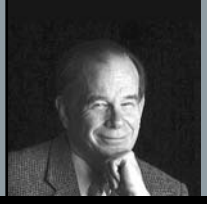

By James J. Demma, LS, Esq

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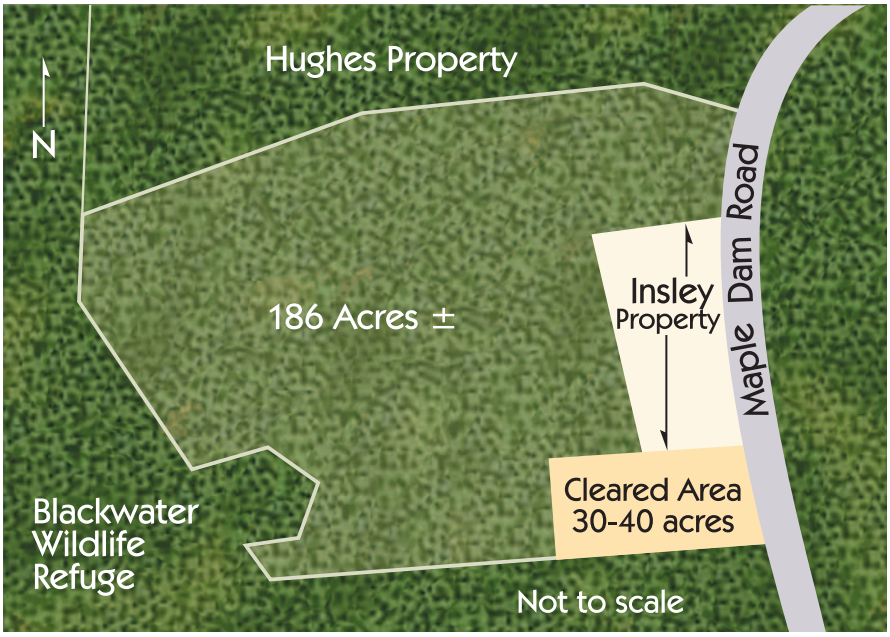
An Adverse Possession Saga

One of the most interesting and complex cases on adverse possession comes from the State of Maryland, that is cited as *Hughes v. Insley*, 155 Md. App. 608, 845 A.2d 1 (2003). This case employs many legal concepts, such as: *res judicata*, estoppel, the doctrine of after-acquired property, intestate distribution, and more important, the common law elements of adverse possession.

At issue was the ownership of 186 acres of land (the "Disputed Tract") that resulted in more than **ten years of litigation** with two trials, an appeal, and various post appeal proceedings. *The record title* of this parcel was vested in Margaret Hughes ("Mrs. Hughes"), who inherited the land from her grandfather, Charles H. Stewart, who died in 1948.



About 30 or 40 acres of the Disputed Tract had been cleared for farming purposes by William Russell Insley, Sr. ("Russell, Sr.") whose son, Russell Insley, Jr. ("Russell, Jr.") was one of the defendants in this case. The remainder of the Disputed Tract was made up of a combination of woodlands and wetlands, with no one residing thereon.

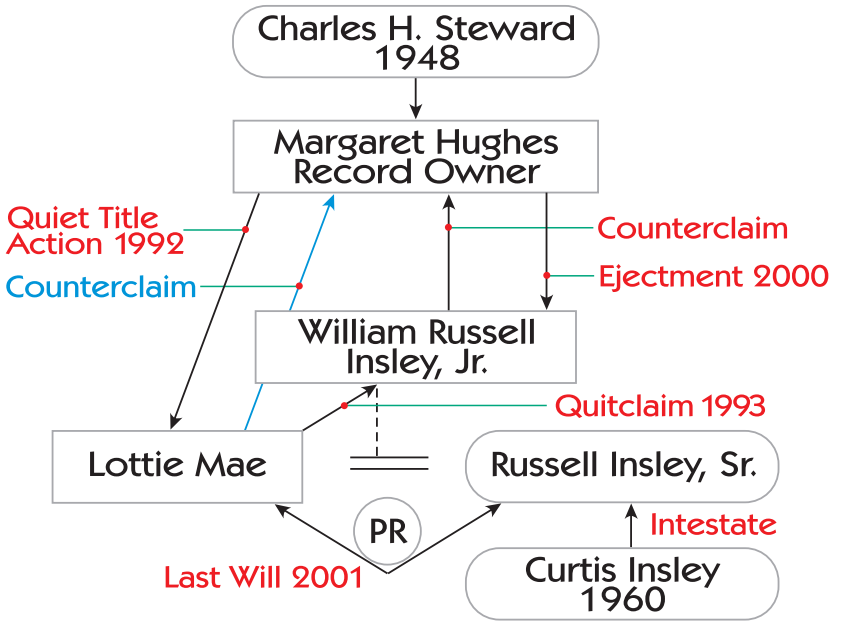
It was an appeals court in my home State of Maryland that decided this case, but keep in mind that while a decision from one state appeals court may not be controlling upon an appeals court in another state, **the decision may be persuasive and entitled to great respect.**

> **"...this case is the one for "the books" when a tract as large as 186 acres passes by this ancient common law doctrine."**

Russell, Jr. claimed that members of the Insley family had been adversely possessing the 186 acres since at least the 1930's, when Curtis Insley regularly took timber off the Disputed Tract, used it for hunting and trapping, and excluded others from it. Curtis died intestate in 1960, and according to Lottie Mae (Russell, Jr.'s mother), Russell, Sr. continued Curtis' practice of treating the Disputed Tract as if he owned it. Also after Curtis' death, Russell, Sr. dug ditches and ponds on the Disputed Tract, took timber from the land, excluded others from entering onto it, erected "no trespassing" signs, hunted on the property, and gave permission to his friends to hunt on the land.

Russell, Sr. died testate in 1992, and in his last will, he left all of his property to his wife, Lottie Mae, with her being the personal representative of his estate. Russell, Jr. asserted that he carried on the same activities on the Disputed Property as his father had before him.

In 1992 Mrs. Hughes filed a lawsuit to quiet the title to the Disputed Tract, naming Lottie Mae as the defendant,



An attorney's flowchart diagram for *Hughes v. Insley*. The chart graphically illustrates the chain of title and record of actions. The boxes represent people who were alive at the time of the litigation; the racetracks represent deceased persons at the time of the litigation. The equal sign between Lottie Mae and Russell Insley, Sr. indicates that they were husband and wife. The dashed line above the equal sign indicates that Russell Insley, Jr. was their son—the title passed to Insley Jr. by a combination of the elements of adverse possession coming together, the quitclaim deed, and the personal representative's deed. The counterclaim in blue was filed by both Lottie Mae and Insley, Jr.

and alleging that the property was vacant and unoccupied. Lottie Mae and Russell, Jr. then filed counterclaims alleging that they and their predecessors in title had been in "actual and constructive possession" of the Disputed Tract for more than 20 years.

In 1993 Lottie Mae executed a quitclaim deed in which she conveyed all of her rights and title in the Disputed Tract to Russell, Jr., contending that upon the death of Russell, Sr., she was the surviving tenant by the entirety, by operation of law. However, as the record in this case shows, and as a matter of law, Lottie Mae and Russell, Sr. never owned the Disputed Tract as tenants by the entirety.

At the *first trial* Russell, Jr. claimed that his father had adversely possessed the land until his death in 1992, and that he, Russell, Jr. was entitled to "tack" his father's possession onto his own, for a number of reasons, one of which being that Lottie Mae had conveyed her interest to him by the quitclaim deed in 1993. The jury in this first trial found that prior to 1992 (the year the first lawsuit was filed) neither Lottie Mae nor Russell, Jr. had received a deed conveying the Disputed Tract to them, and that Russell Jr.'s possession of the property had been interrupted by the filing of the suit by Mrs. Hughes. With respect to Mrs. Hughes's claims, the first trial court found that she had not been in peaceful and quiet possession of the property as required for a quiet title action, and therefore **none of the parties won**!

In 2000 Mrs. Hughes filed a *second lawsuit*, this time for ejectment against Russell, Jr. and Lottie Mae, individually and as the personal representative of the estate of Russell, Sr. In this second lawsuit, Mrs. Hughes claimed, among many things, that the defendants had entered upon the Disputed Tract and dumped and disposed of scrap tires. In an amended counterclaim filed by Lottie Mae and Russell, Jr., they alleged that Russell, Sr. and acquired the "fee simple absolute title" to the Disputed Tract by virtue of his adverse possession for a period of 20 years prior to the initiation of the second suit by Mrs. Hughes; that the estate of Russell, Sr. acquired the land when Russell, Sr. died; that Lottie Mae, in turn, acquired the land when she executed a deed, as Russell's personal representative, conveying the land to herself in 2001; and that the land was then conveyed to Russell, Jr. by the quitclaim deed in 1993.

What the Appeals Court said in the appeal of the second lawsuit was that at the time the first lawsuit ended 1998, the interest in the Disputed Tract, once held by Russell, Sr., by virtue of his approximately 30 years of adverse possession, had never passed to Russell, Jr. However, after the first case concluded, Lottie Mae (who had inherited all of Russell, Sr.'s property under his last will) was appointed the personal representative of Russell, Sr.'s estate and then deeded that interest to herself. And, because she had earlier quitclaimed all of her interest in the Disputed Property to Russell, Jr., by the doctrine of "after-acquired property," Russell, Jr. was the owner of the Disputed Tract! In short, because Russell, Sr. had acquired the Disputed Property during his lifetime by adverse possession, that title passed to Russell, Jr., due to the after-acquired title of Lottie Mae, and for those reasons, Mrs. Hughes lost her right to the Disputed Tract as against the Insleys and all others.

As the Appeals Court pointed out, "title acquired by adverse possession is the same as any acquired by grant, descent, or conveyance and can be lost or transferred only by the methods applicable to such titles."

At the end of the day, *i.e.*, at the end of this appeals process, it was declared that Mrs. Hughes had no interest in the Disputed Tract, and that the 186 acres of the Disputed Tract was owned by Russell, Jr.

I've read many cases on the subject of adverse possession in my career as a land surveyor and a lawyer, but this *Hughes* case is the one for "the books" when a tract as large as 186 acres passes by this ancient common law doctrine.

Many interesting legal doctrines came up in the *Hughes* case—*res judicata*, estoppel, after-acquired property, and intestate distribution—each of which could be the basis for future articles in this column. If there is one in particular that you would like me to discuss, please forward your suggestions via the "Contact Us" section at *www.theamericansurveyor.com*.