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## CONCLUSION

For the foregoing reasons, we conclude that the trial court abused its discretion in impaneling an anonymous jury. Because the evidence presented by the State was sufficient to sustain Nadeem's convictions, we reverse the convictions and remand the cause for a new trial.

REVERSED AND REMANDED FOR A NEW TRIAL.

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## STEPHEN M. SAWTELL, JR., AND JULIA A. SAWTELL, HUSBAND AND WIFE, APPELLEES, V. BEL FURY INVESTMENTS GROUP, L.L.C., APPELLANT.

810 N.W.2d 320

Filed March 6, 2012. No. A-11-150.

1. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
2. ____: ____. In reviewing a summary judgment, the court views the evidence in the light most favorable to the party against whom the judgment was granted and gives such party the benefit of all reasonable inferences deducible from the evidence.
3. **Equity: Quiet Title.** A quiet title action sounds in equity.
4. **Equity: Appeal and Error.** On appeal from an equity action, an appellate court resolves questions of law and fact independently of the trial court's determinations.
5. **Appeal and Error.** Although an appellate court ordinarily considers only those errors assigned and discussed in the briefs, the appellate court may, at its option, notice plain error.
6. **Appeal and Error: Words and Phrases.** Plain error exists where there is an error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of a litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process.
7. **Adverse Possession: Boundaries.** Proof of the adverse nature of the possession of the land is not sufficient to quiet title in the adverse possessor; the land itself must also be described with enough particularity to enable the court to exact the extent of the land adversely possessed and to enter a judgment upon the description.
8. ____: ____. The burden to prove an exact and definite description of land adversely possessed is not met where the metes and bounds of the area claimed would rest on speculation and conjecture.

9. **Summary Judgment.** The denial of summary judgment does not decide any issue of fact or proposition of law affecting the subject matter of the litigation.
10. **Appeal and Error.** An appellate court is not obligated to engage in an analysis that is not needed to adjudicate the controversy before it.

Appeal from the District Court for Douglas County: GERALD E. MORAN, Judge. Reversed and remanded for further proceedings.

Brian J. Muench for appellant.

Matthew S. McKeever, of Copple, Rockey, McKeever & Schlecht, P.C., L.L.O., for appellees.

INBODY, Chief Judge, and CASSEL and PIRTLE, Judges.

CASSEL, Judge.

## INTRODUCTION

Bel Fury Investments Group, L.L.C. (Bel Fury), challenges the district court's decree granting summary judgment in favor of Stephen M. Sawtell, Jr., and Julia A. Sawtell on their claim of adverse possession to a tract of land of which Bel Fury is the record owner. We note plain error. Because the district court entered a decree setting out a legal description of real property that is fundamentally incomplete and ambiguous, we reverse, and remand for further proceedings.

## BACKGROUND

The Sawtells reside at 9228 Timberline Drive, Omaha, Nebraska. They are the record owners of that property, which is legally described as "Lot 52, Block 2, Raven Oaks, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska." The Sawtells purchased this property in July 2006.

The Sawtells' property is adjacent to property owned by Bel Fury. Bel Fury's property is legally described as follows:

> The South Half (1/2) of the South Half (1/2) of the Southwest Quarter (1/4) of the Northwest Quarter (1/4) of Section Nineteen (19), Township Sixteen (16) North, Range Thirteen (13), East of the 6th P.M., in Douglas County, Nebraska; Except that part Deeded to Omaha Public Power District, specifically[:]

> The South Two Hundred Eighty (280′) Feet of the East Five Hundred Sixty Seven (567′) Feet of the West Six Hundred (600′) Feet of the South One Half of the South One Half of the Southwest Quarter of the Northwest Quarter (S ½ S ½ SW ¼ NW ¼) of Section Nineteen (19), Township Sixteen (16) North, Range Thirteen (13) East of the 6th P.M., Douglas County, Nebraska.

Bel Fury acquired this land by a tax foreclosure sale in February 2002.

At dispute is a tract of land approximately 100 feet by 10 feet located along the property line between the Sawtells' residence and Bel Fury's property (hereinafter referred to as the "disputed land"). The disputed land has been fenced in as part of the backyard of 9228 Timberline Drive since 1994. However, Bel Fury is the record owner.

In April 2010, the Sawtells filed a complaint against Bel Fury in the district court for Douglas County, Nebraska, alleging that they had acquired title to the disputed land by adverse possession. They subsequently filed a motion for summary judgment. A hearing was held, and evidence was adduced by both parties. One of the affidavits presented by the Sawtells was that of a registered land surveyor. In this affidavit, the surveyor explained that based on his survey of the disputed land, "[t]he fence extended 8.9′ and extended South 1.0′ from the Northwest corner of the subject property, and then extended South to a point 18′ North and 4′ West of the Southwest corner of the Lot line of the subject property." He also recommended a legal description for the Sawtell property that would include all of the land enclosed by the fence:

> Lot 52, Block 2, Raven Oaks, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, including a point extending 8.9′ West and 1.0′ South of the Northwest corner of Lot 52, Block 2 extending southerly to a point 18′ North and 4.8′ West of the Southwest corner of Lot 52, Block 2 to a point extending 4.8′ East to a point on the lot line of Lot 52, Block 2.

At the hearing, the district court verbally sustained the motion for summary judgment. It filed a written decree to that

effect on January 24, 2011, quieting title to the disputed land in the Sawtells. The decree set out the legal description of the disputed land as follows:

> A point extending 8.9′ West and 1.0′ South of the Northwest corner of Lot 52, Block 2 extending southerly to a point 18′ North and 4.8′ West of the Southwest corner of Lot 52, Block 2 to a point extending 4.8′ East to a point on the lot line of Lot 52, Block 2.

In its decree, the district court also amended the legal descriptions of the property owned by the Sawtells and Bel Fury to include and exclude, respectively, the adversely possessed tract of land. In the case of the Sawtell property, this combined description reads:

> Lot 52, Block 2, Raven Oaks, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, including a point extending 8.9′ West and 1.0′ South of the Northwest corner of Lot 52, Block 2 extending southerly to a point 18′ North and 4.8′ West of the Southwest corner of Lot 52, Block 2 to a point extending 4.8′ East to a point on the lot line of Lot 52, Block 2.

The district court amended the legal description of Bel Fury's property by adding the following qualification to the existing description:

> and except that part described as follows:
>
> A point extending 8.9′ West and 1.0′ South of the Northwest corner of Lot 52, Block 2 extending southerly to a point 18′ North and 4.8′ West of the Southwest corner of Lot 52, Block 2 to a point extending 4.8′ East to a point on the lot line of Lot 52, Block 2.

Bel Fury timely appeals.

## ASSIGNMENTS OF ERROR

Bel Fury alleges that the district court erred in (1) granting the Sawtells' motion for summary judgment, specifically finding that their claim met the requirements for adverse possession; (2) finding that the intervening foreclosure action on this specific real property did not toll the time required for adverse possession; and (3) finding that the Sawtells were entitled to actual notice of the intervening foreclosure action.

Prior to oral argument, we notified the parties to be prepared to address whether there was plain error in the district court's legal description of the disputed land.

## STANDARD OF REVIEW

[1,2] An appellate court will affirm a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. *Mandolfo v. Mandolfo*, 281 Neb. 443, 796 N.W.2d 603 (2011). In reviewing a summary judgment, the court views the evidence in the light most favorable to the party against whom the judgment was granted and gives such party the benefit of all reasonable inferences deducible from the evidence. *Radiology Servs. v. Hall*, 279 Neb. 553, 780 N.W.2d 17 (2010).

[3,4] A quiet title action sounds in equity. *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007). On appeal from an equity action, an appellate court resolves questions of law and fact independently of the trial court's determinations. *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).

## ANALYSIS

[5,6] We do not reach the assigned errors in this case because we note plain error in the legal description of the disputed land set forth in the district court's decree. Although an appellate court ordinarily considers only those errors assigned and discussed in the briefs, the appellate court may, at its option, notice plain error. *Cesar C. v. Alicia L.*, 281 Neb. 979, 800 N.W.2d 249 (2011). Plain error exists where there is an error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of a litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process. *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007). In the instant case, the district court plainly erred in using a legal description that is incomplete and ambiguous.

[7,8] Our case law in the area of adverse possession has evolved to place a high burden on the party claiming title by adverse possession to provide a description of the land to which he or she is claiming title. Proof of the adverse nature of the possession of the land is not sufficient to quiet title in the adverse possessor; the land itself must also be described with enough particularity to enable the court to exact the extent of the land adversely possessed and to enter a judgment upon the description. *Matzke v. Hackbart*, 224 Neb. 535, 399 N.W.2d 786 (1987). Over the years, the Nebraska Supreme Court has explained that the land must be "sufficiently described to found a verdict upon the description," *Steinfeldt v. Klusmire*, 218 Neb. 736, 739, 359 N.W.2d 81, 83 (1984), and that the description "must also be 'exact' and 'definite,'" *Petsch v. Widger*, 214 Neb. 390, 397, 335 N.W.2d 254, 259 (1983). This burden is not met where the metes and bounds of the area claimed would rest on speculation and conjecture. *Inserra v. Violi*, 267 Neb. 991, 679 N.W.2d 230 (2004). The Nebraska Supreme Court has not hesitated to reject adverse possession claims when the burden to provide a specific description is not met. See, e.g., *id*. at 996, 679 N.W.2d at 235 (describing evidence as providing "at best an approximate location of the claimed boundary"); *Matzke v. Hackbart*, 224 Neb. at 541, 399 N.W.2d at 791 (describing description provided as "an admitted estimation, with no factual basis expressed in the record"); *Steinfeldt v. Klusmire*, 218 Neb. at 739, 359 N.W.2d at 83 (noting that claimant's "evidence failed to establish any specific boundaries").

While our case law does not directly place a burden on the trial courts to provide precise descriptions when quieting title to property through adverse possession, we have begun to hold these courts accountable in addition to the parties for providing adequate property descriptions. In a 2004 Nebraska Supreme Court case, the court reversed a district court's allowance of an adverse possession claim based on a description that referred to "'the real property running from "pole to pole" on center on Lot 56 immediately adjacent to Lot 55.'" *Inserra v. Violi*, 267 Neb. at 993, 679 N.W.2d at 233. The court elaborated: "The issue is not . . . whether a surveyor could at some future date establish a boundary and legal description

using the landmarks identified in their testimony. Rather, their adverse possession claim must fail because they did not produce such evidence at trial, as our case law requires." *Id.* at 996, 679 N.W.2d at 235. We have interpreted *Inserra v. Violi* to require a court "to include a precise legal description of property rather than general descriptions based on landmarks." *Campagna v. Higday*, 14 Neb. App. 749, 761, 714 N.W.2d 770, 779 (2006).

The instant case does not include a property description that relies on landmarks or approximations, but it does present errors in description that will cause significant problems in future transactions involving the disputed land. First, the legal description of the disputed land does not describe a closed parcel of land. Such a description would not be sufficient to convey title if provided on a deed. See *Sober v. Craig*, No. A-94-513, 1996 WL 4310 (Neb. App. Jan. 2, 1996) (not designated for permanent publication). Neither would it serve as an adequate mortgage description. See *First Fed. Sav. & Loan Assn. v. Thomas*, 230 Neb. 465, 432 N.W.2d 222 (1988).

Second, the amended legal description of the Sawtell property erroneously states that the Sawtell land "includ[es]" the disputed land. The disputed land is not "includ[ed]" in the Sawtells' lot "as surveyed, platted and recorded." The disputed land lies *outside* of the platted lot. Thus, rather than the platted lot "including" the disputed land, the disputed land would be "together with" or "in addition to" the platted lot.

Finally, the legal description provided by the district court is ambiguous. One alternative is that the tract begins at the northwest corner of the platted lot and proceeds 8.9 feet west and then 1 foot south to a point; in other words, containing a right angle from west to south in the midst of the distance between the northwest corner of Lot 52 and the "point," where the total distance covered is 9.9 feet. Another alternative is that the surveyor meant to say, "beginning at the northwest corner of Lot 52, then proceeding in a straight line to a point located 8.9′ west and 1.0′ south of said northwest corner of Lot 52." In this interpretation, the line would be straight but of unstated length between the two points—point 1 being the northwest corner of Lot 52 and point 2 being the point 8.9 feet west and

1 foot south of the northwest corner of Lot 52. While we might guess that the surveyor meant the latter, the description does not require this interpretation. There are similar ambiguities in the balance of the description. As we have already stated, the burden of describing property in adverse possession cases "is not met where the metes and bounds of the area claimed would rest on speculation and conjecture." *Inserra v. Violi*, 267 Neb. 991, 995, 679 N.W.2d 230, 234 (2004).

[9] Because we interpret the adverse possession case law as placing a burden on the courts, as well as the parties, to provide precise legal descriptions of the land under adverse possession, we find the district court's legal description in this case to be plain error. Thus, the court's decree granting summary judgment cannot stand and must be reversed. But Bel Fury did not move for summary judgment. So our reversal merely reverses the district court's ruling on summary judgment from one granting the motion to a denial of the motion. And, of course, the denial of summary judgment does not decide any issue of fact or proposition of law affecting the subject matter of the litigation. See *Big River Constr. Co. v. L & H Properties*, 268 Neb. 207, 681 N.W.2d 751 (2004). Thus, our decision effectively returns the case to its posture before the Sawtells filed their motion for summary judgment.

[10] Because our finding of plain error necessitates a reversal and remand, we do not consider the errors assigned by the Sawtells and we express no opinion regarding the merits of the Sawtells' claim founded on adverse possession. An appellate court is not obligated to engage in an analysis that is not needed to adjudicate the controversy before it. *Fokken v. Steichen*, 274 Neb. 743, 744 N.W.2d 34 (2008).

## CONCLUSION

We find plain error in the issuance of a decree using an incomplete and ambiguous legal description to quiet title to real property. Accordingly, we reverse, and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.