Current Developments and Issues in Agricultural Law and Taxation

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Overview

The legal, tax and economic issues are many and varied that face farmers and ranchers as well as the businesses and other professionals that work in the agricultural industry. In today's blog article, I look at some recent developments and issues of importance.

Adverse Possession/Prescriptive Easement

Easement issues arise frequently in agriculture. Often the easement involves access to a landlocked parcel. In those situations, the law will imply an easement from prior use or necessity, or by prescription. An implied easement may arise from prior use if there has been a conveyance of a physical part of the grantor's land (hence, the grantor retains part, usually adjoining the part conveyed), and before the conveyance there was a usage on the land that, had the two parts then been severed, could have been the subject of an easement appurtenant to one and servient upon the other, and this usage is, more or less, "necessary" to the use of the part to which it would be appurtenant, and "apparent." An easement implied from necessity involves a conveyance of a physical part only of the grantor's land, and after severance of the tract into two parcels, it is "necessary" to pass over one of them to reach any public street or road from the other. No pre-existing use needs to be present. Instead, the severance creates a land-locked parcel unless its owner is given implied access over the other parcel.

Acquiring an easement by prescription is analogous to acquiring property by adverse possession. If an individual possesses someone else's land in an open and notorious fashion with an intent to take it away from them, such person (known as an adverse possessor) becomes the true property owner after the statutory time period (typically anywhere from 10 to 21 years) has expired. For an easement by prescription to arise, the use of the land subject to the easement must be open and notorious, adverse, under a claim of right, continuous and uninterrupted for the statutory period. But, unlike adverse possession, there is no exclusivity requirement (except for the usage of the easement that is unique to the claimant) for acquiring a prescriptive easement. That's because the claimant is not claiming ownership of the property involved, just use. Others may also be able to use the eased area without interfering with the claimant's prescriptive easements.

That last point is one that I have harped on for years – particularly in Kansas because the Kansas courts, frankly, have confusingly blurred the lines between adverse possession and prescriptive easement. I have always tried to point out to my law students the difference between the two concepts and why the difference matters for farm clients. Well, finally, the Kansas Supreme Court has

cleared the mess up in Kansas by issuing an opinion as if it were straight from my books, seminars, extension meetings, classes and all.

Here's a summary of the case:

Pyle v. Gall, 531 P.3d 1189 (Kan. 2023)

The parties disputed the location of the property line between their tracts. The plaintiff routinely planted crops up to what the plaintiff believed to be the property line, but that planting interfered with the crop farming plans of the defendant's tenant. The plaintiff also regularly used a portion of the defendant's field as a road to access the plaintiff's crops. In 2015, the defendant offered to sell the disputed area to the plaintiff and told the plaintiff to stop accessing the plaintiff's crops via the defendant's field. Each party hired surveyors, but the surveyors reached different conclusions as to the property line. In March of 2016, the defendant built a fence based on the property line that the defendant's surveyor found, which was 17 feet beyond what the plaintiff believed to be the property line. In March 2017, the plaintiff sued to quiet title to the field up to the crop line he farmed to by adverse possession and sought either a prescriptive easement or easement by necessity.

The trial court held that the plaintiff had adversely possessed the land in dispute and had acquired a prescriptive easement across the defendant's property. On appeal, the appellate court upheld the trial court's determination that the plaintiff had acquired the strip in question by adverse possession. The plaintiff had used the property for the statutory timeframe in an open, exclusive and continuous manner upon belief of true ownership. Use by others for recreational purposes, the appellate court reasoned, did not negate the exclusivity requirement because the use was infrequent compared to the plaintiff's farming activity on the disputed land. However, the appellate court reversed the trial court on the prescriptive easement issue because both the plaintiff and the defendant used the alleged area on which a prescriptive easement was being asserted. Thus, the plaintiff had not used the easement exclusively. The appellate court remanded to the trial court the issue of whether an easement by necessity had arisen because the trial court had not considered the issue. *Pyle v. Gall, No. 123,823, 2022 Kan. App. Unpub. LEXIS 242 (Kan. Ct. App. Apr. 29, 2022).*

Note: The appellate court's opinion last year gave me more fodder for criticism of the blurring of prescriptive easement and adverse possession concepts/requirements. There simply is no exclusivity requirement with respect to a prescriptive easement except what is unique to the party claiming a prescriptive easement. A prescriptive claimant is not asserting ownership, but a particular usage of a portion of the owner's property. Others may also assert usage that is unique to themselves that doesn't conflict with the claimant's usage.

On further review, the Kansas Supreme Court reversed. The Court clarified that there is no exclusivity requirement as an element for claiming a prescriptive easement (other than what is unique to the claimant). The Court noted that the other elements for establishing a prescriptive easement are that the usage must be open, continuous for a statutory period (15 years in Kansas) and adverse to the true owner's exclusive right of possession. The Court stated that, "Exclusivity in the context of adverse possession is different than exclusivity in the context of prescriptive easements." So, a prescriptive easement exists if the landowner doesn't substantially interrupt the prescriptive claimant's use of the

land during the statutory (15 years in Kansas) timeframe. It doesn't matter if the claimant failed to exclude all others from the contested area.

Based on the facts of the case, while others used the subject area no one who owned or possessed the area in question substantially interrupted the plaintiff's access to his field. The easement area was being used by multiple people each for their own unique purposes. No one else used it as a corridor to access the plaintiff's field. *How* the contested area was used was the key. The plaintiff successfully asserted a prescriptive easement for access to his field.

Texas Adverse Possession Case

Parker v. Weber, No. 10-16-00446-CV, 2023 Tex. App. LEXIS 2210 (Tex. Ct. App. Apr. 4, 2023)

This case involved adjoining property owners and a disputed 20.62 acres. The defendant acquired his tract in 1958 and the plaintiff bought the adjoining tract and the 20.62 acres in 2014. The seller of the 20.62 acres would not convey the tract via a warranty deed because of his understanding that there was some dispute about ownership of the acreage. The plaintiff knew that there was a dispute about the title of the 20.62 acres, but claimed he didn't know the defendant claimed title to it. The defendant claimed title by adverse possession, pointing out that he had rebuilt and maintained the existing fence (which was first built in 1903), and had grazed cattle on his ranch and the disputed 20.62-acre tract.

The appellate court determined that the evidence was sufficient to conclude that the fence was a "designed enclosure" rather than simply a "casual fence" (one that existed before either adjoining owner owned their tract). The court also noted that the 20.62 acres was contiguous with the defendant's larger ranch property, and he operated both tracts as a single cattle grazing unit. The defendant had continued this usage since 1959 (which easily satisfied the applicable 25-year requirement) and made the fence his own by rebuilding and maintaining it. Neighbor testimony established that the general view of the community was that the defendant owned the 20.62-acre property. The appellate court also rejected the plaintiff's argument that the defendant could not adversely possess the property because he didn't pay taxes on the disputed tract. The failure to pay taxes, the appellate court noted, lacked probative value.

Grain Storage Costs

The cost of storing grain at an elevator could be at an all-time high in the near future. How might it impact your farming business and what can you do about it? According to a report from CoBank's Knowledge Exchange, higher grain storage costs caused by higher interest rates, an inverted futures market and higher labor, insurance and operational costs could also mean lower cash grain bids and wider basis levels. The elevators' cost of borrowing has risen, and crop prices are high, so to alleviate the pressure, elevators raise storage costs. Based on USDA's marketing year average prices, the interest-related cost of storing grain is up 21 percent for corn, 42 percent for soybeans, and 50 percent for wheat. The situation is especially tough for co-op elevators because their business is to buy and market their members' grain – they must carry inventory even if the cost has gone up. And all of this is going on while farmers are facing higher input costs. So, lower bids for outputs and higher costs for inputs is not a good scenario for farmers.

So, what can you do to minimize risk? One thing is to examine your strategy for using forward and deferred payment contracts. Another is to see whether you are optimizing your depreciation alternatives and your use of the commodity futures market.

Update on Proposition 12 Fallout (the EATS Act)

In the wake of the U.S. Supreme Court's decision in the California Proposition 12 case, legislation has been introduced in both the U.S. House and Senate entitled the "Ending Agricultural Trade Suppression Act (EATS Act). The EATS Act attempts to limit the power of states to establish their own standards for agricultural products. The primary objective of the law is to prevent states from enforcing regulations on animal products that are produced outside their borders and then imported for sale within the state. The law is the current version of a bill introduced several years ago by Congressman Steve King. The King legislation and the EATS Act are designed to prioritize economic incentives for the production of agricultural products and avoid states from legislating their "morals" on other states and let consumers decide the ag products they wish to purchase (assuming products are appropriately labeled).

It is possible that the legislation could be included in the next Farm Bill. Animal rights groups oppose the legislation.