STATE OF MICHIGAN

COURT OF APPEALS

DENNIS M. HEFFRON and DIANA L. HEFFRON, Plaintiffs/Counter Defendants-Appellees,	UNPUBLISHED July 2, 2002
v	No. 227933 Eaton Circuit Court
GREGORY A. RAMON and DIANNA RAMON, Defendants/Counter Plaintiffs-Appellants.	LC No. 99-001073-CK

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

PER CURIAM.

Defendants appeal as of right from an order granting summary disposition for plaintiffs under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case involves a dispute over ownership of an approximately 45-foot-wide strip of property along the border of the parties' abutting parcels of real estate. Plaintiffs purchased their then-vacant residential lot in 1976. The property was not surveyed, but the realtor assisting the sale informed them that a line of trees at the back of the lot was the west boundary line of the parcel. Charles Dupree bought the acreage to the immediate west, behind plaintiffs' property, in 1978. According to Dupree, another realtor advised him that the tree line was the boundary line between his parcel and plaintiffs' lot. Defendant Dianna Ramon purchased the Dupree property in 1998. The property was surveyed the following year, apparently for the first time, and the surveyed property line was then located forty-five feet east of the tree line, in plaintiffs' backyard. This quiet title action followed, with plaintiffs claiming that the tree line was by acquiescence the property line between the two parcels.

On appeal, defendants contend that plaintiffs failed to establish acquiescence as a matter of law because Dupree never explicitly articulated to Dennis Heffron, or ever affirmatively demonstrated his agreement, that the tree line was the property line. We disagree. This Court's review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A claim of acquiescence to a boundary line based upon the passage of the fifteen-year statutory period, MCL 600.5801(4), requires a showing that the parties acquiesced in the line and treated it as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). The essential inquiry is whether the respective property owners' conduct showed that they treated a particular boundary line as the property line, not whether there was a continuous event or act overtly demonstrating acquiescence. *Id.* at 457-458.

In this case, Dupree's testimony established that throughout the twenty-year period that he owned what is now defendants' parcel, he understood that the tree line was the boundary line. Although he may have never affirmatively asserted that the tree line was the boundary, that understanding is indirectly confirmed by his decision to erect an electric fence back several feet from the tree line out of concern that the fence not encroach on plaintiffs' lot. Heffron's affidavit established that he believed the tree line was the boundary line from plaintiffs' 1976 purchase of their lot until defendants' 1999 survey. That belief is also confirmed by Heffron's treatment of the disputed strip as plaintiffs' when he mowed the area, planted new trees there, and placed a portion of his septic field within it. The fact that the owners were mistaken or acting on incorrect information is not determinative; mistaken property lines are central to the acquiescence doctrine. *Sackett v Atyeo*, 217 Mich App 676, 681-682; 552 NW2d 536 (1996). Because Dupree and the Heffrons treated the tree line as the boundary line for over fifteen years, the trial correctly granted summary disposition for plaintiffs.

Defendants also suggest that in order for the doctrine of acquiescence to apply, another survey had to have been previously performed. This argument is raised for the first time on appeal and is therefore not properly before this Court. See *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471-472; 628 NW2d 577 (2001).

Finally, plaintiffs ask this Court to impose sanctions against defendants for bringing a vexatious appeal. MCR 7.216(C). We decline to do so. Compare *In re Guardian Ad Litem Fees*, 220 Mich App 619, 625; 560 NW2d 76 (1996).

Affirmed.

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