

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Robert Long, et al.

Court of Appeals No. {48}L-25-00299

Appellees

Trial Court No. CI0202302266

v.

Kelly Meier, et al.

**DECISION AND JUDGMENT**

Appellants

Decided: September 18, 2026

\* \* \* \* \*

Peter A. Dewhirst and Lacey L. Riley, for appellees.

R. Ethan Davis, for appellants.

\* \* \* \* \*

**MAYLE, J.**

{¶ 1} Appellants, Kelly Meier and Michael Meier, appeal the November 17, 2025 decision of the Lucas County Court of Common Pleas granting judgment in favor of appellees, Robert Long and Kathryn Long, on the Longs’ adverse possession and tree-damage claims. For the following reasons, we affirm in part and reverse in part.

## **I. Background and Facts**

{¶ 2} The Meiers and the Longs are neighbors who own adjacent parcels of property on Neapolis Waterville Road in Whitehouse, Ohio. Their shared lot line runs north to south from Neapolis Waterville Road in the south to some fields that abut the properties in the north and is approximately 340 feet long. The Meiers' property is to the west of the line and the Longs' property is to the east of the line. Along the property line are several features that are pertinent to our analysis. Most notable of the features is a fence that the Meiers installed in 2022, which runs parallel to the surveyed property line. Part of the fence is split rail and part is white vinyl. To the west of the fence, in the Meiers' front yard, is a flowerbed outlined with landscaping timbers. North of that, near the middle of the yards, is a wooden post (the "satellite post") near a large tree. Somewhere to the north of the flowerbed are two sections of white lattice.<sup>1</sup> Until the Meiers installed the fence in 2022, a wooden post (the "northern post") stood in the northwest corner of the Longs' yard and the northeast corner of the Meiers' yard. Directly south of the northern post was a white spruce tree that stood on the property until the Meiers installed the fence in 2022. The Longs maintain a large garden in the northwest corner of their yard.

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<sup>1</sup> It is unclear from the testimony where the lattices are in relation to the satellite post and large tree.

{¶ 3} This case arose from a dispute between the Meiers and the Longs regarding the ownership of a strip of land on the eastern edge of the Meiers' property that is approximately four feet wide and runs the length of their parcel. The disputed land is from the surveyed property line (which is five inches to the east of the fence line) west to a line marked by the landscaping timbers, the satellite post, and the northern post.

{¶ 4} The Longs filed a complaint alleging that they had adversely possessed the disputed land, seeking to quiet title to the disputed land, seeking damages under R.C. 901.51 for the Meiers' removal of the white spruce tree that the Longs believed was on their property, and seeking damages under R.C. 971.08 for injuries the Meiers caused by installing a fence on the Longs' property.<sup>2</sup>

{¶ 5} The case was tried to the court. The Longs presented the testimony of Gloria Yarad, and each testified in their own behalf. As relevant to the claims on appeal, the Meiers presented the testimony of Waynette Howery and Kelly Haynes and the deposition testimony of Larry Howery, and each testified in their own behalf.

{¶ 6} Robert Long testified that he and his wife, Kathryn, moved into their home in October 1994. They did not obtain a survey when they purchased the property. A plat survey from 1981 showed that the property line was 35.7 feet from the edge of the Meiers' house and 10.4 feet from the edge of the Longs' house. Robert did not see the plat survey before he and Kathryn bought the house. In 2022, shortly after the Meiers

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<sup>2</sup> The Longs filed several other claims against the Meiers, and the Meiers filed several counterclaims against the Longs, which are not at issue in this appeal.

had their property surveyed, the Longs obtained a survey of their property. The survey includes some property features, including a split-rail fence, which is shown on the Longs' side of the property line, and a garden in the back, northwest corner of the Longs' property, which is 1.1 feet east of the property line. The Longs maintained the garden; neither the Meiers nor their predecessors maintained the garden. The Longs would mow to the west of the garden with a riding lawn mower. The mower had a 42-inch deck, and they would mow two strips to the west of the garden with the mower.

{¶ 7} Robert first learned of the purported property line in late spring 1995 from their neighbor, Larry Howery, who lived in the Meiers' home from before the Longs bought their home until 2005. Larry told Robert that the landscape timbers he was installing at the front of his property, near the southeastern corner, marked the property line. Robert also understood that a round wooden post about five inches in diameter and approximately four feet tall that stood at the northwest corner of his parcel (i.e., the northern post) marked the corner of his property. The northern post was in place from 1994 until 2022. Robert planted a white spruce sapling directly south of the northern post to place the tree on the property line because he believed that the post reflected the true corner. He had not seen iron pins at the corner before the Meiers' 2022 survey. He relied on the northern post and Larry's statements for the location of the property line. There was a second wooden post, about 20 to 25 feet north of the landscaping timbers, that Larry installed for a satellite dish (i.e., the satellite post) that Robert thought was on the property line because "knowing Larry, he pretty much would put it on the property line."

The satellite post was three to four feet to the west of the split-rail fence. There was a large tree to the east of the satellite post.

{¶ 8} Regarding the three- to four-foot strip of land between the satellite post and the split-rail fence, Robert claimed that he and Kathryn maintained the area from 1994 to 2020 because “[n]o one else would maintain it so we started maintaining, weeding, cutting back Poison Ivy [sic], [and] trimming shrubs . . . .” He claimed that “no one contested” their maintenance of the area.

{¶ 9} To the east of the split-rail fence and west of the Longs’ house is an area of the yard that the Longs used “temporarily” to unload supplies for their house or materials for remodeling through a side door. Kathryn used the area for parking more than Robert did. Since the split-rail fence was installed in 2022 or 2023, Kathryn tried to use the area for parking. She “barely squeezed it in, but once you’re in there, you can’t even open your doors to get out.” The fence is approximately 10 feet from the side of the Longs’ house. The Howerys did not use the area to the west of the Longs’ house while they lived next door. However, the next owners, the Yarads, used the area but did not maintain it.

{¶ 10} Regarding the white spruce tree, Robert said that he planted it directly south of the northern post in the back corner of his lot in 1994, and the tree grew there uninterrupted until 2022. He planted the spruce directly south of the post with the intention of putting it directly on the lot line. It grew to 15 or 16 feet tall. It was removed by someone around Halloween of 2022. He assumed that the Meiers removed

it, but he did not see the tree being removed because it was done at night. The Meiers did not ask the Longs' permission to tear down the spruce. According to Robert, his family had buried pets near the spruce, and it was a "memorial tree." Robert told Michael about the spruce being a memorial tree and said that it was on the property line. This conversation happened within the first year or two after the Meiers moved in. A photo Robert took after the tree was removed showed that the hole left by the tree was inside the survey stakes put out by the Meiers' surveyor.

{¶ 11} After the tree was removed, Robert got a quote from a landscaping company to replace it. If the company were able to find a white spruce that was 14 to 15 feet tall, it would cost \$3,841.29 for the tree and its installation.

{¶ 12} On cross-examination, Robert admitted that the 1981 survey set iron bars at the corners of the parcels and that the Longs' 2022 survey used the same iron bars.

{¶ 13} Robert thought that the Meiers' fence was about 1.5 feet from the Longs' garden in the back of the property.

{¶ 14} Robert acknowledged a photograph showing an iron pin with the wooden post to its right and the spruce's base in front of the post but maintained that he had been told that the post indicated the line. He also claimed that he had never seen an iron pin there before the Meiers' 2022 survey. He admitted, however, that the post and tree in the photograph were to the west of the pin.<sup>3</sup>

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<sup>3</sup> The trial court ultimately excluded this photograph, defendants' Ex. 5, from evidence for lack of authentication, so it is not in the record for us to consider.

{¶ 15} Robert acknowledged that Kathryn's vehicle fit in the area between the split-rail fence and the Longs' house.

{¶ 16} Robert disagreed with Larry's claim in his deposition that he mowed to the east of the landscaping timbers.

{¶ 17} Kathryn Long testified that she and her husband, Robert, understood the western boundary of their property by physical markers placed by the neighbors and identified by the neighbors shortly after the Longs moved in. This included wooden landscape timbers that Larry installed in 1995, which he told the Longs he had installed on the property line. He also indicated that some flower beds to the west of the satellite post in the middle of the yard were the Longs', so Kathryn maintained those beds. Finally, their understanding of the boundary line included the northern post at the rear of the property. The post was at the northwest corner when Robert planted a white spruce sapling in approximately 1996, which she saw him plant. After disputes with the Meiers arose in 2022, she and Robert measured nearby corn at 14 feet tall and believed that the spruce was about two feet above the corn, making the tree approximately 16 feet tall.

{¶ 18} Kathryn denied seeing any metal survey pins in the corners of her yard and relied on the northern post and Larry's statements to locate the boundary. She denied telling Michael that a large tree in the middle of the yard marked the boundary line. Instead, she told him that the white spruce at the back, which was north of the northern post, was on the line. Kathryn claimed that the spruce was a memorial tree for their pets

and that they had animals buried in the area of the tree. The Meiers later removed the spruce despite knowing this information.

{¶ 19} Kathryn testified to continuous use and maintenance of the strip to the west of her home, between her house and what is now the Meiers' split-rail fence, from 1994 until the fence was installed in 2022. She regularly mowed the disputed area from the post<sup>4</sup> toward her house and trimmed overgrowth near the lattice between the properties, while neither of their previous neighbors, the Howerys and the Yarads, maintained that strip.

{¶ 20} Kathryn regularly drove and parked her vehicle along the west side of her house to unload groceries, water bottles, and fuel pellet bags through the Longs' side door. She used this area at least weekly in the years before the Meiers installed their fence. After having surgery in August 2020, Kathryn parked in the west side yard continuously for 30 to 45 days. The Meiers lived next door at that time. The split-rail fence reduced the space available for parking in her side yard, making it impossible to open car doors when parked there. This prevents the Longs from using their side door for loading and unloading.

{¶ 21} Gloria Yarad owned and lived in the Meiers' house from 2005 until late 2019. She testified that she understood that a wooden post near some sections of white lattice (i.e., the satellite post) marked the lot line, with her property to the west and the

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<sup>4</sup> It was unclear from Kathryn's testimony which post she was referring to.

Longs' to the east. From 2005 to 2019, the Longs maintained and mowed the area east of that post. They also mowed the strip between their garden and the Yarads' garden at the north end of the property. Additionally, the Longs mowed to the east of the landscaping timbers at the south end of the property.

{¶ 22} Yarad recognized the spruce tree at the far north end of the property, near the fields. She assumed that it was on the Longs' property. Yarad's husband mowed their yard but did not mow at the north end by that tree.

{¶ 23} Yarad frequently observed Kathryn driving a vehicle along the west side of the Longs' house several times a week to unload groceries, water, and fuel pellet bags. Robert also used that area to park and unload fuel pellets.

{¶ 24} On cross, Yarad acknowledged that Kathryn was a close friend who mowed Yarad's grass after her husband died. She reiterated that Kathryn usually mowed areas near and between the gardens in the back of the property, although she acknowledged that her husband sometimes mowed that area.

{¶ 25} Yarad's husband talked to Larry about the property line a couple of times.

{¶ 26} Waynette Howery owned and lived at the Meiers' property from June 1990 to June 2005. The Longs moved in next door around 1994. Waynette said that her husband Larry, who was deceased by the time of trial, handled lawn care. Larry located a metal rod near the road marking the front boundary and a wooden post near the Longs' garden (i.e., the northern post) marking the rear boundary. When Larry mowed, he "mowed right to the property line, so he mowed right up to [the Longs'] garden." The

landscaping timbers at the front of the lot were set inside of the property line, not on it. Waynette believed that the line of survey stakes shown in one of the exhibits extended slightly to the right of the front garden. She recognized two sections of white lattice that were there when she lived in the Meiers' house. She recalled Larry mowing and weed whipping around the lattices but could not say how far the property line was from them. Larry trimmed the "big tree" in the middle of the lot, so Waynette knew that the tree was on their property. Waynette "assumed" that Larry weed whipped the area between the big tree and the split-rail fence (which was not there when the Howerys lived in the house).

{¶ 27} Waynette never saw the Longs drive vehicles through the space between the homes. She never saw the Longs maintain the middle strip or her front garden area and claimed that Larry always did that work. She did not have any conversations about boundary lines with the people who bought the house from the Howerys or with the Longs. According to Waynette, Larry mowed to the line identified by the front metal rod and the northern post, with the rear marker being a post, not a pin.

{¶ 28} On cross, Waynette clarified that her knowledge of the lot line was based on the northern post near the Longs' garden and the front metal pin that Larry had found. She did not recall a pin in the back and confirmed that the northern post marked the lot line. She knew that the landscaping timbers were not on the lot line because Larry "never put stuff on the lot line. He moved things in from the lot line." She denied planting a tree by the northern post and had no knowledge of whether Robert did so. She and Larry

knew where the lot line was based on the mortgage survey they received when they closed on the house, the metal pin Larry found in the front corner, and the northern post in the back corner. She did not recall when Larry found the front pin.

{¶ 29} The parties stipulated to the court's admission and use of Larry Howery's deposition. In the deposition, Larry testified that he lived in the Meiers' house from 1990 to 2005. He knew the property's boundaries from a survey he had done when he bought the house. The boundary between the two houses lay closer to the Longs' house, creating more space on his side. Larry confirmed that a fence post at the back corner between the two properties (i.e., the northern post) marked the rear boundary, which was in line with his survey. He thought that the split-rail fence depicted in one of the exhibits was a good representation of the location of the property line.

{¶ 30} Larry identified a small front garden area bounded by landscaping timbers that was west of the Longs' house, which existed when he bought the property and he and his wife maintained. Large trees behind that garden were on his property and he maintained the trees by performing general cleanup and trimming. The Longs never helped with the trees. He did not see the Longs work on the front garden or maintain the area on his side of the boundary while he lived there. He never saw the Longs park or drive in the area between the houses and did not believe a car could fit there.

{¶ 31} Larry was in charge of the mowing while the Howerys lived at the Meiers' property. He consistently mowed his lawn up to the edge of the Longs' backyard garden

because the garden came to the property line. No one objected when he was mowing, and the Longs did not tell him not to mow their property

{¶ 32} On cross, Larry said that he and his wife, Waynette, installed a landscape timber border around the small front garden early in their occupancy. He believed that he installed the timbers before the Longs moved into their home. He denied any agreement or discussions with the Longs establishing the lot line.

{¶ 33} Larry never saw vehicles in the space between the houses and thought a large tree near the Longs' side door, which he believed was on his land, would have prevented vehicles from being in that area. He recalled having a satellite dish mounted on a post on the east side of the property but could not confirm that it was the specific post shown in a photograph. The lot line was closer to the Longs' house than the post in the picture. He did not have any written or oral agreements about the boundary line with the Longs.

{¶ 34} He did not recall mowing the area east of the lattice sections and could not say who raked leaves there. However, on redirect, he said that he could drive his riding mower through the gap behind some shrubs in that area, which he believed that he owned, and he claimed that he always mowed on the back side of the shrubs.

{¶ 35} Kelly Haynes is Larry and Waynette's daughter. She lived at the Meiers' property from 1990 to 2003. During that time, she performed both outdoor and indoor chores. She recalled two sections of white lattice running north to south along what she understood to be the property line. She believed the white lattice belonged to her parents.

She helped maintain the area around the lattice but only on what she understood to be her family's property. When shown a current photograph, she identified a large tree that she remembered from her time at the house. The tree and the area from the fence in the picture toward her parents' house were on her parents' property. She assisted with maintenance in that area, including the tree and everything toward her parents' house.

{¶ 36} Michael Meier testified that he and his wife, Kelly, moved into their home around 2019 or 2020. Their relationship with the Longs was initially "fine" but deteriorated after the Longs complained that his sheds were too close to the property line.

{¶ 37} Michael said that the Longs tried to claim portions of his property and alleged that his dog was on their property, which prompted him to install the fence. When Kathryn mowed the back of the property, she would "always take two paths into [the Meiers'] property." When he mowed, Michael would "reclaim it back" by mowing that area himself. He alleged that Kathryn was trying to "strong arm [them] into a belief that was her property where she wanted it to be. And [Michael] knew it wasn't." Kathryn initially asked his permission to mow a small section in the front yard, near the garden bounded by the landscaping timbers, for a uniform appearance, which Michael granted.

{¶ 38} He saw the Longs drive between the houses only once or twice and denied that Kathryn parked in that area for 30 days. He did not say anything to them when they parked there because they "didn't do it enough for [him] to complain or say nothing."

{¶ 39} Michael maintained the middle strip and built a small fort for his daughter between two pre-existing sections of lattice.

{¶ 40} The parties' dispute about the boundary existed before the Meiers put up their fence. Before the fence existed, Michael "kept recutting the grass" when Kathryn would "cut her side and show ownership[.]" Michael obtained a survey before installing the fence and set the fence five inches inside his property line on the contractor's advice. The fence follows the survey line, just five inches in toward his house. He measured the distance between his house and the fence as 35.2 feet, which was similar to the distance shown on the plat survey of 35.7 feet.

{¶ 41} Michael identified a northeast corner survey pin near a post and tree and testified it was evident the tree was on his property because the post is roughly four inches west of the pin.<sup>5</sup> He removed that tree with a pickup after being told it had to go to place the fence five inches inside the property line.

{¶ 42} On cross-examination, Michael said that his understanding of the eastern lot line before the 2022 survey came from the location of the Longs' back garden, the Meiers' front garden bounded by landscaping timbers, and Kathryn's comment that the large tree in the middle of the property between the houses was the Meiers'. He acknowledged that he did not obtain a survey when they purchased the house and that he relied on statements from Kathryn to initially establish the boundary line.

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<sup>5</sup> This testimony related to excluded Ex. 5.

{¶ 43} Michael reiterated that he cut down the white spruce because the survey showed that it was on his property and placing the fence five inches inside the property line required its removal. He denied prior notice that the spruce belonged to the Longs; they claimed after he had removed it that it was theirs.

{¶ 44} Kelly Meier testified that she heard the other witnesses' testimony about the boundary line and had no reason to doubt Michael's testimony.

{¶ 45} Before the fence was installed, Michael consistently mowed and maintained the grass along the entire disputed strip since they moved in. Since 2021, she saw Kathryn driving through the strip a couple of times.

{¶ 46} Following the trial, the trial court issued its decision finding in favor of the Longs on their claims for adverse possession, quiet title, injuring trees, and damages under R.C. 971.08. The court found the Longs had resided in their home since October 1994. They did not commission a survey of the property when they bought it. At the time the Longs moved in, the Howerys owned and were living in the Meiers' house. When the Howerys purchased their property, they did not commission a survey. The Howerys sold the property to the Yarads in June 2005. Gloria Yarad lived there until late 2019. The Meiers bought the property in April 2020. They did not commission a survey when they purchased the property.

{¶ 47} The Meiers commissioned a survey in August 2022. According to the survey, the northern and southern boundaries of their parcel are 136 feet long, and the western boundary (which abuts the Longs' property) is 370 feet long. The Longs

commissioned a survey in October 2022. According to their survey, the northern boundary of their property is 149.95 feet long, the southern boundary is between 130 and 158.42 feet long, and the eastern boundary (which abuts the Meiers' property) is 369.76 feet long.

{¶ 48} Although the properties were not surveyed until 2022, there were several things on the properties that the Longs, the Howerys, and the Yarads all believed denoted the boundary line. These included the northern post in the northeast corner of the Meiers' yard and the northwest corner of the Longs' yard, the satellite post in the middle of the yard, and the landscaping timbers in the Meiers' front yard. Michael removed the northern post in October 2022. Gloria testified that she was told that the satellite post marked the properties' boundary. She said that the Longs maintained the property east of the satellite post during the entire time she lived next door. The Longs also testified that they maintained the property east of the satellite post. Robert testified that, when Larry installed the landscaping timbers in the spring of 1995, he told Robert that the timbers were directly on the eastern boundary of the Howerys' property. Gloria said that the Longs maintained the area east of the landscaping timbers. Waynette testified that she did not think that Larry put the timbers directly on the property line. She also said that Larry maintained the area east of the timbers, but she was not involved in the lawn care, and Larry usually had it finished before she got home from work.

{¶ 49} Since October 1994, the Longs have maintained a garden in the northwest corner of their property, 1.1 feet east of the boundary line. They testified that they have

continually mowed the lawn surrounding the garden. Waynette thought that Larry mowed the lawn up to the edge of the garden.

{¶ 50} In 2022, the Meiers installed a split-rail fence. The Longs testified that they solely maintained the property between the fence and the satellite post for 26 years, from 1994 to 2020. Gloria also testified that the Longs solely maintained this area while she lived next door.

{¶ 51} The Longs testified that they solely used the area to the west of their house as a driveway from 1994 until the fence was installed. They can no longer use the area as a driveway since the fence was installed. Kathryn also testified that she would park in that area during inclement weather and parked there for at least 30 days following a surgery in August 2020. Gloria testified that she saw both Longs use the area as a driveway, with Kathryn using the area several times a week while Gloria lived next door. Waynette said that she did not see the Longs use the area but also said that she and Larry seldom interacted with the Longs and used the driveway on the opposite side of their property. The Meiers testified that they only saw the Longs use the area a couple of times, but Michael said that he ““didn’t really pay attention.””

{¶ 52} More than 25 years ago, the Longs planted a white spruce tree on the property line, a few inches south of the northern post in the northern corners of the yards. The tree was approximately 15 to 16 feet tall and would cost \$3,841.21 to replace. Michael removed the tree in October 2022 without the Longs’ permission. The Longs each testified that they told Michael before he removed the tree that the tree was planted

on the property line as a memorial to their pets. Michael admitted to removing the tree. He said that the tree was on his property, and the Longs never told him that it was theirs until after he removed it.

{¶ 53} The trial court did not refer to Larry's deposition testimony in its recitation of the facts.

{¶ 54} The court found that the Longs proved every element of their adverse possession claim by clear and convincing evidence. They had acted in a way consistent with true ownership in order to acquire title to the disputed strip of land. Because the Longs had acquired title to the strip of land, the court found in their favor on their quiet title claim.

{¶ 55} Regarding the spruce tree, the court found that Michael, without privilege to do so, recklessly cut down the tree, which stood on the property line of the Meiers' and the Longs' properties. It found the Meiers liable for treble damages under R.C. 901.51, for a damages award of \$11,523.87 on the injuring-trees claim.

{¶ 56} Finally, regarding the Longs' claim under R.C. 971.08, the court found that the Meiers built a fence on the northern end of the property and did not share construction of the fence with the Longs. In building the fence, the Meiers damaged the Longs' property by removing the spruce tree. Thus, the court found the Meiers liable for damages in the amount of \$3,841.29. This brought the total damages award in favor of the Longs to \$15,365.16.

{¶ 57} The Meiers now appeal, raising three assignments of error:

1. The Trial Court’s Judgment in awarding Appellees a four (4’) foot strip of Appellants’ land by adverse possession is against the manifest weight of the evidence.

2. The Trial Court’s Judgment in awarding Appellees treble damages against Appellants for removal of a tree that was located entirely on Appellants’ property is against the manifest weight of the evidence.

3. The Trial Court erred and abused its discretion in awarding Appellees quadruple damages.

## **II. Law and Analysis**

### **A. The trial court erred as a matter of law by finding that the Longs adversely possessed the Meiers’ property.**

{¶ 58} In their first assignment of error, the Meiers argue that, even if all of the Longs’ evidence is fully believed, they did not present evidence that is legally sufficient to establish adverse possession. They contend that mowing, minor landscaping or maintenance, and occasional trespass of a car door are insufficient as a matter of law to prove adverse possession. They also claim that the Longs’ evidence is “legitimately disputed,” so it does not rise to the level of the clear and convincing evidence required for adverse possession.

{¶ 59} The Longs respond that the trial court’s finding that they adversely possessed the disputed strip of land is supported by the manifest weight of the evidence. They contend that the evidence shows that they exclusively possessed the disputed land from October 1994 to July 2022 and openly, notoriously, continuously, and adversely used the land during that time period by maintaining, mowing, weeding, trimming, and

driving and parking vehicles on it. They also contend that the trial court’s finding in their favor shows that the court found their evidence more credible than the Meiers’ evidence.

{¶ 60} We review a judgment following a bench trial under a manifest weight of the evidence standard. *Terry v. Kellstone, Inc.*, 2013-Ohio-4419, ¶ 12 (6th Dist.). In reviewing the judgment, we weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the trial court clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the trial court’s judgment must be reversed. *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 20. As part of this review, we presume that the trial court’s findings of fact are correct because the trial court “is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Seasons Coal Co., Inc. v. City of Cleveland*, 10 Ohio St.3d 77, 80 (1984). We will not reverse a judgment supported by some competent, credible evidence going to all the essential elements of the case as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

{¶ 61} “To acquire title by adverse possession, a party must prove, by clear and convincing evidence, exclusive possession and open, notorious, continuous, and adverse use for a period of twenty-one years.” *Grace v. Koch*, 81 Ohio St.3d 577 (1998), syllabus. Failure to prove any of the elements is fatal to an adverse-possession claim. *Id.* at 579, citing *Pennsylvania RR. Co. v. Donovan*, 111 Ohio St. 341, 349-350 (1924). Each

adverse-possession claim must be decided upon its particular facts. *Oeltjen v. Akron Associated Invest. Co.*, 106 Ohio App. 128, 130 (9th Dist. 1958). The Ohio Supreme court has emphasized that adverse possession is disfavored and that “the elements of adverse possession are stringent.” *Grace* at 580.

{¶ 62} To establish adverse possession, the Longs need not have intended to take the disputed parcel, but they must have intended to occupy and treat it as their own. *NC Ents., LLC v. Norfolk & W. Ry. Co.*, 2026-Ohio-1429, ¶ 13. The use they made of the land must be the same as the true owner would make of it. *Fulton v. Rapp*, 98 N.E.2d 430, 431 (2d Dist. 1950).

{¶ 63} For use to be open and notorious, the “use must be apparent, clearly indicating that possession of the land, if not ownership, is being asserted. An open-and-notorious use must enable the title landowner to have reason to know of the adverse use, though the landowner need not actually know.” *NC Ents.* at ¶ 16. In other words, “[t]here must be something in the acts which accompany possession of property, in order to give constructive notice, which can be seen and understood—something that will induce inquiry—that will naturally raise the question as to who may have rights there.” *Id.* at ¶ 15, quoting *Williams v. Sprigg*, 6 Ohio St. 585, 595 (1856). “An open-and-notorious use must be obvious and apparent enough to hold a title owner accountable for knowing that an adverse possessor is using the land.” *Id.* at ¶ 20. Additionally, the “occupancy must be such as to give notice to the real owner of the extent of the adverse

claim.” *Evanich v. Bridge*, 2008-Ohio-3820, ¶ 8, quoting *Humphries v. Huffman*, 33 Ohio St. 395, 404 (1878).

{¶ 64} Landscape maintenance—such as mowing grass and trimming bushes—is not sufficiently open and notorious to put the true owner on notice that someone is adversely possessing their land. *NC Ents.* at ¶ 22, 26. Nor is planting a single tree, or even several trees. *See Cannone v. Levy*, 1991 WL 274507, \*3 (11th Dist. Dec. 20, 1991) (“Ohio courts have recognized that mere maintenance of the land, such as mowing the grass, cutting weeds, planting a few seedlings, and minor landscaping, is not sufficient to trigger the statutory time period for adverse possession.”); *Robinson v. Armstrong*, 2004-Ohio-1463, ¶ 25 (5th Dist.) (“Mere maintenance of land, such as mowing grass, cutting weeds, planting a few seedlings, and minor landscaping, is generally not sufficient to constitute adverse possession.”). Instead, “[t]he appearance of the property must be altered substantially before simple landscaping will support an adverse possession claim.” *Dreslinski v. Bugary*, 1992 WL 190162, \*1 (11th Dist. Mar. 20, 1992). This is because, as the Supreme Court put it, minor landscaping activities are more akin to hanging laundry—which is not open and notorious enough to put the true owner on notice—than to “unfurling a flag on the land, and keeping it flying so that the owner may see, if he will, that an enemy has invaded his dominions and planted his standard of conquest.” (Cleaned up.) *NC Ents.* at ¶ 20, 22, 26.

{¶ 65} Minor uses of another’s property can combine to rise to the level of supporting an adverse possession claim. For example, we have held that claimants who

cleared paths, regularly traversed the lot to access a road, harvested firewood, and traveled across the property on bikes and motorcycles established adverse possession. *Korenko v. Kelleys Island Park Dev. Co.*, 2010-Ohio-572, ¶ 27 (6th Dist.). Conversely, planting flower bulbs at some unspecified point in time, occasionally removing debris, parking a boat for a period of time, and playing fetch with dogs on the property was not enough to establish an adverse-possession claim. *Id.* at ¶ 28. The Third District has found that using the disputed property for recreation, planting and pruning trees, cultivating asparagus, parking cars, running a go-kart, storing firewood, piling debris, placing burn barrels, and maintaining the property as an owner would was sufficient to put the owner on notice that the claimants were holding the land as their own. *Kaufman v. Geisken Enters., Ltd.*, 2003-Ohio-1027, ¶ 34 (3d Dist.). But the same court found that removing an old fence and trees, planting one tree, erecting a grape arbor, mowing, and slightly encroaching with a garden was insufficient to support an adverse-possession claim. *Crown Credit Co., Ltd. v. Bushman*, 2007-Ohio-1230, ¶ 49 (3d Dist.). And the Fourth District has found that mowing the grass, parking vehicles, and maintaining two clothesline poles on disputed property is not enough to show adverse possession. *Stover v. Templeton*, 1996 WL 112683, \*2 (4th Dist. Mar. 11, 1996). We have likewise found that mowing, occasionally parking cars, and riding horses on a disputed strip does not rise to the level of adverse possession. *Matheson v. Morog*, 2001 WL 85149, \*3 (6th Dist. Feb. 2, 2001),

{¶ 66} Here, even if the Longs’ minor uses of the disputed property are combined, they do not rise to the level of open and notorious use. First, their use primarily consisted of mowing and minor landscaping, including planting the white spruce, which is not sufficiently open and notorious to put the true owner on notice that another is claiming the land. *NC Ents.*, 2026-Ohio-1429, at ¶ 22, 26. Second, the only other use the Longs made of the land was temporarily, intermittently parking on a small part of the disputed strip. This temporary, transient activity is not enough to put the true owner on notice that another is claiming the land because it is not something “that will naturally raise the question as to who may have rights there.” *Id.* at ¶ 15, quoting *Williams*, 6 Ohio St. at 595. In short, the Longs’ minor uses of the disputed property were just that: minor. As the Supreme Court said in *NC Ents.*, at ¶ 22, these activities were more akin to hanging out laundry than planting a flag of conquest, which is insufficient to take another’s property by adverse possession.

{¶ 67} Because the Longs’ uses of the disputed property were not open and notorious, they failed to present competent, credible evidence supporting every element of an adverse possession claim by clear and convincing evidence. Therefore, we find that the trial court’s decision granting them ownership of the disputed area was against the manifest weight of the evidence. Accordingly, we find that the Meiers’ first assignment of error is well-taken.

**B. The trial court’s recklessness finding is supported by the weight of the evidence.**

{¶ 68} In their second assignment of error, the Meiers argue that the trial court abused its discretion by finding under R.C. 901.51 that they recklessly removed the white spruce. They point out that they surveyed the property to ensure that they were putting their fence in the right place, and the survey showed that the spruce was entirely on their property. Thus, they had a good faith basis to believe that the tree belonged to them, and the precautions they took before removing the tree show that they did not act with heedless indifference to the consequences. The Longs respond that the trial court properly awarded treble damages for Michael cutting down the white spruce because they told the Meiers that they planted the tree on the boundary line and used it as a memorial to their dead pets, and Michael cut down the tree without the Longs’ permission at night, in the dark.

{¶ 69} Under R.C. 901.51, “[n]o person, without privilege to do so, shall recklessly cut down, destroy, girdle, or otherwise injure a vine, bush, shrub, sapling, tree, or crop standing or growing on the land of another or upon public land.” “Recklessly” in this context is the same in the criminal context. *Wooten v. Knisley*, 79 Ohio St.3d 282, 289-290 (1997). A person’s conduct is “reckless” when, “with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk . . .” that their conduct is likely to cause a certain result or be of a certain nature. R.C. 2901.22(C). A person is reckless with regard to circumstances when, “with heedless indifference to the

consequences, the person disregards a substantial and unjustifiable risk . . .” that the circumstances likely exist. *Id.*

{¶ 70} Here, the trial court determined that the spruce tree “stood on the property line of both” the Meiers’ and the Longs’ properties. We cannot conclude that the trial court clearly lost its way in making this conclusion. Although conflicting evidence exists, this finding is supported by Robert’s and Kathryn’s testimony that they planted the tree on the boundary line, as well as a photograph of the area after the tree was removed (plaintiff’s Exhibit K). The trial court was in the best position to judge Robert’s and Kathryn’s credibility, and we must defer to the court’s credibility findings in a manifest-weight review. *State v. Reillo*, 2026-Ohio-2701, ¶ 32. And the admitted photograph, which depicts the dirt outline left after the tree’s removal in relation to a survey stake, does not clearly establish that the tree stood entirely on the Meiers’ property rather than on the property line. The photograph is subject to interpretation, and the trial court’s interpretation of the photograph as showing the tree *on* the property line is not patently unreasonable. The record therefore does not enable us to conclude that the trial court’s factual finding was manifestly unjust.

{¶ 71} Trees on the boundary line of two properties are jointly owned by the property owners on either side of the boundary as tenants in common. *Hay v. Norwalk Lodge No. 730, B.P.O.E.*, 92 Ohio App. 14, 24 (6th Dist. 1951); *Pinkerton v. Franklin Twp. Bd. of Trustees*, 1984 WL 13994 (10th Dist. July 17, 1984). Although we were unable to find any cases addressing R.C. 901.51 in the context of jointly owned border

trees, general rules about tenants in common should apply to this situation. “A tenancy in common is a joint interest in property” in which the cotenants have “a unity or right of possession.” *Koster v. Boudreaux*, 11 Ohio App.3d 1, 5 (6th Dist. 1982). Cotenants hold distinct titles with unity of possession. *Sullinger v. Reed*, 2021-Ohio-2872, ¶ 27 (3d Dist.). Each tenant is equally entitled to the use, benefit, and possession of the property. *Id.* at ¶ 28. This means that “one cotenant cannot dispossess another cotenant of the common property . . . .” *Id.* at ¶ 29. “[I]t is fundamental that a tenant in common cannot convey or incumber [sic] the interest of his cotenant, nor by any act of his divest his interest as cotenant in the entire tract, or defeat, defer or limit his rights as a tenant in common . . . .” *Heiden v. Howes*, 77 Ohio App. 525, 531 (1st Dist. 1945), quoting *Lauer v. Green*, 99 Ohio St. 20, 25 (1918).

{¶ 72} With that in mind, we find that the trial court’s determination that Michael removed the spruce tree recklessly and without privilege is supported by some competent, credible evidence, so it is not against the manifest weight of the evidence. First, the evidence supports a finding that the tree was at least partially “on the land of another,” as required for liability to attach under R.C. 901.51. As we have discussed, the evidence can reasonably be interpreted as showing that the tree was directly on the boundary line of the two properties, meaning that it was at least half on the Longs’ property. Second, because the tree was co-owned by the parties, Michael did not have the right to unilaterally destroy the Longs’ interest in the tree by removing the tree from the property without the Longs’ consent. *Heiden* at 531. Third, Kathryn and Robert each

testified that the spruce was a memorial tree, and Robert testified that he told Michael about the memorial tree a year or two after he moved in. Although Michael testified that the Longs did not tell him about the memorial aspect of the tree until after he removed it, the trial court was in the best position to judge witness credibility and we cannot say that it was unreasonable for the trial court to believe the Longs instead of Michael. Similarly, we cannot say that the trial court lost its way by believing Robert's testimony that Michael removed the tree at night, without consulting the Longs, and with knowledge that it was a memorial to the Longs' pets. Finally, although the Meiers obtained a survey before cutting down the tree, we cannot say that the admitted evidence clearly shows that the trial court erred in its conclusion that the tree was on the boundary line rather than the Meiers' property. Accordingly, we must conclude that there is some competent, credible evidence to support the trial court's conclusion that Michael removed the spruce with heedless indifference to the consequences, i.e., that he acted recklessly.

{¶ 73} Because the trial court's finding that Michael recklessly removed the tree is not against the manifest weight of the evidence, the Meiers' second assignment of error is not well-taken.

**C. The trial court improperly awarded the Longs a double recovery.**

{¶ 74} In their final assignment of error, the Meiers argue that the trial court impermissibly awarded the Longs quadruple damages for the removal of the spruce tree. They point out that the court awarded \$11,523.87 as treble damages for the Longs' R.C.

901.51 claim and an additional \$3,841.29 as damages for the Longs' R.C. 971.08 claim, which amounts to double recovery for the same tree.

{¶ 75} In Ohio, although plaintiffs are permitted to plead and proceed under multiple theories of liability, they are only entitled to a single recovery of compensatory damages for their injuries. *Cunning v. Windsor House, Inc.*, 2023-Ohio-352, ¶ 50 (11th Dist.); *Brenner Marine, Inc. v. George Goudreau, Jr. Trust*, 1995 WL 12118, \*5 (6th Dist. Jan. 13, 1995). Here, the Longs were compensated twice for the single injury of Michael removing the white spruce tree. First, they received compensatory damages under R.C. 901.51, which were statutorily trebled because Michael acted recklessly. Then, they received compensatory damages under R.C. 971.08(A), which provides, “[i]f an owner chooses to build a partition fence and the owner of adjoining property does not share in the construction of the fence, . . . that owner or [their] contractor is liable for all damages caused by the entry onto the adjoining property [to build or maintain the fence], including damages to crops.” This is an impermissible double recovery.

{¶ 76} Because the trial court improperly awarded the Longs a double recovery, we modify the damages award to reflect the proper damages amount of \$11,523.87. The Meiers' third assignment of error is well-taken.

### **III. Conclusion**

{¶ 77} Based on the foregoing, the November 17, 2025 decision of the Lucas County Court of Common Pleas is affirmed in part and reversed in part. The trial court's finding that the Longs adversely possessed a portion of the Meiers' property is reversed

and vacated. The trial court's finding that Michael recklessly removed the white spruce tree on the border of the Longs' and the Meiers' properties is affirmed, but the trial court's damages award is reversed and modified to \$11,523.87. The parties are ordered to divide the costs of this appeal equally under App.R. 24.

Judgment affirmed, in part,  
and reversed, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Christine E. Mayle, J.

JUDGE

Myron C. Duhart, J.

JUDGE

Charles E. Sulek, J.  
CONCUR.

JUDGE

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| <p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:<br/><a href="http://www.supremecourt.ohio.gov/ROD/docs/">http://www.supremecourt.ohio.gov/ROD/docs/</a>.</p> |
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