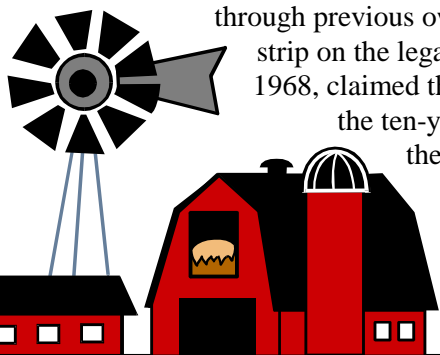


# Kline v. Kramer

Court of Appeals of Indiana, 386 N.E.2d 982 (1979)

The Klines and the Kramers were adjoining landowners who both claimed ownership of a strip of land 1 to 4 feet wide and 309 feet long. The disputed strip formed the northern boundary of the Kramer property and the southern boundary of the Kline property. Both claimed ownership through previous owners. The Klines, who acquired their property in 1972, based their claim to the strip on the legal description contained in their deed. The Kramers, 1968, claimed the strip on the theory of adverse possession. The position of the Kramers was that the ten-year period of possession necessary to establish adverse possession had been satisfied by the previous owners of the Kramer property, Harry and Hazel Britt.



The Kramers, seeking to establish ownership of the boundary strip. The trial court granted the plaintiffs' title by adverse possession, and the defendants appealed.

plaintiffs, filed suit against the Klines, defendants, ownership of the boundary strip. The trial court motion for summary judgment, ruling that they had possession, and the defendants appealed.

Staton, judge:

... Harry Britt testified at the hearing on Kramer's motion for summary judgment that when he purchased the present-day Kramer property in 1947, a fence existed along the northern boundary of the land. Britt maintained the fence during his period of ownership. Photographs of the fence-line were introduced into evidence at the hearing in which Britt identified old fence posts he had set in maintaining the existing fence and familiar trees which had grown in the fence-line during his tenure on the land. While Britt testified that he never contemplated that he was claiming land that belonged to his neighbor, the fence in fact described a line which ran roughly one to four feet north of and parallel to the legally-described northern boundary of his property.

Britt testified that he felt that he owned the property up to the fence line and that he used it to plant crops and pasture cattle. It was his belief that he had bought "what was inside the fence." Similarly, Britt stated that when he sold the land to the Kramers in 1968 he intended to convey to them all the land enclosed by the fence.

F. Richard Kramer testified that he believed that he had purchased the property up to the fence that ran along the northern edge of his acreage. In 1972, Kramer inadvertently allowed his tractor to roll through the fence, tearing out a middle portion of it. Kramer repaired the break in the fence by stretching new fencing between the remaining old fence and fence posts to the east and west of the break. The new portion of the fence was set in the exact location of the old fence, according to Kramer, who noted that the new section followed a trail which cattle had worn along the old section.

Kramer concluded his testimony by stating that he had made improvements which encroached on the disputed stretch of land, that he had no knowledge of the true boundary line until Kline had conducted a survey of the land, and that he had paid taxes on his property according to the tax receipts sent to him by the County Treasurer.

... The trial court's entry of summary judgment was predicated on its conclusion that the Kramers had acquired title to the property through adverse possession. The ten year possessory period necessary to acquire title on that basis is a statute of limitations which runs against the titleholder. If the titleholder fails to oust the intruder within the ten year period, title to the property vests in the intruder, assuming all other elements of adverse possession are satisfied.

... The Klines contend that summary judgment was improper because the undisputed evidence reveals the absence of the elements necessary to acquire title by adverse possession. Specifically, the Klines maintain that the Kramers' predecessors-in-interest, the Britts, whose possessory period provides the foundation for the Kramers' claim, lacked the necessary adverseness, hostility, and intention to claim title to the strip. This argument is premised largely on the testimony of both Harry and Hazel Britt that they never intended to lay claim to any land that belonged to their neighbor to the north. Accordingly, the Klines argue, the Britts held the land by mistake and lacked the adverse intent or hostility which is requisite to establishing a claim of adverse possession.

We note that in the law of adverse possession, "adverse" is synonymous with "hostile." So long as an occupant of another's land does not disavow his or her right to possession of the property nor acknowledge that the possession is subservient to the title held by the true owner, the possession is adverse or hostile.

... While it is true that the Britts did not intend to claim the land of their neighbors, the record clearly reveals that they intended to claim all the land within the parameters of the fence which ran along the northern boundary of their property. They did not recognize that their ownership was subservient to their neighbor's title, nor did they acknowledge that they had no legal right to possession of the property. In all respects they acted as the sole owner of the property, maintaining the fence and using the land in a manner consistent with its normal purposes. This evidence clearly establishes that the Britts intended to claim title to the disputed strip of land. The only mistake involved in the Britts' possession was their belief that they were merely acting in a manner consistent with their ownership rights, a fact which does not negate the conclusion that their possession was adverse.

This uncontroverted evidence also establishes the Britts' "intent to claim title" to the contiguous strip of land, as the Klines have characterized the element of adverse possession. This element is more aptly defined as "a claim of ownership." The element is satisfied by entering upon and occupying the land with the intent to hold the land as one's own. The trial court was thus justified in finding that the Britts' possession was both hostile and under a claim of ownership....

[Affirmed. The Kramers, plaintiffs, own the boundary strip because of adverse possession.]