STATE OF MICHIGAN

COURT OF APPEALS

KIRK MANKIN and CHRISTINE MANKIN,

Plaintiffs-Appellees,

v

ALETA SIEFERT and LEROY RETTELL,

Defendants-Appellants.

UNPUBLISHED
September 26, 2000

No. 218524
Cheboygan Circuit Court
LC No. 98-006430-CH

Before: Murphy, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiffs following a bench trial. We affirm.

This suit arises out of a property line dispute, contesting ownership of a strip of land. Plaintiffs are the deed owners of lot 24 and defendants are the deed owners of lots 22 and 23 in the city of Cheboygan. In the 1940s, plaintiffs' predecessors in interest built a home (the Pellenz house) that straddled the true line between lots 23 and 24. Plaintiffs' predecessors used an additional area south of this house for parking and a side yard, and they placed a culvert and gully[1] on the disputed strip. The trial court ruled plaintiffs had established ownership of the strip of land running between the edge of their own lot 24 and the gully on defendants' lot 23 pursuant to both adverse possession and acquiescence.

Defendants argue the trial court erred in finding defendants acquired title to a portion of lot 23 pursuant to both adverse possession and acquiescence. Actions to quiet title are equitable; therefore, the trial court's holdings are reviewed de novo. *Gorte v Dep't of Transportation*, 202 Mich App

[1] In this instance, "gully" refers to a small ditch used to channel water from a pipe leading from the kitchen of the now-leveled home out to the ditch at the roadway. The parties and witnesses interchangeably refer to this channel as a gully or a ditch. To avoid confusion with the ditch running parallel with the road, the use of the word "gully" refers only to the gutter that once relayed water from the sink to the roadside ditch.

161, 165; 507 NW2d 797 (1993). The factual findings of the trial court are reviewed for clear error. *Grand Rapids v Green*, 187 Mich App 131, 135; 466 NW2d 388 (1991).

It is not necessary for us to rule on plaintiffs' theory of adverse possession because we conclude the evidence at trial established that the gully became the boundary between lots 23 and 24 pursuant to the doctrine of acquiescence. Where adjoining property owners acquiesce to a boundary line for more than fifteen years, that line becomes the actual boundary line. MCL 600.5801(4); MSA 27A.5801(4); *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 512; 534 NW2d 212 (1995); *McQueen v Black*, 168 Mich App 641, 644; 425 NW2d 203 (1988). The underlying reason for the rule of acquiescence is the promotion of peaceful resolution of boundary disputes. *Shields v Collins*, 83 Mich App 268, 271; 268 NW2d 371 (1978). The proper standard applicable to a claim of acquiescence is proof by a preponderance of the evidence. *Walters v Snyder (After Remand)*, 239 Mich App 453, 455; 608 NW2d 97 (2000). This is less stringent than the clear and cogent evidence standard used in adverse possession cases. *Id.*; *McQueen*, *supra* at 645, n 2.

Michigan courts have applied a broad definition of what may serve as a boundary line for the purposes of acquiescence. A line of trees, hedges, and some shrubbery was ruled a sufficient line to serve as an acquiesced boundary in *Renwick v Noggle*, 247 Mich 150, 151-152; 225 NW 535 (1929). A line of bushes was sufficient in *Walters (After Remand)*, *supra* at 459. In *Sackett v Atyeo*, 217 Mich App 676, 682; 552 NW2d 536 (1996), the middle of a shared driveway was later declared to be an acquiesced boundary. A rotted-away wooden fence represented by some steel fence posts and a driveway was deemed an acquiesced boundary in *Geneja v Ritter*, 132 Mich App 206, 212-213; 347 NW2d 207 (1984). In *Siegel v Renkiewicz Estate*, 373 Mich 421, 425; 129 NW2d 876 (1964), the edge of a concrete sidewalk served as an acquiesced boundary. Further, under the acquiescence theory, no parol transfer is required to permit the plaintiffs' predecessors' periods of possession to be tacked to establish the statutorily mandated period of fifteen years. *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964); *Siegel*, *supra* at 425.

In this case, plaintiffs presented evidence that their predecessors' house straddled the line between lots 22 and 23, the southern entrance to the Pellenz house was the structure's main entry point from at least the 1950s until 1981, a driveway crossed over a culvert which allowed for some parking on the south side of the house, and the Pellenzes consistently mowed up to the gully. This evidence of years of both plaintiffs' and defendants' predecessors' treatment of the gully as the boundary line supports a finding of acquiescence for the statutory period by a preponderance of the evidence. The findings of fact by the trial court were not clearly erroneous. MCR 2.613(C). Accordingly, we affirm the trial court's ruling that plaintiffs and their predecessors established title to the disputed strip pursuant to the doctrine of acquiescence.

Defendants also challenge the trial court's failure to rule that plaintiffs' action was barred by the period of limitations for quiet title actions. MCL 600.5801; MSA 27A.5801. However, the statute of limitations is an affirmative defense. Defendants waived this defense by failing to raise it as an affirmative defense. MCR 2.111(F); *Rasheed v Chrysler Corp*, 445 Mich 109, 134-135; 517 NW2d 19 (1994).

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder