

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 21st day of February, 2019.*

Present: All the Justices

Robert C. McDiarmid,  
Trustee of the McDiarmid Land Trust, et al., Appellants,

against Record No. 171625  
Circuit Court No. CL-2016-3631

Northern Virginia Regional Park Authority, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, for the reasons set forth below, the Court is of opinion that there is no reversible error in the judgment that is the subject of this appeal.

On August 16, 1999, Mary and Robert McDiarmid became co-trustees (Trustees) of the McDiarmid Land Trust, which holds an 11.54-acre tract of land (Property) in Fairfax County. Beginning in August 2014, the Northern Virginia Regional Park Authority (NVRPA) constructed a connector trail in the vicinity of the Property. The Trustees filed a complaint in the Circuit Court of Fairfax County against NVRPA alleging that NVRPA constructed part of the connector trail on the Property. The complaint had four counts: Count I (Trespass), Count II (Common Law Inverse Condemnation), Count III (Declaratory Judgment), and Count IV (Action Under 42 U.S.C. § 1983). NVRPA filed an answer in response.

The circuit court held a bench trial on June 26-27, 2017. At the conclusion of the Trustees' evidence, NVRPA moved to strike Counts I and III asserting that the Trustees failed to present sufficient evidence of title to the disputed land where the connector trail was built. NVRPA also moved to strike Counts II and IV because the Trustees failed to present evidence of damages. The circuit court granted the motions to strike and dismissed the complaint, with prejudice.

The Trustees appeal the circuit court's decision to strike Counts I and III.

We review a circuit court's decision to grant a motion to strike by considering the facts and drawing all reasonable inferences therefrom in the light most favorable to the non-moving party. *Green v. Ingram*, 269 Va. 281, 290 (2005).

To recover for a takings or trespass claim, a plaintiff must prove a present right to possess the land or other property in question. *AGCS Marine Ins. v. Arlington Cty.*, 293 Va. 469, 490 (2017) (takings clause "makes no categorical distinction between personal and real property"); *Collett v. Cordovana*, 290 Va. 139, 145 (2015) (observing that "an invasion that interfere[s] with the right of exclusive possession" of property is an element of a trespass claim); *Cooper v. Horn*, 248 Va. 417, 423 (1994) (to establish right to recover for a trespass, the plaintiff must show an act "interfer[ing] with the right of exclusive possession of the land" and that such possession is either "actual or constructive, at the time the trespass was committed"). Where a plaintiff claims possession by title, the plaintiff has the burden of proving title and showing that "the land in dispute is covered by the title papers." *Edwards v. W.M. Ritter Lumber Co.*, 163 Va. 851, 855 (1935).

Review of the trial record confirms that the Trustees failed, at trial, to set forth evidence of clear title or prima facie title to the disputed area of land over which the connector trail was constructed. Therefore, the circuit court did not err in granting the motion to strike Counts I and III.

Accordingly, we affirm the judgment of the circuit court. This order shall be certified to the Circuit Court of Fairfax County.

A Copy,

Teste:

A handwritten signature in black ink, appearing to be "D. B. O.", followed by a long horizontal line extending to the right.

Clerk