not necessary to maintain it.”).

¹³² Trial Tr. at 33:1–38:12, 44:17–47:10 (D. Murray); *id.* at 177:10–23, 186:18–22 (J. Murray); PX-7 at M0067–92, 0145, 0175.

planter. Photographic evidence is consistent with this assertion.¹³³ Also, some of the overgrowth was the result of trees behind the planter, which the Murrays did not consider to be exclusively on their property.¹³⁴ The law does not require meticulously manicured landscaping, and there is no evidence that at any point between 1998 and 2018 the Murrays abandoned their claim or were prevented from using any portion of the disputed area as they wished.

The residents of 234 South Dillwyn did not undertake any activities that could have arguably interrupted the Murrays' possession of the disputed area before late 2022, when the Preradovics began mowing the lawn and cutting back vegetation in the planter. By that point, however, the Murrays had maintained continuous possession for over twenty years, so the subsequent interruption, if it occurred at all, does not defeat the Murrays' claim. The Murrays have proven by a preponderance of the evidence that they enjoyed continuous use over the entire disputed area for over twenty years.

¹³³ See PX-7 at M0136–42 (photographs showing that the ivy inside the planter was trimmed back and the surrounding grass was mowed); DX-6 at P20 (photograph depicting large vegetation growth from the trees behind the planter while the ivy inside the planter appears trimmed).

¹³⁴ See Trial Tr. at 41:18–43:8, 91:7–15 (D. Murray) (testifying as to her belief that the trees behind the planter and fence were on the boundary line between the two properties); *id.* at 191:4–9 (J. Murray) (“[T]he trees that are directly behind the planter were trees that were created during the bamboo fiasco. And we're on the other side of the planter. So they were not our responsibility, nor did we ever have anything to do with them.”).

2. Open And Notorious

Possession is open and notorious if it is sufficient to place the owner and others on notice of the possession.¹³⁵ There is no brightline rule for what type of use is sufficient to provide notice. Courts should consider the nature of the land and whether the possession is consistent with how an actual owner would behave.¹³⁶

Here, the trial record shows the Murrays treated the disputed area as their backyard. They did so in a manner consistent with actual ownership. That is sufficient to put others on notice of their possession.

The fence, literally, looms large in this analysis. It encroaches onto 234 South Dillwyn, annexing a portion of that property into the back patio area of 23 Pinedale. By erecting a fence, the Murrays made it obvious to any observer that they possessed the enclosed portion of the disputed area.

Outside the fence, the planter is the predominant landscaping feature of the disputed area. The weight of the evidence is that the Murrays maintained the planter and the surrounding grass in a manner consistent with ownership.¹³⁷ Inside the planter, the Murrays planted and removed vegetation, trimmed branches, and

¹³⁵ *Tumulty*, 132 A.3d at 27 (quoting *Walker v. Five N. Corp.*, 2007 WL 2473278, at *4 (Del. Super. Aug. 31, 2007)).

¹³⁶ *Marvel*, 104 A.2d at 912.

¹³⁷ See, e.g., Trial Tr. at 53:14–54:14, 56:17–61:8, 84:19–85:3 (D. Murray) (describing the Murrays’ efforts to maintain the planter and the grass strip, including trimming back ivy, planting vegetation, mowing the lawn, and hiring landscapers); *id.* at 177:10–178:15, 190:7–17 (J. Murray) (testifying that he would remove bamboo from the planter, trim back tree branches, and mow the grass strip); Site Visit Tr. at 7:18–22 (Danielle describing cutting back the ivy in the planter).

pruned the ivy. Around the planter they mowed the lawn and weed whacked. They periodically hired landscapers to assist them with this. In sum, the Murrays treated the disputed area as their own and as any reasonable owner would treat their backyard.

The Preradovics say that they never observed the Murrays maintaining their yard, so the possession could not have been open and notorious.¹³⁸ But constant presence within a planter or backyard is not consistent with how owners tend to use their backyard and thus is not required to satisfy the open and notorious element.

During the statutory period, the Murrays maintained the planter and mowed the lawn surrounding it. It would have been obvious to an observer that the ivy was trimmed, the bamboo was kept in check, and the grass was mowed. The owners of 234 South Dillwyn would have been aware that someone was maintaining the disputed area in a manner consistent with ownership. The Murrays owned the only other property adjoining the area. The only reasonable conclusion would be that the Murrays were maintaining the planter and grass strip as their own.

Further, adverse possession is a claim over land, not merely the landscaping features upon it. The encroaching fence, the retaining wall beneath it, and the planter all comprise a contiguous landscaping feature that sits atop the land. The retaining wall and planter share a drainage system that protects the Murrays' land from flooding.¹³⁹

¹³⁸ See Trial Tr. at 237:6–16 (Z. Preradovic) (testifying that Zelkja would walk around the neighborhood and never saw the Murrays maintaining the planter).

¹³⁹ *Id.* at 29:9–18, 72:13–23 (D. Murray).

As I observed during the site visit, these features combine to form the practical divide between 23 Pinedale and 234 South Dillwyn, if not the legal boundary. Orth, Burkert, and the Murrays all testified that they regarded the line formed by the fence and planter as the border between the properties.¹⁴⁰ The Murrays used and maintained the obvious landscaping features demarcating the observed boundary between the properties such that the true owners and general public would have been aware of the Murrays' possession of the land.

Thus, the Murrays have satisfied this element of the adverse possession claim as to the entire disputed area.

3. Hostile And Adverse

“A hostile claim goes against the claim of ownership of all others, including the record owner.”¹⁴¹ The adverse possessor need not declare his intention to take the land; using the property to the exclusion of others establishes hostile use.¹⁴²

¹⁴⁰ See *id.* at 42:20–43:8 (D. Murray) (testifying that the Murrays considered the area behind the fence and the planter as the boundary between the two properties); *id.* at 116:16–18 (Burkert) (“We took care of that area [around the planter] because it looked like it was part of our yard. So we just -- we took care of that whole area.”); *id.* at 168:4–169:7 (Orth) (testifying that the fence had been in the same position for as long as he was aware and that he believed the planter was on 23 Pinedale’s property); *id.* at 186:18–22 (J. Murray) (“Q. Did you consider the area within the fence and the planter to be your property? A. Yes, it had been -- that had been what we had been maintaining and what we had been sold and, to the best of my knowledge, had been ours all along.”).

¹⁴¹ *Ayers*, 2006 WL 2052377, at *2 (internal quotation marks omitted) (quoting *Mitchell v. Dorman*, 2004 WL 117580, at *2 (Del. Ch. Jan. 16, 2004), *aff’d*, 860 A.2d 810 (Del. 2004) (TABLE)).

¹⁴² *Lewes*, 170 A.2d at 282.

The Murrays did not obtain permission to use the disputed area by any resident of 234 South Dillwyn.¹⁴³ Thus, the Murrays' use of the disputed area as their own backyard was hostile.

And as discussed above, the Murrays treated the disputed area as theirs to the exclusion of all others. The fence once again trivializes the analysis as to the area it enclosed. It poses a physical barrier to entry from 234 South Dillwyn.

Likewise, by maintaining the planter and the surrounding grass area, the Murrays were treating the disputed area as their own. It was the Murrays, not the Orths or their tenants, who determined the vegetation in the planter, cut back the ivy, removed the bamboo, and mowed the lawn. Until the Preradovics moved into the property in late 2022, the residents of 234 South Dillwyn did not use the planter or mow the grass around it.

Thus, during the statutory period, the Murrays possessed the disputed area, both the enclosed portion and the portion outside the fence, as their own backyard to the exclusion of all others. Accordingly, the Murrays have satisfied this element of their claim.

¹⁴³ See Trial Tr. at 89:5–8 (D. Murray) (testifying that she has no memory of receiving consent from the Orths to use the disputed area); *id.* at 116:13–117:4 (Burkert) (testifying that the Orths never objected to the Burkerts' use of the disputed area); *id.* at 170:5–10 (Orth) (testifying that he had no knowledge that his parents gave consent for the residents of 23 Pinedale to use the disputed area); *id.* at 188:8–24 (J. Murray) (testifying that he believed the disputed area belonged to 23 Pinedale and that he “didn’t really have any contact with anybody on [234 South Dillwyn]”).

4. Exclusive

“Exclusive possession means that the adverse possessor must show exclusive dominion over the land and an appropriation of it to his or her benefit.”¹⁴⁴

This opinion need not belabor the point. For the same reasons that the Murrays satisfied their burden for the elements of continuous use and hostile and adverse possession, the Murrays have satisfied the element of exclusive use.

5. Actual Possession

“The requirement of actual possession overlaps to a large extent with open and notorious possession.”¹⁴⁵ For the same reasons the Murrays’ possession of the disputed area was open and notorious, it was also actual possession of the area. To put it simply, the Murrays treated the disputed area as their backyard in a manner consistent with true ownership. The law does not require more to satisfy this element of adverse possession. The Murrays have satisfied this element of their claim.

III. CONCLUSION

For the foregoing reasons, the Murrays’ exceptions are granted, and the Preradovics’ exceptions are denied. This case is remanded to the Magistrate to implement an order defining the exact boundaries of the disputed area and awarding title over the disputed area to the Murrays.

¹⁴⁴ *Tumulty*, 132 A.3d at 26 (quoting *Walker*, 2007 WL 2473278, at *4).

¹⁴⁵ *Id.* at 30.