STATE OF MICHIGAN

COURT OF APPEALS

THOMAS EDWARDS and CHERYL EDWARDS,

Plaintiffs-Appellees,

v

EDWARD HAGERMAN and BARBARA HAGERMAN,

Defendants-Appellants.

UNPUBLISHED
July 14, 2000

No. 216194
Montcalm Circuit Court
LC No. 98-000042-CH

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment quieting title and establishing a property boundary in favor of plaintiffs. We affirm.

This dispute concerns a strip of land lying along the boundary between the parties' neighboring parcels of land. Approximately ten years ago, defendants purchased a farm to the south of and adjoining plaintiffs' farm. A right-of-way ran along a section line between the parties' farms. Following a successful petition to the Montcalm County Road Commission to officially abandon the right-of-way, plaintiffs sought a declaration of their southern property boundary at the southern edge of the right-of-way and title to the strip of land. The trial court found that plaintiffs and their predecessors in title had adversely possessed property abandoned fifty years earlier by the county, and quieted title in the land to plaintiffs.

Defendants first argue that plaintiffs are equitably estopped from claiming land up to any boundary other than the middle of the former right-of-way because plaintiffs allegedly admitted that the right-of-way lay between the properties when they petitioned for its abandonment. We disagree. Actions to quiet title are equitable in nature and are reviewed de novo by this Court. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). Likewise, we review de novo a trial court's application of the doctrine of equitable estoppel. *West American Ins Co v Meridian Mutual Ins Co*, 230 Mich App 305, 309; 583 NW2d 548 (1998). However, we review a trial court's factual findings for clear error. *Dobie v Morrison*, 227 Mich App 536, 541-542; 575 NW2d 817 (1998). A finding is clearly erroneous if we

are left with a definite and firm conviction that a mistake was made. *Cimock v Conklin*, 233 Mich App 79, 84; 592 NW2d 401 (1998).

Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party will be prejudiced if the first party is allowed to deny the existence of those facts. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 141; 602 NW2d 390 (1999). Although defendants did not comply with MCR 2.110(C) and designate their affirmative defense of equitable estoppel as a counterclaim, they sought a declaration that the right-of-way was a private road for the use of the parties.

The trial court properly rejected defendants' equitable estoppel argument as a basis for granting the remedy sought by defendants because equitable estoppel is not an independent cause of action, but is instead a doctrine that may assist a party by precluding the opposing party from asserting or denying the existence of a particular fact. *Id.* at 140-141. The court also properly rejected defendants' equitable estoppel defense. Plaintiff Cheryl Edwards testified that she first heard of the existence of a right-of-way from defendant Edward Hagerman several years before trial. Defendant testified that he used the right-of-way on and off for the eight years that he owned his farm, suggesting that he believed it existed throughout his ownership of his farm. In light of this testimony, the trial court could reasonably find that plaintiffs did not induce defendants to believe in the existence of the right-of-way. Because defendants did not act in reliance on an assertion of fact by plaintiffs, the court properly rejected their equitable estoppel defense. *Id.*

Defendants also argue that the trial court's determination of the location of the boundary line between the two properties was against the great weight of the evidence. However, because defendants failed to move for a new trial, they have waived appellate review of this issue. *Buckeye Marketers, Inc v Finishing Services, Inc*, 213 Mich App 615, 617; 540 NW2d 757 (1995).

In any event, contrary to defendants' contention that the trial court failed to consider the existence of a second fence row and the former public right-of-way in making its determination, our review of the record reveals that the trial court acknowledged the existence of both the northern fence line and the right-of-way in its dispositional ruling from the bench following the trial. The court concluded that the second line of fence was erected to facilitate the farming operations of plaintiffs and their predecessors, and thus rejected defendants' contention that the northern fence row indicated plaintiffs' intent to claim land only to that point. The court found that there was a de facto abandonment by the county of the right-of-way for more than fifty years. The court noted that, except for the testimony of Edward Hagerman, all trial testimony was that for more than fifty years, plaintiffs and their predecessors in title had maintained the disputed strip of land and that plaintiffs' barnyard fence ran down to that area. The court further noted that

defendants' predecessors never claimed or implied that they were claiming land north of the mutually maintained fence row between the properties. The trial testimony amply supported these findings.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins