NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0030

WATSON BAPTIST CHURCH, INC.

VERSUS

JAMES R. MORGAN AND MURIEL R. MORGAN

DATE OF JUDGMENT: SEP 1 3 2013

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
NUMBER 134081, DIV. G, PARISH OF LIVINGSTON
STATE OF LOUISIANA

HONORABLE ERNEST G. DRAKE, JR, JUDGE

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James R. Morgan and Muriel R. Morgan

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BEFORE: KUHN, HIGGINBOTHAM AND THERIOT, JJ.

Disposition: AFFIRMED.

MMH Higginbotham, J. concurs with the result.

KUHN, J.

Defendants-appellants, James and Muriel Morgan, appeal the trial court's judgment establishing a common boundary between their property and that of plaintiff-appellee, Watson Baptist Church, Inc. (Watson Baptist), along the line where an approximately 1,005-foot fence once stood. We affirm.

A reasonable factual basis exists to support the trial court's designation of the common boundary between the parties' properties. See ***Patterson v. Holmes***, 464 So.2d 394, 400 (La. App. 1st Cir. 1985); ***Seminary v. DuPont***, 2009-1082 (La. App. 5th Cir. 5/11/10), 41 So.3d 1182, 1187, writ denied, 2010-1336 (La. 9/24/10), 45 So.3d 1077 (the determination of a disputed boundary is a question of fact which should not be disturbed on appeal in the absence of manifest error).

Specifically, Louis L. Higginbotham, accepted as an expert in land surveying, testified that in 1977, a 1,005-foot fence existed between the properties and delineated the common boundary. He stated that a partial fence, approximately 260 feet in length, existed to the east of the boundary fence but that he did not note it on the map of his 1977 survey because it was not in conformity with the deeds and the plat he was working under. It was obvious to Higginbotham that the 260-foot fence was a cross fence that had been placed there by the parties' common ancestor, Doug Nesom, prior to the subdivision of the land. Higginbotham stated that he conducted another survey of the property in 2011, at the request of Watson Baptist. While the 1,005-foot fence no longer existed, he found an approximately 36-inch pine tree with some wire through it right on the line noted in the 1977 survey.

A survey undertaken by. C. Mistric Surveyors, Inc. (Mistric) in 1989, also showed the 1,005-foot fence as the common boundary between the properties. In the act of sale transferring the property to the Morgans, the property was described as "in accordance to a plat" of that survey. The Morgans testified that they understood their property included the land east of the 1,005-foot boundary up to the 260-foot fence

remnant, and that they had possessed the land to that point. Acts by the Morgans in that area included the partial placement of their mobile home, the erection of a small building, and maintenance of the land by mowing.

It is clear that the deed to the Morgans' property indicated that their predecessor-in-title did not convey property to them beyond the 1,005-foot boundary. On appeal, the Morgans assert that the trial court erred by not allowing them to tack onto the acquisitive possession their predecessor-in-title had undertaken beyond the 1,005-foot fence to that of the 260-foot partial fence. See ***Loutre Land and Timber Co. v. Roberts***, 2010-2327 (La. 5/10/11), 63 So.3d 120, 125 (under La. C.C. art. 794, one may utilize tacking to prescribe beyond one's title on adjacent property and to the extent of visible boundaries).

Rhonda Golden Brown, the daughter of the Morgans' predecessor-in-title, testified in support of the Morgans' assertion to entitlement to tacking. Brown stated that she had lived on a tract of her father's land since 1975, and that she was 52 years old on the date of trial.[1] She recalled that in the 1970's, her father had erected a fence where he understood the property line was located. Brown believed that fence was the same one as the 260-foot fence remnant to which the Morgans possessed.

There is no error in the trial court's reliance on Higginbotham's testimony over the memory of the daughter of the Morgans' predecessor-in-title. Higginbotham identified both the 1,005-foot fence and the 260-foot fence remnant during his survey in 1977, although he did not note the latter fence on his map. The 1,005-foot fence was again denoted as the common boundary in 1989 in Mistric's map of his survey, which also did not include a reference to the 260-foot cross fence; and in 2011, Higginbotham found a trace of the 1,005-foot fence. Because the evidence supports a finding that the 1,005-foot fence existed as late as 1989, only those acts committed

[1] Mistric's 1989 survey showed that the tract sold to the Morgans was further subdivided and Tract 3A, located to the west of the Morgans' property, was retained by the predecessor-in-title.

by the Morgans since their possession in 1990 could have been adverse to that of Watson Baptist's predecessor-in-title. Accordingly, we find no error in the trial court's rejection of the Morgans' assertion of entitlement to tacking. See ***Swartley v. Feiber***, 560 So.2d 507, 509 (La. App. 1st Cir. 1990) (possessor seeking to tack adverse possession of predecessor-in-title to his own possession must prove acts of possession by predecessor-in-title).

The Morgans also complained about the assessment of costs against them. There is no error. See La. C.C. art. 790; La. C.C. P. art. 1920; ***Patterson***, 464 So.2d at 401; ***Owens v. Smith***, 541 So.2d 950, 955 (La. App. 2d Cir. 1989) (the trial court's discretion to cast the unsuccessful party with costs will not be set aside absent an abuse of discretion).

DECREE

For these reasons, the trial court's judgment is affirmed. Appeal costs are assessed against defendants-appellants, James and Muriel Morgan.

AFFIRMED.