STATE OF MICHIGAN

COURT OF APPEALS

JAMES MASTERS and DONNA MASTERS,

Plaintiffs-Appellees,

v

BILLIE ROBITAILLE and MARILYN ROBITAILLE,

Defendants-Appellants.

UNPUBLISHED
January 27, 1998

No. 191978
Cheboygan Circuit Court
LC No. 94-004043-CH

Before: Corrigan, C.J., and Markey and Markman, JJ.

PER CURIAM.

In this boundary dispute, defendants appeal by right the judgment establishing the border between the parties' properties and awarding plaintiffs damages. We affirm.

Plaintiffs and defendants are neighbors in Mullet Township. Plaintiffs commenced this action for damages when defendants removed a shed from plaintiffs' property and erected a fence, claiming the property as their own. Defendants also blocked a private drive that plaintiffs had been using as a turnaround for their vehicles. At the conclusion of a bench trial, the trial court adopted plaintiffs' expert's survey establishing a boundary line consistent with plaintiffs prior use of the property. The court also awarded plaintiffs $781.78 for damages the defendants caused when they improperly removed plaintiffs' shed, and granted plaintiffs a turnaround easement on the private drive.

Defendants first argue that the trial court clearly erred by adopting the "Porter" survey that established a boundary line consistent with plaintiffs prior use of the property. We disagree. This Court reviews a trial court's findings of fact in a bench trial for clear error. *Morris v Clawson Tank Co*, 221 Mich App 280, 284; 561 NW2d 469 (1997); see also MCR 2.613.

The trial court did not clearly err in adopting the Porter survey as reflecting the correct property line. Both parties contracted with licensed surveyors to survey the property. The experts reached conflicting results. The trial court heard testimony from the experts and the parties, and reviewed the written surveys as well as photographs of the property and other documents. The trial court did not err in adopting the Porter survey based on this evidence.

Defendants next argue that the court clearly erred in awarding plaintiffs the disputed property because plaintiffs did not present evidence of adverse possession. Defendants further contend that plaintiffs failed to prove adverse possession because their occupation was not "notorious" as required under Michigan law. Defendants' arguments, however, are without merit because the trial court's findings regarding the conflicting surveys resolved the dispute. When the trial court found that the Porter survey properly reflected the legal boundary, any matters of adverse possession or acquiescence became irrelevant. Defendants' arguments on adverse possession or acquiescence would have merit only if the trial court adopted their survey as correctly depicting the boundary line. Because the court found for the plaintiffs and set the boundary line consistent with plaintiffs' claim, plaintiffs do not have to prove that they acquired title to the land in any other fashion. Accordingly, the trial court properly declined to address adverse possession or acquiescence.

We likewise reject defendants' argument that the trial court erred in granting plaintiffs a turnaround easement on defendants' property because the plaintiffs did not use the property for fifteen years. Plaintiffs presented sufficient evidence to establish an easement by prescription. "As a general rule, an easement by prescription arises from a use of the servient estate that is open, notorious, adverse and continuous for a period of fifteen years." *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 645; 528 NW2d 221 (1995). Plaintiffs testified they had used a ten foot private roadway at the end of defendants' property to turn their vehicles around for "as long as they could remember," and that Donna Masters' parents had done so since they purchased the property in 1958. Plaintiffs filed their complaint in 1994 after defendants blocked off the drive with a mobile home, making it impossible for them to use the land as a turnaround. The record reflects that plaintiffs used the property for the requisite fifteen years in a manner that was both adverse and notorious.

Defendants next argue that the trial court abused its discretion in refusing to admit the "Dunn" survey into evidence. We disagree. This Court reviews the trial court's evidentiary rulings for an abuse of discretion. *Sackett v Ateyo*, 217 Mich App 676, 683; 552 NW2d 536 (1996). Although the trial court incorrectly excluded the survey on grounds it was not specifically included in defendants' exhibit list, we do not reverse because the court reached the correct result for the wrong reason. *Smith v Globe Life Ins Co*, 223 Mich App 264, 278; 565 NW2d 877 (1997); *Durbin v K-K-M Corp*, 54 Mich App 38, 46; 220 NW2d 110 (1974). The document is clearly hearsay. Defendants attempted to use the Dunn survey as an out of court assertion to prove that plaintiffs' shed was not on the disputed property in 1986. MRE 801. The author did not testify at the hearing, nor did the parties stipulate that his survey would be admitted. The trial court did not abuse its discretion by excluding the hearsay evidence. MRE 802.

Defendants additionally argue that the trial judge erred by not recusing himself because he participated in a local theater production with plaintiffs. Defendants did not preserve this issue by raising it below, MCR 2.003(C)(1); *Fischhaber v General Motors Corp*, 174 Mich App 450, 455-456; 436 NW2d 386 (1988), so we need not address it here. Defendants, however, allege that they did not discover the grounds for disqualification before they filed their claim of appeal. In any event, even taking defendants' allegations as true, defendants have not demonstrated actual bias or prejudice sufficient to warrant recusal. *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996).

Affirmed.

/s/ Maura D. Corrigan
/s/ Jane E. Markey
/s/ Stephen J. Markman