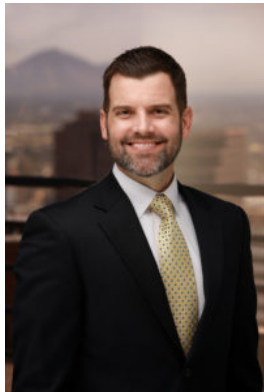


ARIZONA LAW RECOGNIZES CAUSE OF ACTION FOR BOUNDARY BY ACQUIESCENCE

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Beck v. Neville

Arizona Supreme Court

January 9, 2024

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In *Beck v. Neville*, the Arizona Supreme Court recognized a cause of action for boundary by acquiescence and identified the elements of proof for such a claim. The case begins with a boundary dispute between two neighboring property owners, the Nevilles and the Becks. The Becks installed a line of concrete paver bricks on their property in 2004, thus creating the appearance of a new boundary that would have ceded approximately 135 square feet of the Becks' property to the Nevilles. But a boundary dispute did not arise between the two neighbors until 2019.

The Becks sued the Nevilles to quiet title asserting ownership and entitlement to possession of the disputed property; the Nevilles counterclaimed to quiet title on their behalf based on adverse possession and boundary by acquiescence. The trial court granted summary judgment for the Becks, but the court of appeals reversed and remanded for further proceedings based on disputed questions of fact. The Arizona Supreme Court granted review because "the circumstances under which a claimant may quiet title to a portion of a record owner's real property is an important issue of statewide concern."

The Court initially held that claims for boundary by acquiescence are cognizable in Arizona, as the "cause of action has been part of our jurisprudence for decades, albeit sparingly referenced and little discussed." The Court then identified the elements of proof for such a claim, which are: (1) "occupation or possession of property up to a clearly defined line," (2) "mutual acquiescence by the adjoining landowners in that line as the dividing line between their properties," (3) "continued acquiescence for a long period of time," which in Arizona is at least 10 years; and (4) "that the true boundary is disputed or uncertain." The Court further held that "the party asserting a boundary by acquiescence claim bears the burden of proof for each element," and must carry that burden by clear and convincing evidence.

With the foregoing principles in mind, the Court concluded that the Nevilles failed to carry their burden on the boundary by acquiescence claim. The Court reasoned that the true boundary was never in dispute, and "the failure to offer any evidence of an uncertain or disputed boundary means the Nevilles' boundary by acquiescence claim fails as a matter of law." The Court then addressed the other elements "to provide guidance to future litigants and courts," holding that: (1) the Nevilles' limited use of the disputed property was "insufficient to put the Becks on notice that the Nevilles were claiming the entirety of the 135 square feet as their property," (2) "the record does not contain evidence permitting the fact finder to infer that the Becks acquiesced to the pavers as the new property line," and (3) "[a]side from facts establishing the requisite time frame, the evidence produced by the Nevilles in support of the remaining elements is insufficient to prove a boundary by acquiescence claim by clear and convincing evidence."

The Court finally concluded that "there is insufficient evidence to establish a genuine dispute of a material fact regarding the notice required for an adverse possession claim," and that "the Nevilles' claim of ownership is not hostile or exclusive," meaning the adverse possession claim also failed as a matter of law. Accordingly, the Court "vacate[d] the court of appeals' memorandum decision and affirm[ed] the trial court's judgment."

Vice Chief Justice Timmer concurred in part and in the result, objecting to the majority's inclusion of "paragraphs 24 through 26, which cite the Virginia Declaration of Rights, the Declaration of Independence, and federal constitutional jurisprudence to explain the significance of property rights in Arizona—an uncontested issue." The concurrence otherwise "agree[d] entirely with the majority's disposition in this case, including that a plaintiff must prove a boundary-by-acquiescence claim by clear and convincing evidence."

Jonathan P. Barnes, Jr. is a clerkship-trained appellate lawyer with significant experience handling federal and state appeals in all types of civil litigation, including insurance bad faith, medical malpractice, governmental liability, premises liability, employment, family law, and torts. In addition to briefing and

arguing appeals, Jon also assists trial counsel with crafting litigation strategy, preserving the record for appeal, and preparing and arguing complex motions.

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