IN THE CIRCUIT COURT OF [redacted] COUNTY
STATE OF MISSOURI

DT, *et al.*,	)	
	)	
Plaintiff.	)	
	)	
vs.	)	Case No.
	)	
RH, *et al.*,	)	
	)	
Defendants.	)	

JUDGMENT NOTWITHSTANDING THE JURY'S VERDICT

At trial, plaintiffs DLS and DS ("the S.s") claimed that they had adversely possessed approximately 314 acres of land ("the Disputed Property"), which is legally described in the attached and incorporated Exhibit A, from MLS, comprising part of the former "S. Farm".

Defendants RH and JH ("the H.s") claimed via Counterclaim that they own the Disputed Property and sought to Quiet Title free and clear of the claims asserted by DLS and DS, as well as by JS and MS, who proceeded to trial as co-plaintiffs before dismissing their claim with prejudice on April 13, 2017.

The S.s introduced evidence, then the H.s introduced evidence, which was followed by rebuttal evidence from the S.s. The H.s renewed their Motion for Directed Verdict at the close of all evidence. The Court denied the H.s renewed motion, but is "deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion." *See* Supreme Court Rule 72.01(b). The jury returned a verdict for the S.s on April 14, 2017.

On their affirmative claim for adverse possession, the S.s were obligated to introduce evidence that their possession of the Disputed Property was "(1) hostile, that is, under a claim of

right, (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous, for ten years prior to commencement of the action to perfect title by adverse possession." *Shanks v. Honse*, 364 S.W.3d 809, 812 (Mo.App.S.D. 2012) (citing *Walker v Walker*, 509 S.W.2d 102, 106 (Mo. banc 1974)); *White v. Matthews*, 506 S.W.3d 382 (Mo.App.S.D. 2016). Unless the S.s proved each of these elements, their claim for adverse possession failed as a matter of law. *Shanks, supra*, at 812 (citing *Murphy v. Holman*, 289 S.W.3d 234, 237 (Mo.App.W.D. 2009)).

A. "Hostile" Element

1. Adverse Possession must be founded upon the assertion of rights that oppose or are inconsistent with the record owner's title.

"Adverse possession implies a commencement wrongfully by ouster or disseisin and maintained against right." *Tallent v. Barrett*, 598 S.W.2d 602, 606 (Mo.App.S.D. 1980). As such, in any adverse possession case, "[t]he essential and overriding consideration is that the possessor's occupancy be truly adverse and in opposition to the title of the record owner, that the claimant intend to occupy as his own and not in subordination to the rights of others." *Ortmeyer v. Bruemmer*, 680 S.W.2d 384, 392 (Mo.App.W.D. 1984) (emphasis added); *Weaver v. Helm*, 941 S.W.2d 801, 805 (Mo.App.S.D. 1997); *Warren v. Tom*, 946 S.W.2d 754, 759 (Mo.App.S.D. 1997); *Teson v. Vasquez*, 561 S.W.2d 119, 125 (Mo.App.E.D. 1977); *Eakins v. Sadler*, 683 S.W.2d 303, 306 (Mo.App.E.D. 1984). Stated another way, "[i]t is not a mere occupancy or possession which must be known to those who claim ownership which establishes title by adverse possession, but that occupancy or possession which is in opposition to the rights and in defiance or inconsistent with the rights of the other claimants." *Russell v. Russell*, 540 S.W.2d 626, 634 (Mo.App.E.D. 1976).

2. "Hostile" Possession is antagonistic, defiant, and undertaken without recognizing the record owner's authority and rights.

The fundamental characteristic of an adverse possession claim is reflected in the "hostility"

element, which requires proof that possession was "antagonistic to claims of all others, with an intent to occupy as one's own." *Weaver v. Helm*, 941 S.W.2d 801, 804 (Mo.App.S.D. 1997) (citation omitted) (emphasis added). This "claim of right or ownership must be unequivocal." *Id*. (citation omitted) (emphasis added). Possession "must be in defiance of, not in subordination to, the rights of others." *Id*. at 804 (citation omitted). "An adverse possessor does not recognize the authority of the record titleholder to permit or to prevent his continued use of the property claimed." *Id*. at 804 (citation omitted) (emphasis added); *White v. Matthews*, 506 S.W.3d 382, 390 (Mo.App.S.D. 2016) (reciting that "[p]ermissive use will not support a claim of adverse possession because hostile possession is lacking.") (citing *Brokhausen v. Waubansee*, 65 S.W.2d 598, 600 (Mo.App.S.D. 2002)).

3. <u>Permissive Possession can become hostile, but additional evidence is required.</u>

When one's possession of land begins permissively, it remains permissive until a hostile claim is brought home to the true owner. *Williams v. Diederich*, 223 S.W.2d 402, 404 (1949); *Eld v. Ellis*, 235 S.W.2d 273, 276 (Mo. 1950) (citations omitted). To change the nature of a use from permissive to adverse, there must be a distinct and positive assertion of a right that is hostile to the owner and made evident to that owner. *Kammerer v. Cella*, 585 S.W.2d 552, 557 (Mo. Ct. App. 1979) (citations omitted); *Oberle v. Monia*, 690 S.W.2d 840, 844 (Mo. Ct. App. 1985) (citations omitted); *Contemporary Mgmt., Inc. v. 1007 Olive P'ship*, 760 S.W.2d 135, 138 (Mo. Ct. App. 1988) (citations omitted).

4. <u>Adverse Possession against family members also requires a higher burden of proof.</u>

While the burden of proof in adverse possession cases is typically preponderance of the evidence, the S.s had the burden of introducing clear, cogent, and convincing evidence that their possession was "hostile" because MLS was their mother/mother-in-law. *Sleepy*

Hollow Ranch LLC v. Robinson, 373 S.W.3d 485, 497 (Mo.App.S.D. 2012) (stating that "[t]here is a greater standard of proof required when the parties involved in an adverse possession claim are family members" and evaluating sufficiency of evidence using "clear, cogent, and convincing" standard); *Tallent v. Barrett*, 598 S.W.2d 602, 606 (Mo.App.S.D. 1980).

Imposing a higher burden of proof is founded upon the "general rule" that "permissive occupation of a family estate by other family members is so usual and common that acts of occupation thereof to show hostile adverse possession against one another, must be demonstrated by a clear, positive, and continued disclaimer and disavowal of title and an unadulterated assertion of adverse right brought home to the true owners for such time as to bar them, by statutory limitations, from asserting their rights." *Tallent v. Barrett*, 598 S.W.2d 602, 606 (Mo.App.S.D. 1980) (emphasis added). Accordingly, "[w]here there exists a family relationship among involved parties, that relationship will prevent or rebut a presumption of adverse holding that may arise under similar circumstances involving nonrelated parties." *Id*. at 606 (emphasis added).

5. <u>Adverse Possession divests the record owner of title at 10-year mark and vests title in adverse possessor.</u>

Once adverse possession occurs for ten continuous years, "the possessor is vested with title and the record owner is divested." *Whetstone Baptist Church v. Schilling*, 381 S.W.3d 366, 372 (Mo. Ct. App. 2012) (citing *Flowers v.* Roberts, 979 S.W.2d 465, 469 (Mo.App.E.D. 1998)).

6. <u>The Scotts' evidence failed to establish "hostile" possession.</u>

The S.s attempted to prove "hostile" possession by focusing solely on how they used and possessed the Disputed Property and the fact that MLS did not interfere with their use and possession. This evidence was legally deficient in two regards.

First, the S.s completely ignored and failed to address whether their use and possession was in opposition to MLS and antagonistic towards or inconsistent with her rights

as the record title owner. At most, the S.s' evidence proved possession alone without any regard to adverseness.

Second, the S.s' evidence affirmatively disproved that their possession was "hostile," as set forth below:

a. 1981 Quit-Claim Deed

In 1981, the S.s signed a Quit-Claim Deed releasing and conveying their rights, title, and interests in 216 acres of the Disputed Property to MLS and DS2. *See* Trial Ex. 404-H, which was admitted into evidence. DLS and DS signed this Quit-Claim Deed so that DLS's father, DS2, could put the Disputed Property in trust.

By signing this Quit Claim Deed, DLS and DS conveyed to MLS and DS2 whatever rights, titles, and interests they possessed. *Humphrey v. Sisk*, 890 S.W.2d 18, 21 (Mo.App.S.D. 1994) (reciting that "a quitclaim deed is as effective as any other deed for the purpose of transferring title") (citations omitted); *Jamieson v. Jamieson*, 912 S.W.2d 602, 605 (Mo.App.E.D. 1995) ("A quit-claim deed passes the whole of grantor's interest in the property.") Conveying title to someone may be the utmost form of recognizing someone else's superior rights in land in that, by doing so, the grantor is unequivocally recognizing the grantee as the rightful owner going forward.

This Quit-Claim Deed proves that, as of 1981, the S.s were not hostilely possessing the Disputed Property.

b. Post-Partnership

DLS farmed the Disputed Property throughout the 1970's as his father's partner. In DLS's mind, this partnership ended in 1981 when his father did not want to farm any longer. DSL kept farming the Disputed Property after his father retired, but never denied that

MLS remained the record title owner "at all times."[1] None of DLS's continued farming activities ever went against anything that MLS wanted done. MLS never objected to the way DLS ran things. MLS never told the S.s to refrain from doing anything they were doing or to stop using any portion of the Disputed Property.

The S.s' admission that MLS remained the record title owner "at all times" disproves their adverse possession claim *in toto*. A record owner is divested by an adverse possessor as soon as ten years of hostile possession come together with the other required elements. *Whetstone Baptist Church v. Schilling*, 381 S.W.3d 366, 372 (Mo. Ct. App. 2012) (citing *Flowers v.* Roberts, 979 S.W.2d 465, 469 (Mo.App.E.D. 1998)). By admitting that MLS was never divested of title, which the S.s seemingly confessed to soften their appearance before the jury, the S.s admitted that adverse possession never occurred. If adverse possession had occurred, MLS would have been divested of title by the S.s' actions.

Notwithstanding the S.s' confession that adverse possession never occurred, DLS's testimony that he and his father were partners implicitly established that DLS initially had permission to possess and use the Disputed Property. Under Missouri law, DLS's permissive use and possession remained permissive unless and until he distinctly and positively asserted against his parents a right that was hostile towards theirs.

The S.s did not offer any evidence that could possibly support a finding that they transformed their permissive use into hostile use after 1981 via distinct and positive assertions of right, let alone evidence that was clear, cogent, and convincing.[2] If anything, the S.s' evidence

[1] DS2 passed away in 1983.

[2] DLS's testimony about his father wanting to retire was not salient to this issue. That evidence speaks only to why DS2 stopped assisting DLS with farming and why DLS thereafter retained the farming income. It does not evidence in any way DLS's assertion of a hostile right against his parents' ownership.

disproved that any transformation occurred. DLS simply kept doing what he had initially done permissively, and MLS continued allowing him to do so without any objections or requests to cease (which, if disobeyed, could have transformed the S.s' use to hostile rather than permissive).

c. 1993-1995 Deeds

The Disputed Property was larger before 5 tracts were conveyed between approximately 1993 and 1995 because they were not needed for farming and DLS was trying to raise money to build a house. However, MLS signed all 5 of the deeds evidencing those conveyances. *See* Trial Exhibits 407-H, 408-H, 409-H, 410-H, and 411-H, all of which were admitted into evidence.[3] DLS was not a party to and did not sign any of those deeds. *Id.* At trial, DLS expressly and repeatedly testified that he "needed" MLS to sign those deeds to accomplish his objectives, that she agreed to sign those deeds for him, and that he could not have done what he wanted to do if MLS had not acquiesced. Tr. at 124:10-13, 125:5-9, and 125:24-126:10.

An adverse possessor does what he wants with land without permission. *See* § A-2, *supra*. DLS was not an adverse possessor because he could not do what he wanted with MLS's land, i.e. use it as a source for funding construction, without her assent. Additionally, an adverse possessor does not recognize the record owner's authority or the subservience of his rights to the owner's. *Id*. DLS was not an adverse possessor because he freely recognized and admitted that his rights did not include the right to convey title, which is

[3] Trial Exhibit 407-H was a November 5, 1993 Trustee's Deed from MLS to SC. Trial Exhibit 408-H was a July 22, 1994 Trustee's Deed from MLS to HH and AH. Trial Exhibit 409-H was a September 16, 1994 Trustee's Deed from MLS to JTR and JR. Trial Exhibit 410-H was a December 23, 1994 Trustee's Deed from MLS to HH and AH. Trial Exhibit 411-H was a June 12, 1995 Trustee's Deed from MLS to DM and CM.

why he "needed" MLS's permission (in the form of signatures on deeds) to consummate all five transactions and could not have done so had she declined. As such, these five transactions proved that, as of the mid-1990's, the S.s still were not hostilely possessing the Disputed Property.

d. The 1999 Beneficiary Deed

Trial Exhibit 413-H, which was admitted into evidence, was an August 13, 1999 Beneficiary Deed from MLS to DLS covering various real estate including the Disputed Property. DLS did not file an adverse possession lawsuit against MLS because of this Beneficiary Deed and the fact that his mother's "word was good." *See* Testimony of DLS , Tr. at 170:13-170:21; 171:2-171:6; 174:24-175:2. DLS testified, in his own words, that a beneficiary deed is "a way of conveying ownership from one person to another upon death." *Id.* at 170:22-170:25 (emphasis added). DLS believed that he had "earned" the Disputed Property and that it would pass to him when MLS died if she still owned it. This arrangement was acceptable to DLS because he wanted to avoid incurring taxes and other responsibilities associated with buying and selling real estate.

Again, adverse possessors refuse to recognize the true owner's authority and claim rights that oppose and are inconsistent with the true owner's rights. *See* § A-2, *supra*. The Beneficiary Deed (Trial Exhibit 413-H) demonstrated that, as of 1999, MLS claimed ownership of the Disputed Property and the right to convey it to DLS when she died. DLS did not oppose MLS's right and authority to dispose of the Disputed Property in this manner. In fact, he preferred this course of action and affirmatively wanted MLS to continue owning the Disputed Property for fear that he would otherwise incur taxes and other liabilities.

DLS 's plan to acquire the Disputed Property under the Beneficiary Deed when

MLS died and his express desire for her to continue owning the Disputed Property until she died proved that the S.s' possession was not "hostile" in and after 1999.

e. <u>The 2007 Seymour Bank Loan</u>

Trial Exhibit 550-H, which was admitted into evidence, was the S.s' written application for a loan from [redacted] Bank in 2007. *See* Testimony of DLS, Tr. at 130:7-10, 130:15-22, and 132:14-16.[4] DLS and DS needed a loan from [redacted] Bank to refinance a loan that had gone past due. *Id*. at 132:19-23. The loan application included space to list real estate owned by the S.s and the only real estate they listed was their own home. *Id*. at 133:2-15; Trial Ex. 550-H at p. 2. After discussing this loan application with [redacted] Bank, DLS approached MLS and told her that he "needed" her to pledge the Disputed Property as collateral. *Id*. at 135:1-136:11. MLS then submitted a written loan application, which was marked as Trial Exhibit 551-H and admitted into evidence. MLS's loan application stated that *she* owned a "farm and home." Trial Ex. 551-H at p. 2. DLS had no objection to MLS's loan application because she was the title owner. *See* Testimony of DLS, Tr. at 137:11-25. On or about March 20, 2007, MLS signed a Deed of Trust, which was marked as Trial Exhibit 414-H and admitted into evidence. Trial Exhibit 414-H granted Bank a security interest in the Disputed Property.[5] DLS testified that MLS signed this Deed of Trust to secure a loan that was supposed to be in his and DS's names. *Id*. at 122:16-25. DLS Scott admitted that the S.s would not have gotten their loan from Bank if MLS had not acquiesced. *Id*. at 136:6-136:14.

[4] Originally, Trial Exhibit 550 was mistakenly referred to as Trial Exhibit 462. This mistake was acknowledged and corrected on the record. *Id* at 130:23-131:16.

[5] Trial Exhibit 414-H's legal description was the same as the legal description in the February 8, 2013 General Warranty Deed from MLS to the H.s, which was Trial Exhibit X-S and admitted into evidence.

This testimony and documentary evidence reinforces that the S.s did not adversely possess the Disputed Property against MLS. DLS's acknowledgment that MLS had not been divested of title is another acknowledgment that adverse possession never occurred. *Whetstone Baptist Church v. Schilling*, 381 S.W.3d 366, 372 (Mo. Ct. App. 2012) (adverse possessor "is vested with title and the record owner is divested" once ten- year period is satisfied) (citing *Flowers v.* Roberts, 979 S.W.2d 465, 469 (Mo.App.E.D. 1998)).

Setting aside DLS's second confession that adverse possession never occurred, adverse possessors assert unequivocal claims to land. *See* § A-2, *supra*. After decades of farming the Disputed Property, the S.s did not even list it on a schedule of assets when applying for a loan they desperately needed. Additionally, and as previously stated, an adverse possessor does what he wants with land without permission. *See* § A-2, *supra*. The S.s were not adverse possessors because they could not do what they wanted with MLS's land, i.e. pledge it as collateral for their loan, unless MLS assented. Likewise, an adverse possessor does not recognize the record owner's authority or the subservience of his rights to the owner's. *Id.* The S.s relied on MLS doing something they could not do themselves (pledge the Disputed Property as collateral for their loan) and which would not have been done but for MLS's acquiescence. Accordingly, at a minimum, the evidence concerning the 2007 Bank transaction proved that the S.s were not adversely possessing the Disputed Property as of 2007.

f. <u>Admissions From Prior Lawsuit</u>

Trial Exhibit 440-H, which was admitted into evidence, was a certified copy of a Verified Petition that MLS, DLS, and his son JS filed in 2009 concerning alleged trespasses upon the Disputed Property. This Verified Petition alleged that MLS

owned the Disputed Property and that DLS and JS worked and farmed the Disputed Property. *See* Trial Ex. 440-H at ¶¶ 1-2.

Trial Exhibits 460-H, 461-H, and 462-H, which were also admitted into evidence, were copies of interrogatory answers signed under oath by MLS, JS, and DLS, respectively, and served in the prior lawsuit. Those sworn interrogatory responses stated that MLS allowed DLS and JS to use her land to operate her family farm and that she had signed a beneficiary deed for the Disputed Property. *See* Trial Ex. 460-H at ¶¶ 6, 7, 8, and 9; Trial Ex. 461-H at ¶¶ 6, 8, and 10; Trial Ex. 462-H at ¶ 6.

DLS was deposed in the prior lawsuit and testified that MLS still owned 480 acres at that time. *See* Testimony of DLS, Tr. at 162:8-163:12. At trial, DLS testified that his prior deposition testimony was correct because MLS owned title while he "owned possession." *Id*. at 163:16-164:1.

This testimony and documentary evidence further reinforced that adverse possession did not occur. It included DLS's third express admission that MLS was never divested of title, which means she was not adversely possessed. *See* § A-5, *supra*. It also included even more evidence that the S.s did not unequivocally claim ownership of the Disputed Property or assert any rights that were antagonistic towards, inconsistent with, or opposed to MLS's ownership. To the contrary, they expressly recognized (in numerous sworn pleadings) that MLS owned the Disputed Property while allowing them to use it. By admitting MLS's superior title and that their use was permissive, the S.s disproved that they were adverse possessors. *See* § A-2, *supra*.

g. <u>How "Hostile" Evidence Failed</u>

The evidence at trial proved that the S.s' possession was not "hostile" because they (a)

repeatedly and continuously recognized MLS as the true owner in deeds, loan applications, and verified pleadings; (b) believed that DLS would acquire the Disputed Property pursuant to a Beneficiary Deed (Trial Exhibit 413-H) when MLS died; and (c) requested and received MLS's assent when necessary to accomplish what they themselves could not do with the Disputed Property.

For all of these reasons, the S.s failed to meet their burden of proving that their possession was "hostile" and thereby failed to make a *prima facie* case for adverse possession. *Shanks v. Honse*, 364 S.W.3d 809, 812 (Mo.App.S.D. 2012) (claim for adverse possession fails as a matter of law if each element is not proven).

B. <u>Knowledge / "Open and Notorious" Element</u>

1. <u>Actual or Implied Notice to True Owner is Required</u>

"The law presumes that every possession is consistent with title and not adverse thereto." *Tallent v. Barrett*, 598 S.W.2d 602, 606 (Mo.App.S.D. 1980). "To rebut this presumption, the party championing adverse possession must show either actual knowledge of the real owner that the adverse claimant is claiming in defiance and opposition of the real owner's title or a use and occupancy by adverse claimant so notorious and open and inconsistent with and injurious to the rights of the true owner that, from such facts, the law will authorize a presumption of such knowledge reposing in the true owner." *Id*. at 606. The purpose of this requirement is "to ensure that the legal owner had cause to know of the adverse claim of ownership by another." *Schroeder v. Proctor*, 280 S.W.3d 724, 727 (Mo.App.W.D. 2009) (citing *Luttrell v. Stokes*, 77 S.W.3d 745, 749 (Mo.App.S.D. 2002)).

Whether a use is "open and notorious" turns on whether "the particular acts in question are acts of ownership and are sufficient to give the existing owner notice of the claim being made."

Porter v. Posey, 592 S.W.2d 844, 849 (Mo.App.E.D. 1979) (citations omitted). "Thus, the element of open and notorious is satisfied by a showing that the occupancy or possession manifested a claim of ownership and was conspicuous, widely recognized and commonly known." *Id*. at 849 (emphasis added). "When the land in question 'is wild, undeveloped and covered in woods and hills', what is required to satisfy the 'open and notorious' element may very well be increased." *Schroeder v. Proctor*, 280 S.W.3d 724, 727 (Mo.App.W.D. 2009) (citing *Luttrell v. Stokes*, 77 S.W.3d 745, 749 (Mo.App.S.D. 2002)).

2. <u>The S.s' evidence failed to establish that their possession served notice of an adverse claim that was conspicuous, widely recognized, and commonly known.</u>

The S.s failed to introduce evidence that their claim was conspicuous, widely recognized, and commonly known. In fact, the S.s' own evidence proved that any such adverse claim was unknown to their closest friends and neighbors.

The S.s introduced the testimony of longtime family friends and neighbors as "character" witnesses familiar with the S.s' use of the Disputed Property. These witnesses (HB, RD, and JS2) each testified that DLS was the only person they ever saw farming the Disputed Property. However, all three of these witnesses thought that MLS nonetheless owned the Disputed Property. HB testified that he assumed that MLS owned it. *See* Testimony of HB, Tr. at 236:5-10. RD testified that he always thought DLS would eventually inherit the Disputed Property from MLS. *See* Testimony of RD, Tr. at 249:7-12. JD2 testified that he thought MLS would own the Disputed Property until she died. *See* Testimony of JS2, Tr. at 262:14-263:3.

An adverse possessor asserts antagonistic claims that are "conspicuous, widely recognized,

and commonly known." *See* § B-1, *supra*. The S.s were not adverse possessors because their use and possession of the Disputed Property was construed by their hand-picked trial witnesses as permissive use of MLS's land, which DLS would someday inherit.

C. "Exclusive" Element

1. Joint Possession Defeats Adverse Possession

"The rightful owner cannot be deprived of title by possession of another if he is also in possession with the adverse claimant as joint possession is not adverse." *Tallent*, *supra*, at 606. Consequently, the S.s had the burden of proving that the Disputed Property was not "open to the use of others and was not jointly possessed with others." *Machholz-Parks v. Suddath*, 884 S.W.2d 705, 708 (Mo.App.S.D. 1994).

2. The S.s failed to establish that their possession was "exclusive."

MLS was born on the Disputed Property, left briefly during the 1950's before returning home, and ultimately lived within 100 yards of the S.s until 2011. Her husband farmed the Disputed Property in partnership with DLS throughout the 1970's. As previously stated, DLS never accused MLS of trespassing on the Disputed Property and never prohibited her from going anywhere on the Disputed Property.

Adverse possessors do not jointly possess land along with the record title holder. *See* § C-1, *supra*. But that is exactly what the S.s did. Even after their farming partnership allegedly ended, the S.s lived next door to MLS, never excluded her from the Disputed Property, and in fact allowed her to access the Disputed Property whenever she wanted. These were not the acts of an adverse possessor, but rather of a son farming his mother's land.

The S.s' adverse possession claim also failed as a matter of law because they failed to

introduce evidence that the Disputed Property was not jointly possessed with MLS.

D. Family Land

The parties may think a judge may not understand their opinions and beliefs about the land in dispute in this case. I was born on a family farm. I was raised on a family farm. I now farm part of that family farm with my cousin.

I did not know until my 20's that my paternal grandparents owned the house and land where we lived. When my grandparents passed away, I learned my parents did not own our land and my uncle did not own his land. In the last 6 months of my grandfather's life, he lived with my aunt. During that time, the will was changed and all of the CD's were changed by my grandfather.

Prior to this time, it was understood that the boys (my father and uncle) would get the farm, and the girl (my aunt) would get the money. However, my aunt had her name placed on all the CD's with my grandfather. The will stated the 3 children would share the estate equally. The result was my aunt received over $300,000.00 in money. My father and uncle had to then pay their sister for one third of the farm. The farm they were always promised as boys, "If you stay and work the farm, it will be yours." In conclusion, not only did they not receive any money, they had to pay hundreds of thousands of dollars for "their farms".

So yes, I understand this case. I would suggest the parties get together and the H.s' sell back the acres. Then, DLS and his sister can decide what is right or fair, or not. This is a sad case, but one which is played out in an almost daily manner in this state and country.

E. JNOV is appropriate because the S.s failed to introduce evidence supporting multiple elements of their claim for adverse possession.

"A motion for directed verdict or JNOV should be granted if the defendant shows that at least one element of the plaintiff's case is not supported by the evidence." *Ellison v. Fry*, 437

S.W.3d 762, 768 (Mo. 2014) (citations omitted). As set forth above, multiple elements of the S.s' claim for adverse possession were unsupported by evidence. The S.s did not introduce evidence that their possession and use of the Disputed Property was in opposition to MLS's rights, did not introduce evidence that their possession conspicuously served notice of an adverse right that was commonly known and widely recognized, and did not introduce evidence that their possession was exclusive against MLS. Accordingly, the H.s' Motion for Directed Verdict was well-founded and so too is their Motion for Judgment Notwithstanding Verdict.

The S.s failed to introduce evidence that their possession was hostile, open and notorious, and exclusive. The S.s thereby failed to prove their claim for adverse possession as a matter of law and the H.s are entitled to relief under Supreme Court Rule 72.01(b). The H.s requested that the jury's verdict be set aside and that Judgment be entered in their favor in accordance with their Motion for Directed Verdict.

The H.s are entitled to judgment notwithstanding that verdict ("JNOV") because their Motion for Directed Verdict identified elements of the S.s' adverse possession claim that were not supported by evidence. *Clevenger v. Oliver Ins. Agency, Inc.*, 237 S.W.3d 588, 590 (Mo.banc 2007) (citing *Breckenridge v. Meierhoffer-Fleeman Funeral Home, Inc.*, 941 S.W.2d 609, 611 (Mo.App. 1997)); *Hadley v. Burton*, 265 S.W.3d 361, 371 (Mo.App.2008).

The S.s' adverse possession claim also failed as a matter of law because they failed to introduce evidence that could support a factual finding that MLS had actual knowledge that her son and daughter-in-law claimed rights in opposition to her own or that their use served notice of an adverse right or claim that was conspicuous, widely recognized, and commonly known. In fact, the S.s' own evidence, i.e. the testimony of HB, RD,

and JS2, proved the exact opposite.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the jury verdict rendered in this case is set aside by the Court. The Court further orders, adjudges and decrees that Defendant's Motion for Judgment Notwithstanding the Jury's Verdict is granted. It is the Order of the Court that Judgment is entered (1) in favor of Defendants RH and JH and against Plaintiffs DLS and DS as to the S.s' affirmative claim for adverse possession; and (2) in favor of Defendants RH and JH on their Counterclaim to Quiet Title against DLS, DS, JS , and MS, and that the H.s are the owners in fee simple of the 314 acres legally described in the attached and incorporated Exhibit A, free and clear of any rights, titles, or interests asserted or claimed by DLS, DS, JS, and MS. It is further ordered, adjudged and decreed that Defendants H.s are awarded immediate possession of the disputed 314 acres.

Taxable court costs are assessed against Plaintiffs.

1/19/2018

DATED

[redacted]

HONORABLE CALVIN R. HOLDEN

Exhibit A