STATE OF MICHIGAN

COURT OF APPEALS

CONRAD R. FERN and RICHARD D. FERN,

Plaintiffs/Counterdefendants-Appellants,

v

EUGENE V. LINN and CHERYL M. LINN,

Defendants/Counterplaintiffs-Appellees,

and

DAVID P. KORTES and PATRICIA A. KORTES,

Defendants/Counterplaintiffs,

and

CECIL WELCH, NORMA WELCH, WARD E. TUTTLE and LAURA E. TUTTLE,

Defendants.

UNPUBLISHED
May 21, 1999

No. 203839
Gladwin Circuit Court
LC No. 93-011812 CH

Before: Smolenski, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiffs Conrad Fern and Richard Fern appeal as of right from a judgment of quiet title. We affirm.

As a result of an error in the original Government Land Office survey and the obliteration of the northwest section corner marker by the flooding of the Tittabawassee River, a dispute arose over the position of the north one-eighth line in section thirty-six, Clement Township, Gladwin County. This line

constitutes the boundary that divides the parties' respective pieces of land. The trial court quieted title in favor of defendants Eugene and Cheryl Linn and David and Patricia Kortes. On appeal, plaintiffs challenge the judgment only with respect to the Linn defendants.

An action to quiet title is an action in equity. *McKay v Palmer*, 170 Mich App 288, 293; 427 NW2d 620 (1988). This Court reviews equity cases de novo, "but gives great weight to the findings of fact of the trial judge and does not reverse unless it finds from a reading of the entire record that it would have reached a different result . . . ." *Mallick v Migut*, 22 Mich App 140, 145; 177 NW2d 200 (1970).

In a boundary dispute, the duty of a factfinder is to determine what constitutes the best evidence of the true boundary line as the original government survey established it. *Woodbury v Venia*, 114 Mich 251, 255, 258-259; 72 NW 189 (1897); see also *Diehl v Zanger*, 39 Mich 601, 603 (Graves, J., with Campbell, C.J., and Cooley, J.), 605-606 (Cooley, J., with Campbell, C.J.) (1878). Likewise, when the location of a boundary line depends on the position of a section corner, the factfinder must strive to determine the location of the section corner as the government surveyor originally set it. See *Hess v Meyer*, 73 Mich 259, 264-265; 41 NW 422 (1889). The factfinder may consider field notes of the original survey, monuments, or other unrecorded markers. *Woodbury*, *supra* at 258-259; *Hess*, *supra* at 264. In this respect, it is the province of the factfinder to weigh the evidence and assess the credibility of the witnesses. *Gorelick v Dep't of State Hwys*, 127 Mich App 324, 333; 339 NW2d 635 (1983). There are also occasions when it may be appropriate to consider lines of occupation in order to refrain from unsettling the boundaries of neighboring parcels of land. *Adams v Hoover*, 196 Mich App 646, 651-652, 655; 493 NW2d 280 (1992). In this case, had we sat as the trial court and heard the evidence in its stead, we are not convinced that we would have reached a different conclusion about the appropriateness of the Meyers survey in fixing the legal boundary in question.

There is no legal support for plaintiffs' argument that the trial court erred by adopting the boundary identified in the Meyers survey because it relied on surveys conducted in adjoining sections rather than solely focusing on evidence from within section thirty-six. Only when there are clear, but contradictory, indications of a boundary does the law establish a hierarchy of relevant evidence in order to determine where the original government survey set the line. See e.g., *Klais v Danowski*, 373 Mich 262, 274; 129 NW2d 414 (1964); *Mumaugh v McCarley*, 219 Mich App 641, 649; 558 NW2d 433 (1996). There is no logical reason to accord evidence from within section thirty-six more weight than evidence from adjacent sections as a matter of law because this case does not contain an obvious or irreconcilable conflict in the description of the boundary. Cf. *Burton Twp v Genesee Co*, 369 Mich 180, 186; 119 NW2d 548 (1963).

Nor do we agree with plaintiffs' argument that the Meyers survey is improper because it relies on mathematical projections of the northwest corner rather than physical monuments from within section thirty-six. Section subdivision lines are theoretical straight lines and do not necessarily conform to other monuments and physical attributes of the earth. See *Keyser v Sutherland*, 59 Mich 455, 460-461; 26 NW 865 (1886). The measurement and position of the boundary only would yield to monuments in section thirty-six if there was some reason to believe that the government surveyors actually drew the

boundary on the earth rather than relying on the section subdivision line. See *Murray v Buikema*, 54 Mich App 382, 387-388; 221 NW2d 193 (1974). There is no such evidence.

Furthermore, the Meyers survey incorporated an accepted position of the northwest section corner identified by a surveyor named Hennings. Although Hennings located the northwest corner for surveys in adjacent sections, it represents the same reference point for surveys in section thirty-six and the position of the north one-eighth line in dispute. *Thompson Twp Hwy Comm'r v Beebe*, 61 Mich 1, 1-3; 27 NW 713 (1886). Even if there is a deflection in the Meyers survey that exceeds accepted surveying standards, that survey is still more reasonable than the boundary plaintiffs propose, which would likely have a chaotic effect on established boundaries for property to the north. *Adams*, *supra* at 654-655. We acknowledge that *Adams* was based on evidence from within the section in question, and concentrated on allowing the settled boundaries in that section to remain. However, the doctrine of repose articulated in *Adams* is a policy aimed at attempting to limit a negative "ripple effect" that may occur when long respected boundaries are disturbed; it does not limit how far and wide the trial court may look to determine if the new boundary would create incalculable mischief and consternation. *Id*. at 652-653. As a court sitting in equity, it was appropriate for the trial court to take notice of the problems plaintiffs' line would cause to property owners in nearby sections. See generally *Rasheed v Chrysler Corp*, 445 Mich 109, 133-134; 517 NW2d 19 (1994) (courts sitting in equity have broad powers). We do not see any error in the trial court's reasoning or the factors it considered in concluding that the Meyers survey was the proper boundary line.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Hilda R. Gage