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Costello v. Staubitz: The Status of the Visible Line of Demarcation in Adverse Possession in Maryland

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NOTES

COSTELLO v. STAUBITZ: THE STATUS OF THE VISIBLE LINE OF DEMARCATION IN ADVERSE POSSESSION IN MARYLAND

[W]e do not need the wall:
He is all pine and I am apple orchard.
My apple trees will never get across
And eat the cones under his pines, I tell him.
He only says, "Good fences make good neighbors."[1]

Adverse possession is the means of acquiring title to property by possession of the property for the duration of the statutory period for bringing an action for its recovery.[2] Subject to certain additional requirements,[3] such

1. R. FROST, *Mending Wall,* THE POCKET BOOK OF ROBERT FROST'S POEMS 94 (1971).

2. 7 R. POWELL, THE LAW OF REAL PROPERTY ¶ 1012[2][a] (1984). The concept that adverse possession is a limitation of rights, rather than a presumption of deed or ouster, was recognized early by Maryland courts. *See* Hammond v. Ridgely's Lessee, 5 H. & J. 245 (1821).

The limitations period for real property in Maryland is twenty years. MD. CTS. & JUD. PROC. CODE ANN. § 4-103 (1984). The origin of this statute is Limitations Act 21, Jac., ch. 16 (1623), which was in effect in 1776, the year Maryland incorporated English statutory law into its jurisprudence. *See* Safe Deposit & Trust Co. v. Marburg, 110 Md. 410, 414, 72 A. 839, 841 (1909). The statute in effect when Costello v. Staubitz, 300 Md. 60, 475 A.2d 1185 (1984), was filed provided as follows: "Within 20 years from the date the cause of action accrues, a person shall: (1) File an action for recovery of possession of a corporeal freehold or leasehold estate in land; or (2) Enter on the land." MD. CTS. & JUD. PROC. CODE ANN. § 5-103 (1980), *reprinted in Costello,* 300 Md. at 67 n.2, 475 A.2d at 1188 n.2.

3. In Maryland, to be adverse, possession of real property must be actual, hostile, open, notorious, exclusive, under claim of title or ownership, continuous, and uninterrupted. *See, e.g.,* Blickenstaff v. Bromley, 243 Md. 164, 220 A.2d 558 (1966). All these elements coalesce into the requirement that the adverse claimant act as if he intended to claim the property as his own. *See* Waltemeyer v. Baughman, 63 Md. 200, 204 (1884) (the adverse claimant's acts must have indicated that the possession was a claim of title). For example, possession is "actual" if it is accompanied by such acts of ownership that would be evidence of a claim of ownership. Gee v. Ghee, 194 Md. 328, 332, 70 A.2d 810, 811 (1950). Such acts of ownership can differ from case to case, depending upon the character and location of the property. *Blickenstaff,* 243 Md. at 171, 220 A.2d at 561. Similarly, "hostility" does not denote enmity or ill will but rather such possession that manifests an intent to claim the property without recognition of the legal owner's right to the land. Hungerford v. Hungerford, 234 Md. 338, 340, 199 A.2d 209, 211 (1964). Maryland courts construe "exclusive" to denote such dominion over the property

possession vests title in the adverse claimant by operation of law and without the consent of the true owner.[4] Indeed, the adverse possession generally rests on trespass.[5]

In *Costello v. Staubitz,*[6] the Maryland Court of Appeals[7] held that a visible line of demarcation, a fence that was erected by the record land owner's predecessor in title for his own purposes, was not evidence that would support a rival claim of adverse possession. Therefore, the court ruled that the adverse claimant could take title only to the property he actually occupied, rather than to the property delineated by the fence.

Maryland adverse possession cases have frequently involved visible lines of demarcation, such as fences or roads, that owners of contiguous property

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as will constitute an appropriation of it for the possessor's use and benefit. *Blickenstaff,* 243 Md. at 173, 220 A2d at 562. Moreover, the adverse claimant's possession is abandoned if he ceases to perform acts of ownership on the property, even if he continues to pay taxes on it. Goen v. Sansbury, 219 Md. 289, 149 A.3d 17 (1959).

4. 5 G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 2540 (1979); *see* Armstrong v. Risteau's Lessee, 5 Md. 256 (1853) (adverse possession will support an ejectment action against the legal owner); Casey's Lessee v. Inloes, 1 Gill 430, 490 (1844) (title by possession will repair defect in chain of title); Regents of Univ. of Md. v. Trustees of Cavalry M.E. Church S., 104 Md. 635, 65 A. 398 (1906) (although church's deed was void, it had title by adverse possession and therefore a subsequent sale was valid); *see also* Mills v. Trustees of Zion Chapel, 119 Md. 510, 87 A. 257 (1913). *But see Hungerford,* 234 Md. at 340-41, 199 A.2d at 211 (the absence of hostility prevents adverse possession from resulting when a conveyance violates the statute of frauds unless the record owner has notice of claimant's claim to title).

5. 5 G. THOMPSON, *supra* note 4, at § 2540. Thompson consequently described adverse possession as "the law of the landless, the have nots." *Id.* Another commentator took a less sympathetic view of title by adverse possession. *See* Stoebuck, *The Law of Adverse Possession in Washington,* 35 WASH. L. REV. 53, 53 (1960) (adverse possession is a "strange and drastic doctrine" by which "a legal right is obtained through conduct which must be wrongful").

Commentators have suggested various policy justifications for the doctrine of adverse possession. These justifications include: to encourage the development of land by facilitating the conveyance of titles and by protecting the utilization of vacant land, to quiet titles by minimizing the assertion of stale claims, to protect third persons who act in reliance on the possessor's claim of title, to correct conveyancing errors, and to punish property owners who fail to assert their titles within a reasonable time. *See generally* C. CALLAHAN, ADVERSE POSSESSION 89-96 (1961); Stoebuck, *supra,* at 53; Williams, *Title by Adverse Possession in Indiana,* 6 VAL. U.L. REV. 26, 29 (1971). The introductory clause to the English precursor of the Maryland statute of limitations provided that its purpose was "for quieting of men's estates, and avoiding of suits." Limitations Act, 21 Jac., ch. 16 (1623). Oliver Wendell Holmes suggested that there was a more elemental reason for the doctrine: "The true explanation of title by prescription [is] that man, like a tree cleft of a rock, gradually shapes his roots to his surroundings, and when the roots have grown to a certain size, cannot be displaced without cutting at his life." Letter from Oliver Wendell Holmes to William James (April 1, 1907), *reprinted in* P. GOLDSTEIN, REAL PROPERTY 25 (1984).

6. 300 Md. 60, 475 A.2d 1185 (1984).

7. The Court of Appeals is the highest court in Maryland. MD. CTS. & JUD. PROC. CODE ANN. § 1-301 (1984).

erroneously believed to be their boundary. Thus, Maryland courts have developed a body of law regarding the effect of these visible lines of demarcation in adverse possession cases. This Note will trace the development of this body of law. It will then demonstrate how *Costello v. Staubitz* synthesized the earlier cases and produced a rule that, through its clarity and ease of application, should simplify litigation in the adverse possession area.

I. Visible Lines of Demarcation in Adverse Possession—Enclosures

A. Pre Act of 1852

Enclosure of the claimed property by the adverse claimant for the twenty-year limitations period was a requirement in the early development of the doctrine of adverse possession.[8] Thus, in *Cheney v. Ringgold*[9] the court held that the legal owner of a tract of land could proceed in ejectment against the adverse claimant as to the unenclosed portion of the tract, notwithstanding that the adverse claimant had used and enjoyed that portion for cutting timber for over twenty years.[10] The legal owner, however, was barred with respect to the portion that the claimant had enclosed twenty-seven years before the legal owner brought suit.[11]

8. This rule was announced by the Maryland General Court in Davidson's Lessee v. Beatty, 3 H. & McH. 594 (1797). The court also noted that a possessor of a tract of land with title had possession of the whole unless excluded by the rival claimant's enclosures. *Id.* at 621. *See also* Gibson v. Martin, 1 H. & J. 545 (1805). One court, however, construed the enclosure rule too strictly and ruled that the removal of enclosures, although only temporary while enlarging the fences, defeated a claim of adverse possession. This unreported ruling was summarily reversed on appeal in Hall v. Gittings' Lessee, 2 H. & J. 380, 395 (1809). *See also* Morrison v. Hammond's Lessee, 27 Md. 604, 618-19 (1867) (temporary breaches of the enclosure do not defeat an adverse possession claim).

9. 2 H. & J. 87 (1807).

10. *Id.* at 95.

11. *Id. Cheney* involved "mixed possession"; i.e., both the legal owner and the adverse claimant had possession by enclosure of portions of the tract. Both parties had enjoyed the property exterior to the enclosures by sparsim cutting and general user. The legal owner did not have to prove enclosure of the entire tract because he had legal title to the whole. *Id.* at 94. The *Cheney* court expressly did not reach the question of whether enclosure was a requirement of adverse possession in cases where the legal owner did not have possession, despite the "considerable importance" of that issue. *Id.* at 93. The modern mind has difficulty comprehending the importance of this issue because it is now clear that title vests in the legal owner whether or not he is in possession of the property. This was not clear in early Maryland jurisprudence, however, perhaps resulting from the lingering influence of the medieval concept of seisin. *See infra* note 12. Thus, in Hoye v. Swan, 5 Md. 237 (1853) the adverse claimant of an unenclosed tract argued that enclosure was unnecessary because the legal owner did not have possession of the tract. *Id.* at 241-42. After a careful analysis that underscored the importance of the issue, the court rejected this argument on the ground that if presumptions were to be made, they should be made in favor of the legal owner rather than a tortfeasor, *id.* at 255, and held that

The rationale for the enclosure rule was threefold. First, enclosure was evidence that the adverse claimant was seized of the claimed tract.[12] Second, requiring enclosure made the acquisition of real property by adverse possession more difficult, thereby protecting the rightful owner's title.[13] Third, the erection of enclosures was an act of ownership that helped prove the adversary nature of the possession.[14]

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whether the possession was mixed or unmixed was immaterial. *Id.* at 248. Therefore, the claim of adverse possession failed. *Id.* at 255-56.

12. Seisin, the concept underlying the system of medieval rights and duties with respect to land, simply denoted possession. II F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 31 (1895). Etymologically the term reduces to "to sit." *Id.* at 29. Title, or ownership, derived from seisin: "every title to land ha[d] its root in seisin; the title which ha[d] its root in the oldest seisin [was] the best title." *Id.* at 46. The early Maryland cases implicitly recognized this concept and struggled to apportion value to one person's seisin of a tract vis-a-vis another person's title to the same tract. For example, in *Cheney,* 2 H. & J. at 93, the court confined its holding to the rule that enclosure was required in adverse possession when both adverse claimant and title holder possessed portions of the tract. That the court did not immediately quash the suggestion that adverse possession should be easier to prove (i.e., eliminate the enclosure rule) if the legal owner was not in possession illustrated the willingness of the early courts to protect possession over title. *See* II F. POLLOCK & F. MAITLAND, *supra,* at 40-43 (discussing the reasons that English law protected possession—"something that will from time to time come into sharp collision with ownership").

Not until 1853, in *Hoye,* did Maryland courts establish that adverse possessors were tortfeasors whose actions were protected not because of the sanctity of possession but for policy reasons: "that disputes in regard to titles and boundaries should not be encouraged or revived after the lapse of many years." 5 Md. at 255. Indeed, the court explicitly noted that this policy was not in conformity with justice. *Id.*

This early emphasis on seisin also suggests why the enclosure had to enclose the claimed property completely. *See* Casey's Lessee v. Inloes, 1 Gill 430 (1844); *Armstrong,* 5 Md. at 273. Enclosure was the best proof of seisin; without color of title, all the adverse claimant had was his fences to prove the extent of his occupation. Moreover, enclosure put the legal owner on notice that he was deseized of his land. *See id.* at 278. Not until 1868, well after the Act of 1852, did Newman v. Young, 30 Md. 417 (1868), suggest that a natural boundary, the Potomac River, could complete an enclosure.

13. *See Davidson's Lessee,* 3 H. & McH. at 621 (the rightful owner of land is favored over the intruder or trespasser); Gwynn v. Jones' Lessee, 2 G. & J. 173, 184 (1830) ("nothing is to be presumed in favor of an adverse possession"); *Hoye,* 5 Md. at 255 (presumptions are not made in favor of a tortfeasor); *see also* Helmholz, *Adverse Possession and Subjective Intent,* 61 WASH. U.L.Q. 331, 332 (1983) (arguing that modern courts implicitly favor innocent trespassers over knowing trespassers in adverse possession).

14. In *Davidson's Lessee,* 3 H. & McH. at 621-22, the court reasoned that enclosure was an act of ownership that unequivocally showed a claim of title adverse to the rightful owner and excluded the legal owner from the use and enjoyment of the property. Similarly, the court in Hammond v. Warfield, 2 H. & J. 151, 158 (1807), held that possession was adverse only if the claimed tract was enclosed. Moreover, the court in *Gwynn,* 2 G. & J. at 184, held that enclosures erected by tenants for reasons of utility rather than to claim title did not show the necessary hostility to take the land by adverse possession even though the tenant remained on the land past the term of the lease. *But see* Safe Deposit & Trust Co. v. Marbury, 110 Md. 410, 72 A. 839 (1909) (the *Gwynn* result statutorily changed; landlord loses fee if he does not claim rental for 20 years). In Cresap's Lessee v. Hutson, 9 Gill 269, 278 (1850), the court reasoned

B. Post Act of 1852

In 1852, the Maryland legislature eliminated the requirement of enclosure of the property claimed by the adverse claimant.[15] The statute, however, did not entirely negate the impact of enclosure upon adverse possession. Rather, enclosure continued to be evidence of acts of ownership reflecting the adversary nature of the possession and showing that the claimant was making a claim against the legal owner's title. In *Storr v. James*[16] the court held that an enclosure, when erected by the adverse claimant or his privy, constituted evidence of the "character" of the claim.[17] The court explained that, as the claimant's "own affirmative act,"[18] the enclosure defined the extent of the claim.[19] Yet, as was the case in *Storr,* when someone other than the adverse claimant erected the enclosure, the enclosure had no reference to the claim and could not constitute evidence of the adverse possession.[20]

The *Storr* holding was applied in *Mauck v. Bailey,*[21] where the court held that because a fence was erected and maintained by an adverse claimant, it constituted evidence of the adverse possession claim.[22] On the other hand,

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that an enclosure delineating an incorrect boundary could not support an adverse possession claim because the claimant did not hold the property adversely to his neighbor. *But see infra* notes 25-29 and accompanying text. The court in *Armstrong,* 5 Md. at 278, held that a fence did not evidence an adverse possession claim when erected by someone other than the claimant because it did not show the claimant's intent to claim the property. The court also noted that to hold otherwise would put a land owner at risk of losing his property to adverse claimants when the legal owner enclosed portions of his tract without "abandoning his title to what may be left out." *Id.* The court further noted that the fence at issue in *Casey's Lessee,* 1 Gill at 430, a mere single line, more effectively manifested a claim of ownership than the fence at issue in *Armstrong* because the former was clearly a "possession fence." *Armstrong,* 5 Md. at 278.

15. The legislation provided that "actual enclosure shall not be necessary to prove possession, but acts of use and ownership other than enclosure, may be given in evidence to the jury to prove possession." Act of 1852, ch. 177, § 2, *reprinted in* Thistle v. Frostburg Coal Co., 10 Md. 129, 144 (1856). The *Thistle* court noted that to apply the Act retroactively would impermissibly take the property from the legal owner, who had acted in reliance on the enclosure rule, and give it to the adverse claimant. *Id.* at 144-45. The court also noted that to give the Act a liberal construction would be a contravention of common law, and required that possession claimed under it be shown with "clearness and precision." *Id.* at 146-47. The adverse claimant in *Thistle* failed to make this showing. *But see* Warner v. Hardy, 6 Md. 525, 539 (1854) (affirming lower court's rejection of the legal owner's proffer of evidence that the claimed property was not enclosed for 20 years).

16. 84 Md. 282, 35 A. 965 (1896).

17. *Id.* at 291, 35 A. at 967. Thus the court continued to recognize the third rationale for the enclosure rule. *See supra* note 14 and accompanying text.

18. *Id. See also* Matthews v. Ward, 10 G. & J. 443, 457 (1839) (adverse claimant must show he committed some "positive act;" mere nonrecognition of the legal owner's rights was insufficient).

19. 84 Md. at 291, 25 A. at 967.

20. *Id.*

21. 247 Md. 434, 231 A.2d 685 (1967).

22. *Id.* at 442, 231 A.2d at 690.

in *Stinchcomb v. Realty Mortgage Co.*,[23] the court held that a fence did not demonstrate that the adverse claimant was making a claim against the legal owner's title because, inter alia, it was erected to restrain livestock rather than to delineate a boundary. Therefore, the fence could not be evidence of the adverse possession.[24]

The *Storr* holding was extended in *Jacobs v. Disharoon*[25] to situations in which the claimant mistakenly erected an enclosure on property contiguous to his land. The court distinguished two situations: first, where the adverse claimant erected the fence with the intent, albeit mistaken, of marking the boundary; and second, where the adverse claimant erected the fence to mark merely provisional boundaries. In the first situation, the statute of limitations ran because the claimant was asserting a claim against the legal owner's title. In the second situation, the statute did not run because the adverse claimant was not asserting such a claim.[26]

This rule was extended in *Tamburo v. Miller*,[27] where the court held that whether the adverse claimant mistakenly possessed the property was immaterial so long as he proved "unequivocal acts of ownership" over the enclosed tract.[28] The court reasoned that such objective acts of ownership were sufficient to prove his intent to claim the enclosed property.[29] The *Tamburo* rule was subsequently applied to cases in which someone other than the adverse claimant erected the fence. For example, in *Ridgely v. Lewis*,[30] the court held that a fence surrounding a parcel that encompassed the disputed area was evidence supporting the adverse claim. Although there was no evidence as to who erected the fence or the purpose for its erection, the court held that the adverse claimants had performed sufficient acts of ownership by farming the disputed tract to take title to it.[31] Similarly, in *Wilt v. Wilt*,[32] where the adverse claimants' predecessor in title constructed a fence to serve as a boundary, the adverse possession claim

23. 171 Md. 317, 188 A. 790 (1937).

24. *Id.* at 320-21, 188 A. at 793.

25. 113 Md. 92, 77 A. 258 (1910).

26. *Id.* at 98, 77 A. at 260. This holding implicitly overruled several cases with respect to the mistake issue, including *Cresap's Lessee*, 9 Gill 269 (1850) and Davis v. Furlow's Lessees, 27 Md. 536 (1867). The court in each of these cases equated the adverse claimant's mistake as to the boundary with a lack of intent to claim title to the property, which meant that the hostility element was missing. *See Cresap's Lessee*, 9 Gill at 278; *Davis*, 27 Md. at 545.

27. 203 Md. 329, 100 A.2d 818 (1953).

28. *Id.* at 336, 100 A.2d at 821.

29. *Id.* at 337, 100 A.2d at 821-22. The acts were erection of a barbed wire fence, cultivation of a hedge, and construction of a boathouse. *Id.* at 337, 100 A.2d at 822.

30. 204 Md. 563, 105 A.2d 212 (1954).

31. *Id.* at 567, 105 A.2d at 213-14. *See Costello*, 300 Md. at 72, 475 A.2d at 1190.

32. 242 Md. 129, 218 A.2d 180 (1966).

succeeded when it was discovered that the fence did not mark the true boundary. Again, the dispositive consideration was the adverse claimants' acts of ownership, i.e., farming that extended up to the fence line.[33]

In summation, Maryland courts have consistently recognized the evidentiary value of fences in adverse possession cases—that their erection was an "act of ownership" that the adverse claimant could proffer to show that he claimed the delineated tract. Moreover, when the courts have found that the adverse claimant has performed other acts of ownership, as they did in *Ridgely, Wilt,* and *Brooke,* the issue of who erected the fence was rendered effectively irrelevant. Even when visible lines of demarcation other than fences have been involved, the courts have undertaken similar analyses.

II. Visible Lines of Demarcation Other Than Fences

Maryland courts have occasionally decided adverse possession cases involving visible lines of demarcation other than fences, such as roads or ditches. The first such case was *Newman v. Young,*[34] which suggested that a river could complete an enclosure of a tract of land partially bounded by fences.[35] More recently, the court in *Tamburo*[36] did not confine its holding to fences, stating that the adverse claim would succeed if the claimant performed unequivocal acts of ownership and *"visible boundaries* have existed for" the statutory period.[37] In one of *Tamburo*'s progeny, *Ervin v. Brown,*[38] the court held that the adverse claimant took title to property extending to a hedge planted by the neighboring record owner inside of his true boundary line.[39] Obviously the hedge did not evidence acts of ownership performed by the adverse claimant. In fact, a garden worked by the claimant's predecessor, an act clearly suggesting ownership, extended only to an area about five feet from the hedge.[40] Nevertheless, the court found it "reasonable to assume" that the claimant's predecessor had occupied the strip of land between the garden and the hedge by walking on it while performing garden

33. *Id.* at 131-32, 218 A.2d at 181-82. The court noted that the claimants generally treated the fence line as the boundary. *Id.* at 132, 218 A.2d at 181. Similarly, in East Washington Ry. v. Brooke, 244 Md. 287, 223 A.2d 599 (1966), the court was silent as to who erected a fence that enclosed the contested strip into the claimant's tract. Nevertheless, the court held that the claimant had acquired title to the strip by adverse possession because he had farmed it. *Id.* at 295, 223 A.2d at 604.

34. 30 Md. 417 (1869).

35. *Id.* at 421. This case, although decided after the Act of 1852, applied the enclosure rule.

36. 203 Md. 329, 100 A.2d 818 (1953). *See supra* notes 27-29 and accompanying text.

37. 203 Md. at 336, 100 A.2d at 821 (emphasis added).

38. 204 Md. 136, 102 A.2d 806 (1954).

39. *Id.* at 139-40, 102 A.2d at 808.

40. *Id.* at 141, 102 A.2d at 809.

chores.[41] The court also emphasized that the legal owner did not occupy that strip.[42]

Similarly, the court in *Blickenstaff v. Bromley*[43] held that a road bisecting the record owner's property became a "visible and fixed boundar[y]" that separated the resulting sections, one of which was contiguous to the adverse claimant's tract.[44] The court emphasized the claimant's acts of ownership[45] but was unconcerned with whether those acts extended to the road. The court also noted that the road contributed to the visibility of the adverse possession[46] and noted, as in *Ervin,* that the record owner had abandoned his possession.[47] Finally, in *Freed v. Cloverlea Citizens Association,*[48] the court held that a ditch formed a boundary that defined an adverse possession claim where the claimant performed acts of ownership on the tract so delineated.[49]

Thus, as with fences, the effect of other visible lines of demarcation in adverse possession cases was to provide evidence of the adverse claim. Because such visible lines of demarcation were not constructed by the adverse claimant, however, they could not be evidence of the "character" of the claim. Rather, these nonfence lines of demarcation evidenced the extent of the claim if the claimant performed sufficient acts of ownership on the claimed tract. The rule announced by *Costello v. Staubitz* was a synthesis of these cases encompassing fence and nonfence visible lines of demarcation.[50]

III. *COSTELLO V. STAUBITZ*: THE SYNTHESIS AND THE RULE

In *Costello v. Staubitz,*[51] the Maryland Court of Appeals synthesized this jurisprudence, relying principally on three cases, and announced a rule of law broad enough to apply to virtually any adverse possession case involving a visible line of demarcation. In *Costello,* a survey revealed that a barbed wire fence, erected by the record owner's predecessor in title, was not situ-

41. *Id.* at 142, 102 A.2d at 809.

42. *Id.,* 102 A.2d at 809.

43. 243 Md. 164, 220 A.2d 558 (1966).

44. *Id.* at 170, 220 A.2d at 561.

45. These acts included clearing brush, cutting timber, and cultivating a garden. *Id.* at 172, 220 A.2d at 562.

46. *Id.,* 220 A.2d at 562.

47. *Id.* at 170, 220 A.2d at 561. *Blickenstaff* arose because a drought forced the record owner to use a spring located on the disputed property. *Id.,* 220 A.2d at 561.

48. 246 Md. 288, 228 A.2d 421 (1967).

49. *Id.* at 304, 228 A.2d at 431.

50. 300 Md. 60, 74, 475 A.2d 1185, 1192 (1984) (applying the principle that title acquired by adverse possession shall extend only to the land actually occupied rather than to all the land delineated by a visible boundary).

51. 300 Md. 60, 475 A.2d 1185 (1984).

ated on the boundary between the record owner's lot and his neighbor's. Rather, it ran diagonally to the true boundary, thereby forming two triangular pieces of property, one on the record owner's lot and the other on his neighbor's lot.[52] The neighbor brought suit to quiet title to the triangle located on the record owner's property,[53] arguing that he had acquired title to it by adverse possession through acts of ownership extending to the fence.[54]

The trial court's opinion, which was not published but was quoted at length by the court of appeals, held that the adverse claimant neighbor acquired title to the property by adverse possession.[55] The trial court noted that it was uncontroverted that the fence had been erected to mark the boundary between the two lots,[56] and reasoned that the claimant's acts of ownership made the possession actual.[57]

The Maryland Court of Special Appeals affirmed in an unreported per curiam opinion, which was also quoted extensively by the court of appeals.[58] The record owner argued that the rule of *Storr v. James*[59] made irrelevant the finding that the fence demarcated the boundary because the fence had not been erected by the adverse claimant.[60] The court rejected this argument, reasoning that although the erection of the fence could not be an act of ownership, the fence was nonetheless a visible boundary that delineated the extent of the claimant's possession.[61] The court further held that under *Tamburo*[62] it was irrelevant that the boundary was incorrectly marked.[63]

The court of appeals reversed and remanded. It deemed the trial court's finding that the fence was erected as a boundary to be clearly erroneous.[64]

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52. *Id.* at 63, 475 A.2d at 1186.

53. *Id.*, 475 A.2d at 1186. The triangle on the adverse claimant's lot was not in dispute. *Id.*, 475 A.2d at 1186. The triangle on the record owner's lot was river-front property, while the triangle on the claimant's lot was road-front property. *See id.*, 475 A.2d at 1186.

54. These acts included maintaining an "animal sanctuary," planting trees, constructing a shed, a boat railway, and a portable firepit, extending his pier, and burying a pet. *Id.* at 64-65, 475 A.2d at 1187. Additionally, several neighbors testified that they thought the claimant owned the property. *Id.* at 64, 475 A.2d at 1187. That the acts extended beyond the statutory period was not in dispute.

55. *Id.* at 66, 475 A.2d at 1188.

56. *Id.* at 65, 475 A.2d at 1187. The court of appeals, however, noted that the claimant had testified that the "sole purpose" for erecting the fence was to confine cattle owned by the record owner's predecessor in interest. *Id.* at 64, 475 A.2d at 1187. *See infra* note 65 and accompanying text.

57. 300 Md. at 65, 475 A.2d at 1187.

58. *Id.* at 66, 475 A.2d at 1188.

59. *See supra* notes 16-20 and accompanying text.

60. 300 Md. at 66, 475 A.2d at 1188.

61. *Id.*, 475 A.2d at 1188.

62. 203 Md. at 329, 100 A.2d at 818. *See supra* notes 27-29 and accompanying text.

63. 300 Md. at 74, 475 A.2d at 1192.

64. *Id.* at 73, 475 A.2d at 1191-92.

Instead, it determined that the purpose of the fence was to restrain the livestock that belonged to the adverse claimant's predecessor in title.[65] Relying on *Storr v. James,*[66] it held that a fence, when erected by someone other than the adverse claimant, did not constitute a boundary for the purpose of defining the extent of the adverse possession.[67] Moreover, the court held that under *Tamburo* the fence was not a boundary because the adverse claimant had not erected it with the intent to delineate the claimed boundary.[68] Finally, the court held that under *Ridgely v. Lewis,*[69] if there was no evidence as to who erected the fence or the purpose for its erection, the fence could still constitute evidence supporting the claim of adverse possession.[70] The court determined, however, that the fence was constructed by a previous title holder to serve as a cow fence and consequently, reasoned that the *Ridgely* holding did not apply. Therefore, the court ruled that the possession could extend only to property actually occupied by the adverse claimant and remanded for consideration of that issue.[71]

Thus, the rule handed down by *Costello* is that if the visible line of demarcation was not erected by the adverse claimant, the claimant can take title only to the property that he actually occupied. On the other hand, if the visible line of demarcation was erected by the adverse claimant for the purpose of delineating the claimed parcel, or if there was no evidence of who erected it or its purpose, the visible line of demarcation would constitute evidence of adverse possession of all the property it defined.[72] The court derived this rule by a synthesis of *Storr, Tamburo,* and *Ridgely.* Thus, the court provided Maryland practitioners a rare "bright line" rule that should ease future litigation in the adverse possession area, particularly with respect to visible lines of demarcation.

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65. *Id.,* 475 A.2d at 1191-92.

66. 84 Md. at 282, 35 A. at 965. *See supra* notes 16-20 and accompanying text.

67. 300 Md. at 73, 475 A.2d at 1191-92.

68. *Id.,* 475 A.2d at 1191. Actually, Jacobs v. Disharoon, 113 Md. 92, 77 A. 253 (1910), first announced this rule. *See supra* notes 25-26 and accompanying text.

69. 204 Md. 563, 105 A.2d 212 (1954). *See supra* notes 30-31 and accompanying text.

70. 300 Md. at 74, 475 A.2d at 1191.

71. *Id.,* 475 A.2d at 1192.

72. This rule should not be confused with the doctrine of adverse possession under color of title. Under this doctrine, if the adverse claimant had "title papers good enough in appearance and ostensible effect to give [him] the right to the bona fide belief [that he] owned the land," the adverse claimant would take title to the land specified by the deed even if he did not actually occupy the entire tract. Spicer v. Gore, 219 Md. 469, 476, 150 A.2d 226, 230 (1959). Arguably, aspects of the *Costello* rule reach beyond the issues presented in the case and therefore are dicta. Nevertheless, principles of judicial economy and clarity in the law suggest that the validity of the rule will not be questioned on this ground.

IV. CONCLUSION

In early Maryland jurisprudence, enclosure was an element necessary for adverse possession. After this requirement was eliminated statutorily, enclosures remained significant in adverse possession cases because their erection was probative of the adverse claimant's acts of ownership. If not erected by the adverse claimant, fences delineated the adverse claim if the claimant actually occupied the area up to the fence. Other visible lines of demarcation, such as roads or ditches, generally had the same effect. *Costello v. Staubitz* synthesized the earlier cases and produced a rule of law that is easy to apply in all adverse possession cases involving visible lines of demarcation.

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