

STATE OF MICHIGAN
COURT OF APPEALS

MARK ECKER,

Plaintiff/Counterdefendant-
Appellant,

v

EDWARD J. PRINCE, EUNICE PRINCE,
KENNETH SIERADSKI, and DARLENE
SIERADSKI,

Defendants/Counterplaintiffs-
Appellees.

UNPUBLISHED

March 15, 2002

No. 224476

Charlevoix Circuit Court

LC No. 98-124418-CH

Before: Meter, P.J., and Markey and Owens, JJ.

PER CURIAM.

In this property dispute, plaintiff appeals by right from a judgment of no cause of action in favor of defendants on plaintiff's complaint for declaratory relief with regard to the boundary line between property owed by plaintiff and defendants and a judgment quieting title to the disputed property in favor of defendants on their countercomplaint. We affirm.

In an action to quiet title, we review the trial court's holdings de novo and the factual findings for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). The purpose of an equitable action to quiet title is to "determine the existing title to property by removing any cloud therefrom." *Ingle v Musgrave*, 159 Mich App 356, 365; 406 NW2d 492 (1987). A person's interest in property may take on different forms. *In re Forfeiture of \$53, 178 Mich App 480, 493; 444 NW2d 182 (1989)*. However, legal title requires a transfer by deed. See *Frosh v Sportsman's Showcase, Inc*, 4 Mich App 408, 415-416; 145 NW2d 241 (1966).

The plaintiff in an action to quiet title bears the initial burden of making out a prima facie case of title. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). If this burden is met, the defendant must prove a superior right of title. *Id.* In an equitable action to quiet title, a court "looks at the whole situation and grants or withholds relief as good conscience dictates." *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992), quoting *Hunter v Slater*, 331 Mich 1, 7; 49 NW2d 33 (1951).

Here, plaintiff first challenges the trial court's finding that he failed to prove title to the disputed property under a theory of acquiescence for the statutory period. We disagree. Such a claim is rooted in the statute of limitations prescribed in MCL 600.5801. *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993). A claim of acquiescence is a defense that must be proven by a preponderance of the evidence. *Killips, supra* at 260; *Walters v Snyder*, 239 Mich App 453, 455, 460; 608 NW2d 97 (2000). The essence of the claim is that it prevents a property owner, whose property is possessed by another, from recovering possession after fifteen years. *Kipka, supra* at 438-439. It is not necessary that the possession be hostile or without permission. *Killips, supra* at 260. What constitutes acquiescence, however, has been defined in general terms. *Walters, supra* at 457. The doctrine commonly arises when a boundary line, such as a fence, is mistakenly treated by adjoining property owners as the boundary line. *Id.* at 458.

In the case at bar, even if we were to ignore the evidentiary problems noted by the trial court in determining the location of the fence or fences that existed at one time, the record is clear that title by acquiescence would have occurred, if ever, when defendants' predecessor in title owned the property running along the disputed boundary. Considering the character of the property in question, the lack of evidence regarding whether defendants' predecessor in title agreed or acquiesced in anything, and the other trial proofs, we conclude that the trial court did not clearly err in finding that plaintiff failed to prove his claim of title by acquiescence.

Plaintiff also claims that defendants failed to establish the requisite facts to invoke the equitable doctrines of estoppel and laches. Because we find no clear error in the trial court's determination that plaintiff failed to prove title by acquiescence, we find it unnecessary to address the trial court's application of equity in the case at bar.

We affirm.

/s/ Patrick M. Meter
/s/ Jane E. Markey
/s/ Donald S. Owens