

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HARRY R. SMITH and JANICE E. SMITH,

Plaintiffs/Counter-Defendants-  
Appellants,

v

ADELINE BRYNER,

Defendant/Counter-Plaintiff-  
Appellee.

UNPUBLISHED

May 28, 2002

No. 229620

Ionia Circuit Court

LC No. 99-020170-CH

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Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm.

In 1958 Raymond and Thelma Pranger purchased a one-acre parcel of land from defendant and her husband. A series of steel pipes were placed in the ground on the northern and eastern sides of the property. In 1979 the Prangers sold the property to Kenneth and Cynthia Lawless. In 1996 the Lawlesses sold the property to Donald and Karla Elliston. In 1998 the Ellistons sold the property to plaintiffs. Plaintiffs commissioned a survey that showed that the steel pipes were placed beyond the true northern and eastern boundaries of the property. Plaintiffs filed a complaint to quiet title, alleging that they and their predecessors in interest had occupied the property to the steel pipe boundaries, and claiming ownership of the property to the steel pipe boundaries under a theory of adverse possession or acquiescence. Defendant filed a counter-complaint seeking an order requiring plaintiffs to remove any encroachments on the property and money damages for the destruction of trees on the property.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). In an affidavit defendant stated that neither she nor her late husband placed the steel pipes on the property, and that she never intended that the pipes were to serve as boundary markers. Defendant submitted affidavits from Kenneth Lawless and Donald Elliston, who stated that the steel pipe lines were not known to be the true boundaries of the property. The trial court granted defendant's motion, finding that the affidavits established that the true boundaries of the property were not known until the survey was completed, that plaintiffs' predecessors in interest did not make any claim to the disputed property, and that defendant did not acquiesce in the use of the disputed property by any other party. The trial court's order disposed of all claims.

We review a trial court's findings of fact in an equity action for clear error, and review the ultimate decision de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). In addition, we review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish adverse possession, a claimant must show that his or her possession has been "actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years." *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995); MCL 600.5801(4). The doctrine of adverse possession is strictly construed, and a party claiming title by adverse possession must prove the claim by clear and cogent evidence. *Walters v Snyder*, 225 Mich App 219, 223; 570 NW2d 301 (1997).

The doctrine of acquiescence provides that if adjoining property owners acquiesce to a boundary line for at least fifteen years, that line becomes the actual boundary line. A claim of acquiescence must be proven by a preponderance of the evidence. *Killips, supra*, 260.

Plaintiffs argue that the trial court erred by concluding that they had not established ownership of the disputed property by adverse possession or acquiescence. They contend that although the true boundaries of the property were not known until the property was surveyed in 1999, they and their predecessors in interest actually, visibly, notoriously, continuously, and openly occupied the property to the steel pipe lines. We disagree and affirm. Plaintiffs maintained that they were entitled to rely on the use of the property to the steel pipe lines by previous owners for the statutory period to establish their claim of ownership of the disputed property by adverse possession or acquiescence.

However, plaintiffs produced no evidence establishing that their predecessors in interest, specifically the Ellistons and the Lawlesses, actually, visibly, notoriously, continuously, and openly possessed the disputed area, or used the disputed area with the acquiescence of defendant. The trial court did not clearly err in finding that the affidavits submitted by defendant, Donald Elliston, and Kenneth Lawless in support of defendant's motion for summary disposition did not establish that plaintiffs' predecessors used the disputed property in a manner that would satisfy the elements of a claim of ownership by adverse possession or acquiescence. MCR 2.613(C). Plaintiffs could not establish their claim of ownership by either adverse possession, *West Michigan Dock & Market Corp, supra*; *Walters, supra*, or acquiescence. *Killips, supra*. Summary disposition was proper. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Martin M. Doctoroff