

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 52974

STATE OF IDAHO, IDAHO STATE)
BOARD OF LAND COMMISSIONERS,)
and IDAHO DEPARTMENT OF)
LANDS,)

Plaintiff-Counterdefendants-)
Respondents,)

v.)

GREGORY MARTIN SEMPEL,)
an individual; LEAH SEMPEL,)
an individual;)

Defendants-Counterclaimants-)
Appellants,)

and POKEY CREEK FARM,)
an assumed business name,)

Defendant.)
_____)

Coeur d’Alene, September 2026 Term

Opinion Filed: October 27, 2026

Melanie Gagnepain, Clerk

Appeal from the District Court of the First Judicial District of the State of Idaho,
Benewah County. Barbara Duggan, District Judge.

The partial judgment is vacated, the decision granting partial summary judgment is
reversed, and the case is remanded.

Ohler Bean & Tinkey, Coeur d’Alene, and Carney Badley Spellman, Seattle,
Washington, for Appellant. Nathan S. Ohler argued.

Idaho Department of Lands, Boise, State Board of Land Commissioners, Boise, and
State of Idaho, Boise, for Respondents. J.J. Winters argued.

BEVAN, Justice.

This appeal arises from the disputed ownership of a small tract of property in Northern Idaho. Greg and Leah Sempel have lived on a remote parcel of land in Benewah County since 1979. Their deeded property abuts a parcel of approximately six acres (the “disputed tract”) that lies south of and is enclosed by a barbed wire fence, which has fallen into disrepair. During their nearly fifty years on the property, the Sempels established and operated Pokey Creek Farm on the land. They assert that they also used the disputed tract for farming and other purposes. The property immediately north of the disputed tract was privately owned until 1996, when the State of Idaho received it as part of a land swap, placing it in trust to benefit the Capitol Permanent Building Fund. In 2022, some twenty-six years after the land swap, the State of Idaho, Idaho State Board of Land Commissioners, and the Idaho Department of Lands (collectively, “the State”) brought an action against the Sempels to quiet title to the disputed tract and asserted additional claims seeking damages against the Sempels for occupation of state land without a lease, timber trespass, and trespass with damage.

The Sempels counterclaimed, seeking to quiet title to the disputed tract under theories of adverse possession and boundary by agreement. Both parties moved for summary judgment. The district court ruled for the State on the quiet title claims while declining to grant summary judgment on the remaining claims. The district court entered a partial judgment in favor of the State and certified it as final pursuant to Rule 54(b) of the Idaho Rules of Civil Procedure. The Sempels timely appealed the grant of summary judgment to this Court. For the reasons discussed below, we vacate the partial judgment entered in favor of the State and reverse the district court’s order granting partial summary judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

The State is the record owner of the 5.95-acre disputed tract, which it holds in public trust for the benefit of the Capitol Permanent Building Fund. The tract is located within a 663.5-acre parcel legally described as Section 2 of Township 44 North, Range 1 West, Boise Meridian, Benewah County (“Section 2”). Section 2 was owned by Milwaukee Land Company from 1961 to 1981, when it conveyed the land to Potlatch Corporation. Potlatch conveyed the land to the State on December 9, 1996, as part of a 4,108.42-acre land swap. Greg and Leah Sempel reside on an adjoining parcel, where they also operate Pokey Creek Farm. The parcel on which the Sempels

reside, legally described as Section 11 of Township 44 North, Range 1 West, Boise Meridian, Benewah County (“Section 11”), was purchased from Contract Associates for Greg and Leah’s use by Greg’s parents in 1979. Greg’s father, Boyd Sempel, conveyed the parcel to Greg in 1994.¹

The Sempels allege that, prior to the 1979 purchase, Greg walked the property with Tom Rathbone, a representative of the property owner Contract Associates. Rathbone identified a barbed wire fence as the property’s northern boundary. Then, after the purchase, Greg met with Chester Henning, who had previously owned the property. Henning told Greg that “he and a representative of Milwaukee Land Company had erected that fence in the 1960s as the agreed boundary between the[] properties.” Since then, the Sempels have treated the fence as the northern boundary of the property and used the disputed tract as if it were their own. The Sempels allege that they have used the disputed tract for a variety of purposes. These uses include planting crops and corralling horses (1979); timber harvesting, laying a gravel access road and constructing a series of temporary and permanent buildings, including a sweat lodge (1980s); and building a greenhouse and raising livestock (1990s). The Sempels also allege that, throughout their ownership of the property, state employees treated the fence as the boundary during logging operations. The State conducted a water rights aerial survey in 2016, which it alleges revealed that the Sempels were trespassing on state land.

B. Procedural Background

On August 25, 2022, the State sued the Sempels, seeking to quiet title to the disputed tract and requesting damages against the Sempels under claims for occupation of state land, timber trespass, and trespass with damage. The Sempels denied the State’s claims and counterclaimed, asserting that they acquired title to the disputed parcel through boundary by agreement and adverse possession long before the State took ownership of the land.

On November 22, 2023, the State moved for summary judgment on its claims against the Sempels and for dismissal of the Sempels’ counterclaims. The Sempels also moved for summary judgment, requesting that the court grant their quiet title counterclaims and dismiss the State’s quiet title and trespass claims. The State moved to strike portions of the sworn declarations accompanying the Sempels’ motion for summary judgment for violating the Idaho Rules of

¹ According to the record, Boyd conveyed the parcel to Greg only, but the Sempels and the State treat Greg and Leah both as owners of the parcel. We do the same.

Evidence. The Sempels also moved to strike portions of the State’s evidence for alleged evidentiary issues.

The district court later granted summary judgment to the State on its quiet title claim, denying the Sempels’ motion seeking summary judgment in its favor on the boundary by agreement and adverse possession theories. The court denied the State’s motion for summary judgment on the claims for the occupation of state land without a lease, timber trespass, and trespass with damages. The court declined to address either motion to strike and explained that, “[e]xcept for any questions of evidentiary admissibility expressly decided by the [c]ourt, the remaining questions of admissibility raised in the motions to strike do not impact the [c]ourt’s analysis. As result, it is unnecessary for the [c]ourt to answer those questions.” The court also issued a Rule 54(b) certificate certifying the partial judgment as an appealable final judgment. The Sempels timely appealed.

II. ISSUES ON APPEAL

1. Whether the district court erred by failing to decide the admissibility of the parties’ summary-judgment evidence.
2. Whether the district court erred in quieting title to the disputed property in the State by dismissing the Sempels’ adverse possession claim.
3. Whether the district court erred in quieting title to the disputed property in the State by dismissing the Sempels’ boundary by agreement claim.

III. STANDARDS OF REVIEW

“This Court reviews an appeal from an order of summary judgment de novo, and this Court’s standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment.” *Valiant Idaho, LLC v. JV L.L.C.*, 164 Idaho 280, 286, 429 P.3d 168, 174 (2018) (quoting *Curlee v. Kootenai Cnty. Fire & Rescue*, 148 Idaho 391, 394, 224 P.3d 458, 461 (2008)). “Under Idaho Rule of Civil Procedure 56(a), a party is entitled to summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Budget Truck Sales, LLC v. Tilley*, 163 Idaho 841, 846, 419 P.3d 1139, 1144 (2018) (citation modified). “To determine whether there is a genuine issue of material fact, the trial court ‘must liberally construe the facts, and draw all reasonable inferences in favor of the nonmoving party.’” *Heath v. Denny’s Wrecker Serv., Inc.*, 174 Idaho 942, 954, 560 P.3d 1089, 1101 (2024) (quoting *Fragnella v. Petrovich*, 153 Idaho 266, 271, 281 P.3d 103, 108 (2012)).

“When the trial court is acting as the trier of fact and is deciding a motion for summary judgment, it is ‘entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences.’” *Heath*, 174 Idaho at 954, 560 P.3d at 1101 (quoting *Intermountain Forest Mgmt., Inc. v. La. Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001)). Even then, at summary judgment the judge must not “weigh evidence or resolve controverted factual issues.” *Montgomery v. Montgomery*, 147 Idaho 1, 7, 205 P.3d 650, 656 (2009).

IV. ANALYSIS

We first hold that the district court erred when it failed to rule on the parties’ motion to strike before ruling on the substantive claims. Because the district court declined to rule on the motions to strike, we consider all the evidence submitted by the parties when analyzing those underlying claims. We next analyze the Sempels’ claims—adverse possession and boundary by agreement—and hold that the Sempels established a genuine dispute of material fact as to each claim; therefore, the district court erred in granting the State’s motion for summary judgment.

A. **The district court erred by failing to decide the admissibility of the parties’ evidence before ruling on the motions for summary judgment.**

We first address the district court’s failure to decide the admissibility of the parties’ evidence. The Sempels claim that the court’s failure to rule on the motions to strike before ruling on the summary judgment motions was a legal error that requires reversal. The State responds that the court did not err, and even if it did, any error was harmless because the court did not rely on the affidavits to reach its decision. We agree with the Sempels.

We explained our summary judgment standard in *Heath v. Denny’s Wrecker Service, Inc.*:

Summary judgment is proper if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” I.R.C.P. 56(a). To determine whether there is a genuine issue of material fact, the trial court “must liberally construe the facts, and draw all reasonable inferences in favor of the nonmoving party.” *Fragnella v. Petrovich*, 153 Idaho 266, 271, 281 P.3d 103, 108 (2012).

174 Idaho 942, 954, 560 P.3d 1089, 1101 (2024). “When the trial court is acting as the trier of fact and is deciding a motion for summary judgment, it is ‘entitled to arrive at the most probable inferences based upon the *undisputed evidence properly before it* and grant the summary judgment despite the possibility of conflicting inferences.’” *Id.* (emphasis added) (quoting *Intermountain Forest Mgmt., Inc. v. La. Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001)); *see*

Montgomery v. Montgomery, 147 Idaho 1, 7, 205 P.3d 650, 656 (2009) (holding that even when sitting as the factfinder, at summary judgment, the judge must not “weigh evidence or resolve controverted factual issues”).

Heath also affirmed that “[t]he admissibility of affidavits filed in support of a motion for summary judgment is a threshold issue that must be decided before addressing the parties’ substantive arguments on summary judgment.” 174 Idaho at 954, 560 P.3d at 1101. Relatedly, in *Montgomery*, the Court held that “[a] trial court’s failure to determine the admissibility of evidence offered in connection with a motion for summary judgment is error that may not be remedied on appeal.” 147 Idaho at 6, 205 P.3d at 655. In that case, the magistrate court judge stated that “my philosophy is let [evidence] in and weigh it, rather than keep it out . . . and come back and try the case again” *Id.* The Court held that the magistrate court judge “failed to do the work required of every trial judge confronted with objections to evidence offered in connection with a summary judgment motion.” *Id.* The court’s “weigh[ing] [of] the evidence before” it was a “violation of the well-established rule that a trial court, in ruling on a motion for summary judgment, is not to weigh evidence or resolve controverted factual issues.” *Id.* at 7, 205 P.3d at 656.

Here, the district court stated in the Opinion & Order Re: Cross Motions for Summary Judgment (“Opinion & Order”) that its rulings on both the adverse possession and boundary-by-agreement claims did not depend on the evidence challenged by motions to strike. Ruling on boundary by agreement, the court wrote: “Since this conclusion does not rest on a determination of the merits of the parties’ motions to strike, it is unnecessary for the [c]ourt to address the merits of those motions.” Ruling on adverse possession, the court wrote: “This conclusion is not dependent upon the resolution of any issue raised in the motions to strike. It is therefore unnecessary to address the merits of those motions in reaching this conclusion.” The court’s claimed refusal to rule on the motions to strike is not reconcilable with its refusal to consider the evidence the Sempels submitted.

The district court quoted forty-three paragraphs from Greg’s declarations in their entirety. The declarations provided the basis for much of the Sempels’ claims. For example, paragraph 23 of the first declaration extensively described the Sempels’ possession and use of the disputed tract. Paragraph 24 also stated: “Leah and I had always paid the property taxes as assessed on the Sempel [p]roperty.”

Despite these extensive quotations, the court went on to write in the “Adverse Possession” section of the Opinion & Order:

The Sempels have presented no evidence of government taxes “levied and assessed” on the subject property as required by [Idaho Code section] 5-210. Contending that the lot number [exception] applies, the Sempels cite only their deed rather than, for example, a government tax assessment record showing the property description that formed the basis of any tax assessment. In addition, they have presented no receipts or other evidence to corroborate their vague, conclusory assertions of the payment of taxes. As a result, the Sempels’ adverse possession cause of action fails.

The court’s conclusion that the Sempels provided “no receipts or other evidence” for payment of taxes is only partially correct; Greg’s first declaration stated that the Sempels always paid their taxes. The State offered no evidence to the contrary. Greg’s declaration may be uncorroborated, but he explained that the county assessor only kept records for ten years. Regardless of whether the district court would have preferred more definitive evidence of tax payments, Greg’s declarations are nevertheless *evidence* that was submitted. The court quoted extensively from the declarations and was therefore aware of them.

The Sempels also submitted their deed and emphasized that it did not contain a metes and bounds description. The State submitted tax assessments showing that its property was not assessed according to a metes and bounds description since at least 1983 and it acknowledges on appeal that the deeds in its chain of title do not contain metes and bounds descriptions. The most “probable inference,” given the evidence, would be that the Sempel property was also not assessed according to a metes and bounds description. *See Heath*, 174 Idaho at 954, 560 P.3d at 1101. To reach another conclusion would have required the court to either strike or weigh the evidence before it. The district court stated it did not strike evidence, and it could not lawfully have weighed evidence.

The analysis of the boundary by agreement claim proceeds similarly. In the “Boundary by [Agreement]” section of the Opinion & Order, the district court wrote:

[T]he vague, conclusory assertions that prior owners of the “disputed” land “honored” and “treated” the alleged fence as the boundary, or “agreed” it was the boundary, do not show that the boundary was ever uncertain much less actually disputed before the current litigation and that there was an agreement between the owners and the Sempels to resolve any uncertainty or dispute.

It is difficult to reconcile the court’s extensive quotation of Greg’s declarations with its analysis that “[t]he Sempels have failed to present specific material facts showing a genuine

dispute of such facts as to their boundary-by-[agreement] cause of action.” The district court’s inference that the first element of boundary by agreement was unsatisfied was erroneous because the inference rested on disputed evidence. *See Heath*, 174 Idaho at 954, 963, 560 P.3d at 1101, 1110. Finally, the Sempels’ evidence regarding boundary by agreement, while not unassailable, was sufficient to create a genuine issue of material fact. *Bedell v. Parsons*, 177 Idaho ___, 529 P.3d 322, 331 (2026) (“To defeat summary judgment, the nonmoving party need only present evidence that creates a disputed issue of fact on a triable issue. The nonmoving party is not required to persuade the court that the trier of fact would resolve the disputed issue of fact in his favor.” (Citation omitted.)). Again, to conclude otherwise would require the court to have either stricken or weighed the evidence.

To be clear, it is not suggested that the Sempels’ claims, which are supported by little beyond their declarations, meet the “clear and convincing” and “clear, satisfactory, and convincing” standards required at trial for adverse possession and boundary by agreement claims. *See* I.C. § 5-210; *Flying Elk Inv., LLC v. Cornwall*, 149 Idaho 9, 13, 232 P.3d 330, 334 (2010) (citation omitted). However, those are not the standards for survival of summary judgment as a nonmoving party. *See Kelso v. Applington*, 173 Idaho 738, 749, 548 P.3d 363, 374 (2024) (“[T]he traditional summary judgment principles and standards govern when deciding a motion for summary judgment, even where there is a heightened evidentiary standard—such as ‘clear and convincing evidence’—that must be met at trial.”). The Sempels were the moving party with respect to their motion for quiet title but were the nonmoving party with respect to the State’s motion for quiet title. A grant of summary judgment is only proper “if the movant shows that there is no genuine dispute as to any material fact” *Heath*, 174 Idaho at 954, 560 P.3d at 1101 (citation modified). At this stage, the district court must not “weigh evidence or resolve controverted factual issues.” *Montgomery*, 147 Idaho at 7, 205 P.3d at 656. Because the district court did just that, as noted below, we reverse the summary judgment and remand for further proceedings.

B. The district court erred by ruling that the State was entitled to summary judgment on the Sempels’ adverse possession claim.

The Sempels argue that the district court erred when it ruled that the “Sempels have presented no evidence of government taxes ‘levied and assessed’ on the subject property as required by [Idaho Code section] 5-210.” The Sempels contend that the court refused to apply Idaho’s lot-number exception, which satisfied the tax payment requirement of section 5-210. The

Sempels further assert that they introduced sufficient evidence to satisfy the other elements of adverse possession, and the district court erred when it denied their motion for summary judgment on that theory. The State responds that the State’s motion for summary judgment was properly granted because the Sempels failed to “prove any element of adverse possession[,]” and presented no evidence of taxes paid or tax assessments. We agree with the Sempels and reverse the district court’s summary disposition of the Sempels’ adverse possession claim.

The requirements to sustain a claim of adverse possession are set out in Idaho Code section 5-210. Adverse possessors must, among other things, “have paid all the taxes, state, county or municipal, which have been levied and assessed upon such land according to law.” I.C. § 5-210. Importantly, the Sempels assert that their claim of adverse possession ripened by 1984, five years after they took possession of the property in 1979, and long before the State took possession of the disputed property.²

1. Adverse possessors can constructively satisfy the statutory tax payment requirement through the lot-number exception.

This Court has long recognized that the payment of taxes requirement on adversely possessed property is not always a literal one. *Trappett v. Davis*, 102 Idaho 527, 530, 633 P.2d 592, 595 (1981) (“Decades of judicial gloss have steadily chipped away at a literal application of the [adverse possession] tax requirement.”). When property is imprecisely described, tax payments on the adverse possessor’s actual property may constitute constructive tax payments on the disputed tract. *Roark v. Bentley*, 139 Idaho 793, 796, 86 P.3d 507, 510 (2004). Otherwise, an adverse possessor would “face[] an almost impossible task in attempting to prove that he paid taxes on the land he claims” *Flynn v. Allison*, 97 Idaho 618, 621–22, 549 P.2d 1065, 1068–69 (1976). The Court in *Roark* emphasized the importance of the “lot number” exception to the tax payment requirement:

[I]n the case of boundary disputes between contiguous landowners, where one landowner can establish continuous open, notorious and hostile possession of an adjoining strip of his neighbor’s land, *and taxes are assessed by lot number or by government survey designation, rather than by metes and bounds description*, payment of the taxes on the lot within which the disputed tract is enclosed satisfies the tax payment requirement of the . . . statute.

² Idaho Code section 5-210’s duration requirement was amended to twenty years in 2006, but the longer requirement does not apply retroactively. *See* Act of Mar. 22, 2006, ch. 158, § 5, 2006 Idaho Sess. Laws 474, 475; *Schoorl v. Lankford*, 161 Idaho 628, 631, 389 P.3d 173, 176 (2017).

139 Idaho at 796, 86 P.3d at 510 (alterations in original) (quoting *Scott v. Gubler*, 95 Idaho 441, 443–44, 511 P.2d 258, 260–61 (1973)). The Court’s reference in this quote to the “lot within which the disputed tract is *enclosed*” refers to the land fenced in by the adverse possessor, which included both the possessor’s lot of record and the adjacent disputed tract. *Id.* (emphasis added). It does not mean the lot where the disputed tract is legally located. Our decision in *Roark*, which quoted from *Scott*, aligned with Court precedent going back to at least 1909. 139 Idaho at 796, 86 P.3d at 510; see, e.g., *Bayhouse v. Urquides*, 17 Idaho 286, 105 P. 1066 (1909) (quieting title in adverse possessor when fence was built beyond the true property line to enclose the disputed property, and the adverse possessor had paid property taxes on his lot of record for decades).

In *Scott*, Scott owned Lot 4 and enclosed part of the adjoining Lot 3 with a fence. 95 Idaho at 441–42, 511 P.2d at 258–59. Despite Scott not making *actual* tax payments on Lot 3, the Court affirmed the district court’s finding that payment of taxes on Lot 4 “constituted payment of taxes on all the land actually being occupied as Lot 4, including the disputed land” and the “quiet[ing] [of] title in Mrs. Scott to the triangular portion of Lot 3 which had been enclosed by Scott’s fence.” *Id.* at 443–44, 511 P.2d at 260–61.

If the adverse possessor can establish payment of taxes on the enclosed parcel, this Court has held that such evidence satisfies the taxes paid element of an adverse possession claim. In *Luce v. Marble* we stated, “[u]nless the land was assessed under a metes and bounds description, or there is evidence the adverse possessor did not pay any taxes on the property, the law presumes the adverse possessor paid taxes on the disputed parcel and the tax payment requirement is satisfied.” 142 Idaho 264, 272, 127 P.3d 167, 175 (2005). The presumption can only arise if the property is not assessed taxes under a metes and bounds, or similarly precise, description. *Id.*; *Roark*, 139 Idaho at 797, 86 P.3d at 511 (“Since neither . . . tax assessment notice[] rel[ies] on a metes and bounds description, the precise quantity of land assessed is undeterminable and the lot number exception applies . . .”). The adverse possessor must also show how taxes were assessed in order to utilize the presumption. *Luce*, 142 Idaho at 273, 127 P.3d at 176. The *Luce* Court emphasized that, “[w]hen determining whether an exception to the tax payment requirement applies, the basis for the assessor’s actual valuation of the property, whether by metes and bounds or some other more general method, is critically important.” 142 Idaho at 272, 127 P.3d at 175 (citation omitted). There, the adverse possessor “failed to establish how taxes were assessed on the . . . property, so it [was] impossible to determine if she [met] one of the exceptions.” *Id.* at 273,

127 P.3d at 176. Finally, the presumption also requires that there is no “evidence the adverse possessor did not pay any taxes on the property[.]” *Id.* at 272, 127 P.3d at 175.

Luce also described two other relevant aspects of the adverse possession taxation requirement. First, the adverse possessor prevails when both they and the record owner pay taxes on the disputed property. *Id.* at 272–73; 127 P.3d at 175–76 (citing *Roark*, 139 Idaho at 796, 86 P.3d at 510). Second, if “tax records are inconclusive, uncontradicted testimony that the adverse possessor paid taxes on the disputed property is sufficient to show compliance with the tax requirement[.]” *Id.* (citing *DeChambeau v. Est. of Smith*, 132 Idaho 568, 572, 976 P.2d 922, 926 (1999)). As explained above, *Luce* also provides that “[u]nless the land was assessed under a metes and bounds description, . . . the law presumes the adverse possessor paid taxes on the disputed parcel and the tax payment requirement is satisfied.” This underscores that a *lack of* a metes and bounds description means a presumption can arise that the adverse possessor paid the taxes.

Our decisions in *Bayhouse*, *Scott*, *Roark*, and *Luce* hold that, when taxes are not assessed by metes and bounds or similarly precise descriptions and the adverse possessor has enclosed a disputed tract, the lot number exception construes payments on the tax lot of record as constructive payments on the disputed tract. *See Bayhouse*, 17 Idaho at 297–98, 105 P. at 1069–70; *Scott*, 95 Idaho 443–44, 511 P.2d at 260–61; *Roark*, 139 Idaho at 796–97, 86 P.3d at 510–11; *Luce*, 142 Idaho at 272–73; 127 P.3d at 175–76.

2. *The State did not controvert the Sempels’ evidence of constructive tax payments on the disputed tract.*

The Sempels provided testimony in Greg’s first declaration that they always paid their property taxes. While this evidence may be limited in the sense that it was based on Greg’s statement rather than receipts or canceled checks, it was not controverted on summary judgment. Instead, the State argued that the Sempels “provided ***no evidence*** beyond bare assertions that they paid the required taxes.” On appeal, the State continues to argue that the Sempels “failed to produce *any* evidence of taxes paid or assessed on *any* parcel, in any section whatsoever, regardless of legal description.” (Citation modified.) Importantly, a sworn declaration *is* evidence; however, the State is correct that the manner of tax assessment is also germane to the analysis under *Luce*.

The Sempels testified that they could not locate tax assessments from the relevant time period, and their counsel argued that because the property was not described by a metes and bounds description in the deed, it was fair to infer that they were likewise not taxed according to a metes and bounds description. The Sempels also point to assessment records of Potlatch’s property,

submitted by the State, showing that Potlatch's property was taxed according to a township and range description, not a metes and bounds description. The State acknowledged that its property's chain of title contained no metes and bounds descriptions.

Therefore, there is evidence suggesting that the Sempels' property was not assessed under a metes and bounds description, and there is no evidence that the land was assessed under another description. So long as the property was *not* assessed by metes and bounds or another precise method, the Sempels may show constructive tax payments under *Luce*. The Sempels' deed and Potlatch's tax assessments are sufficient to raise a genuine issue of material fact on whether the Sempels' land was assessed according to a method other than metes and bounds. This evidence distinguishes this case from *Luce*, where the plaintiff was unable to utilize the "lot number" exception because there was "no indication in the record" of how taxes were assessed. 142 Idaho at 273, 127 P.3d at 176.

Since the "lot number" exception applies, based on the Sempels' uncontroverted evidence at the summary judgment stage, their payment of taxes creates a genuine issue of material fact for the trier of fact to resolve. *See, e.g., Scott*, 95 Idaho 441, 511 P.2d 258. The State did not controvert the Sempels' evidence showing that the "lot number" exception applies. If the exception applies, then whether the Sempels paid taxes is a genuine issue of material fact for the trier of fact to resolve. *See, e.g., id.* The State's claim that the "Disputed Property is enclosed entirely in Section 2" misapprehends the *Scott* rule by conflating the physical location of the disputed property with the evidence indicating that the Sempels enclosed it within their lot of record. *See Scott*, 95 Idaho at 443–44, 511 P.2d at 260–61. Although the disputed tract may have been located in Section 2, the Sempels contend that the barbed-wire fence enclosed it within Section 11. The State's interpretation of *Scott* is also inconsistent with this Court's line of cases dating back over 100 years, holding that actual payment of taxes constituted constructive payment of taxes in adverse possession boundary disputes. *See, e.g., Bayhouse*, 17 Idaho 286, 105 P. 1066; *Scott*, 95 Idaho 441, 511 P.2d 258.

Finally, the Sempels correctly cite *Luce* for the proposition that, under concurrent tax payments, the adverse possessor prevails. *See Luce*, 142 Idaho at 273, 127 P.3d at 176. Accordingly, the State's argument that "Potlatch was assessed all taxes for all of Section 2, inclusive of the Disputed Property," has no import if the Sempels also made tax payments. *See id.*

For the foregoing reasons, we reverse the district court’s grant of summary judgment on the Sempels’ adverse possession claim.

C. The district court erred by ruling the State was entitled to summary judgment on the Sempels’ boundary by agreement claim.

The Sempels argue that the district court misapplied the “uncertainty” element of boundary by agreement and failed to apply Idaho’s long-standing fence presumption when it quieted title in the State. The State repeats that it is the record owner of the disputed tract and reiterates that the Sempels’ claims lack corroborating evidence. The State’s arguments are unpersuasive at the summary judgment stage because they merely go to the weight of the evidence—they do not establish the lack of a genuine issue of fact. We reverse the district court’s grant of summary judgment because the Sempels presented sufficient evidence to establish a genuine dispute of material fact on their boundary by agreement claim.

Idaho’s boundary by agreement doctrine provides for title of an enclosed tract of land to be quieted in the adjoining property owner in certain circumstances. *Anderson v. Rex Hayes Fam. Tr.*, 145 Idaho 741, 743–44, 185 P.3d 253, 255–56 (2008). Our decision in *Flying Elk Investment, LLC v. Cornwall* explains:

Boundary by agreement or acquiescence has two elements: (1) there must be an uncertain or disputed boundary and (2) a subsequent agreement fixing the boundary. Ignorance of the true boundary creates the uncertainty necessary to satisfy the first element. The agreement may be either express or implied by the landowners’ conduct. . . .

Because the party holding title to property is presumed to be the legal owner, someone claiming ownership of that property must prove his or her claim by clear, satisfactory, and convincing evidence. Though our cases often use the phrase “boundary by acquiescence” interchangeably with “boundary by agreement,” the latter phrase more accurately describes the doctrine. Where the boundary is uncertain or disputed, coterminous owners “may orally agree upon a boundary line” and such an agreement can become binding on successors if the parties to the oral agreement take possession under it. Since there must be an agreement, acquiescence is merely regarded as competent evidence of the agreement, and alone is not enough to establish a boundary by agreement. Allowing an adjoining landowner to improve the disputed land is evidence of an agreement.

149 Idaho 9, 13, 232 P.3d 330, 334 (2010) (citation modified).

The first element, uncertainty or dispute, is assessed according to what the parties actually knew at the time of agreement, even if additional information was available or a survey is later conducted. *See Heath v. Denny’s Wrecker*, 174 Idaho 942, 961, 560 P.3d 1089, 1108 (2024) (“If

‘the true boundary is unknown until the property is surveyed, it is sufficient for a trier of fact to find an uncertain or disputed boundary.’” (quoting *Fickenwirth v. Lanning*, 173 Idaho 1, 8, 538 P.3d 370, 377 (2023)); *Morrissey v. Haley*, 124 Idaho 870, 873, 865 P.2d 961, 964 (1993) (“This Court and the Court of Appeals have clearly ruled that whether the correct boundary line is ascertainable elsewhere, via surveys or subdivision plats, is irrelevant; the proper inquiry revolves about what the parties, at the time of their agreement, actually knew.”).

The second element, a subsequent agreement fixing the boundary, may be satisfied by either an express or implied agreement, but acquiescence to the boundary alone does not prove an agreement. *See Griffin v. Anderson*, 144 Idaho 376, 378–79, 162 P.3d 755, 757–58 (2007). “This Court has repeatedly found a boundary by agreement where a fence is treated as the property line for a number of years, there is no information about why the fence was built, and no evidence to disprove that the fence was intended to be a boundary.” *Flying Elk*, 149 Idaho at 14, 232 P.3d at 335.

In certain circumstances, a boundary delineated by a long-established fence can give rise to a presumption that the fence is evidence of an agreement fixing the boundary:

First, when a fence line has been erected, and then coterminous landowners have treated that fence line as fixing the boundary between their properties for such a length of time that neither ought to be allowed to deny the correctness of its location the law presumes an agreement fixing that fence line as the boundary. Second, coupled with the long existence and recognition of a fence as a boundary, the want of any evidence as to the manner or circumstances of its original location, the law presumes that it was originally located as a boundary by agreement because of uncertainty or dispute as to the true line.

Id. at 13–14, 232 P.3d at 334–35 (citation modified). Importantly, establishing a non-boundary purpose for the fence’s construction can defeat the presumption that a long-established fence constitutes a boundary by agreement. *See Griffin*, 144 Idaho at 378–79, 162 P.3d at 757–58; *Cox v. Clanton*, 137 Idaho 492, 495, 50 P.3d 987, 990 (2002). The mere fact that a fence runs “haphazardly” does not disprove a boundary by agreement. *Flying Elk*, 149 Idaho at 12, 15, 232 P.3d at 333, 336. (holding that a “crooked wire fence . . . running haphazardly” and enclosing almost nineteen acres of adjoining land was reasonable). However, additional facts, such as the disproportionately large size of an enclosed tract, can make irregularly shaped boundaries unreasonable. *Luce*, 142 Idaho at 268–69, 272, 127 P.3d at 171–72, 175 (“[T]he shape of Parcel A is so irregular and encompasses such a large portion [(1.34 acres)] of the Marble property [(1.34 acres)] that such an assumption would be unreasonable.”).

Finally, unlike adverse possession, there is no statutorily mandated duration requirement for a boundary by agreement claim. But this Court held almost a century ago that at least five years of boundary existence are required to satisfy the rule, *Kesler v. Ellis*, 47 Idaho 740, 744, 278 P. 366, 367 (1929), while several recent cases have involved decades-long extant boundaries, *see, e.g., Fickenwirth*, 173 Idaho 1, 538 P.3d 370 (50 years); *Flying Elk*, 149 Idaho 9, 232 P.3d 330 (70 years); *Griffel v. Reynolds*, 136 Idaho 397, 34 P.3d 1080 (2001) (20 years). The lengthy periods involved in these recent cases, however, reflect their particular facts rather than a requirement that a boundary exist for decades before it may be established by agreement.

The Sempels' evidence raised a genuine dispute of a material fact as to whether the fence created a presumption of a boundary by agreement, and the district court therefore erred when it ruled for the State on summary judgment. The Sempels put on evidence that the boundary was uncertain and that, for decades, the Sempels and the State's predecessors-in-title treated the fence as the property boundary. According to Greg's first declaration, sometime in the 1960s, Henning and Milwaukee Land Company agreed to the fence as the boundary, *despite it not being* the legal property line. This "[i]gnorance of the true boundary creates the uncertainty necessary to satisfy the first element" of boundary by agreement. *Flying Elk*, 149 Idaho at 13, 232 P.3d at 334 (citing *Morrissey*, 124 Idaho at 873, 865 P.2d at 964).

The "long existence and recognition of a fence as a boundary" means that "the law presumes that it was originally located as a boundary by agreement because of uncertainty or dispute as to the true line." *Id.* at 13–14, 232 P.3d at 334–35 (citation omitted). Put another way, a fence's longstanding existence may support an inference that the parties impliedly agreed to fix the boundary at the fence line. Here, the fence has stood for decades—long enough that the bark of the trees has grown around and engulfed portions of the barbed wire as shown below:



The Sempels also testified that (1) Rathbone, Contract Associates’ representative, told them the fence was the boundary; (2) their predecessor-in-interest, Henning, and the State’s predecessors-in-interest, Milwaukee Land Company and Potlatch, treated the fence as the boundary; (3) a state forester treated the fence as the boundary; and (4) there was no evidence the fence was erected for another purpose. This testimony established a genuine dispute of material fact concerning whether the long-standing fence presumption applied. *Contrast Flying Elk*, 149 Idaho at 14, 232 P.3d at 335 (“This Court has repeatedly found a boundary by agreement where a fence is treated as the property line for a number of years, there is no information about why the fence was built, and *no evidence to disprove* that the fence was intended to be a boundary.” (emphasis added)), *with Griffin*, 144 Idaho at 378–79, 162 P.3d at 757–58 (holding no boundary by agreement existed despite acquiescence because the fence was originally erected as a livestock barrier). Finally, it is irrelevant that the State’s survey later revealed that the fence was not located at the true boundary; uncertainty is determined at the time the fence was erected. *Fickenwirth*, 173

Idaho at 7, 538 P.3d at 376. Given evidence of the fence’s long treatment as a boundary and the lack of information about why the fence was built, we conclude that the Sempels’ evidence presented at summary judgment was sufficient to give rise to the presumption the fence was located to fix an uncertain boundary. *Flying Elk*, 149 Idaho at 13–14, 232 P.3d at 334–35. For the reasons discussed, we conclude the Sempels established a genuine dispute of material fact on their boundary by agreement theory.

The State’s litany of arguments in response is unpersuasive. The State emphasizes that there is no information referencing the boundary in either landowner’s chain of title and no testimony from Milwaukee Land Company or Potlatch in the record. It argues that the fence itself would not be a reasonable boundary under the doctrine because of its shape and the fact it was “primarily lying along the ground” during a 2020 and a 2023 survey. It also cites two of the Sempels’ water rights applications to show that the Sempels knew the true boundary between the properties. Finally, the State seems to imply that the wire could have been placed fraudulently, stating “[n]o evidence was presented to establish the era of the barbed wire, although antique barbed wire could be sourced from anywhere, and by its very nature is temporary and portable.”

While the State does point to additional evidence that could have been presented, it fails to overcome the Sempels’ evidence.³ The State’s evidence focuses on the barbed wire’s current condition, not the fence’s condition at the time the alleged agreement was made. The fact the barbed wire was “primarily lying along the ground” during the 2020 and 2023 surveys does not address the fence’s condition when the Sempels acquired the property in 1979 or between 1979 and the surveys. No evidence cited by the State shows that the actual boundary was certain at the time the fence was built or that the fence was built for a different purpose.

The State is also incorrect that the “irregular, abrupt, and non-linear” shape of the boundary renders the boundary by agreement claim “patently absurd.” *See Flying Elk*, 149 Idaho at 12, 15, 232 P.3d at 333, 336. The Sempels assert that the disputed tract is irregularly shaped because the fence follows the contours of the land. There is also no indication that the 5.95-acre tract encompasses a large portion of Section 2’s 633.5 acres or the 4,108.42 total acres the State acquired from Potlatch. *See Sims v. Daker*, 154 Idaho 975, 980, 303 P.3d 1231, 1236 (2013) (“[T]he [p]arcel

³ The State claimed the testimony was hearsay in its motions to strike, but, as noted, the district court did not rule on the motions.

is approximately three acres of the Dakers' approximately 103 acres. The [p]arcel is not a large portion of the Daker parcel.”).

Nor do the Sempels' water rights applications demonstrate that the Sempels knew the true boundary between the properties. The 1988 and 2011 applications show that: (i) the Sempels applied for water use only on Section 11; and (ii) Section 11 was a rectangle. The 2011 application includes a satellite image, which shows a clear delineation between Section 11 and Section 2. But the applications do not show what the Sempels' predecessors-in-interest knew. Henning and Milwaukee Land Company may have agreed to fix the boundary without knowledge of the actual line or the benefit of satellite imagery. *See Heath v. Denny's Wrecker Serv., Inc.*, 174 Idaho 942, 961–62, 560 P.3d 1089, 1108–09 (2024); *Morrissey*, 124 Idaho at 873, 865 P.2d at 964. According to the Sempels, both applications were submitted after the minimum five years for a boundary by agreement claim to ripen had elapsed, so the boundary may already have been set. *See Kesler*, 47 Idaho at 744, 278 P. at 367. Second, and of less importance because boundary by agreement focuses on the original agreement, the applications describe water use, not necessarily land ownership. Applying to use water on Section 11 does not establish as a matter of law that the Sempels did or did not believe they owned the disputed tract located in Section 2. The Sempels assert that their predecessors-in-interest had enclosed the disputed tract within Section 11.

That said, the shape of the disputed property as shown in the Sempels' own exhibit shows that the fence line runs northwest from the property line before turning sharply south then almost due west. The irregular shape of the fence, at least as shown on the 2023 survey, clearly diverges from the rectangular section depicted on the water rights applications. However, it is impossible to know how reasonable the fence line appears in context. The Sempels argue generally that deeds and other evidence do not defeat a boundary by agreement, because otherwise, “boundary by agreement would collapse into the deed line in most cases” This contention is supported by this Court's decision in *Griffel*, where the parties' lack of knowledge of the actual boundary was sufficient for a boundary by agreement to arise even though deeds “describe[d] the boundaries in terms of the section lines of Section 24 of the government survey.” 136 Idaho at 400, 34 P.3d at 1083.

Even if there is uncertainty about the relationship between the on-the-ground boundary and the boundary depicted in the water rights application, that is a factual dispute that should *not* be

decided on summary judgment. We reverse the district court's grant of summary judgment on the Sempels' boundary by agreement claim.

V. CONCLUSION

For the reasons set forth above, we vacate the district court's partial judgment, reverse its grant of partial summary judgment to the State, and remand the case for further proceedings.

Chief Justice BRODY and Justices MOELLER, ZAHN, and MEYER CONCUR.