STATE OF MICHIGAN

COURT OF APPEALS

CHARLES RIFFENBURG and CATHY SUE RIFFENBURG,

Plaintiffs-Appellants,

v

GEORGE L. RACZ and MAY RACZ,

Defendants-Appellees.

UNPUBLISHED
July 30, 2002

No. 228976
St. Clair Circuit Court
LC No. 99-003034-CZ

CHARLES RIFFENBURG and CATHY SUE RIFFENBURG,

Plaintiffs-Appellees,

v

GEORGE L. RACZ and MAY RACZ,

Defendants-Appellants.

No. 229925
St. Clair Circuit Court
LC No. 99-003034-CZ

Before: Holbrook, Jr., P.J., and Jansen and Wilder, JJ.

PER CURIAM.

This consolidated case centers around a property line dispute between adjacent landowners. The two lots are located on land that was once owned by a dairy farmer named Grierson. The façades of both houses run parallel to North River Road in Fort Gratiot Township. In docket no. 228976, plaintiffs appeal as of right from the July 13, 2000, order of the circuit court granting summary disposition to defendants. In docket no. 229925, defendants appeal as of right from the September 6, 2000, order of the circuit court denying their motion for sanctions. We affirm in part, reverse in part, and remand for further proceedings.

Docket No. 228976

The dispute between these landowners centers on the location of the boundary line between their adjacent front yards. Plaintiffs claim that the boundary begins at a point ten feet out from the front right-hand corner of their home, and runs perpendicular to North River Road. Plaintiffs' placement means that the boundary from the front to back of the lot would not be a continuous straight line, i.e., the front yard boundary would create an obtuse angle with the backyard boundary. The line described on the Grierson plat also begins ten feet out from the front right-hand corner of the house, but it continues the unbroken straight line created by the backyard boundary. Plaintiffs' placement of the disputed boundary runs east of the Grierson line. Defendants argue the boundary is as described on the Grierson plat. These conflicting placements form a triangular-shaped area lying in the southwest corner of defendants' lot, as the lot is set out on the Grierson plat. Plaintiffs claim ownership of the triangular-shaped area by either adverse possession or acquiescence.

We conclude that the trial court erred in granting summary disposition to defendants on plaintiffs' claim of ownership based on the doctrine of acquiescence.[1] Michigan case law has identified three subdivisions of the law of acquiescence: (1) acquiescence to a boundary established following the express settlement of a bona fide dispute; (2) in the absence of an express agreement, acquiescence to a boundary for the statutory period applicable to adverse possession, *Maes v Olmstead*, 247 Mich 180, 183; 225 NW 583 (1929); *Tritt v Hoover*, 116 Mich 4, 8; 74 NW 177 (1898); *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993); *McGee v Erikson*, 51 Mich App 551, 558-559; 215 NW2d 571 (1974); and (3) acquiescence arising from an intention to deed to a marked boundary by either the predecessors' in interest or a common grantor. *Maes, supra* at 184; *Murray v Buikema*, 54 Mich App 382, 387; 221 NW2d 193 (1974).

"It has been repeatedly held by this court," the Michigan Supreme Court observed in *Tritt*, *supra* at 8, "that a boundary line, long treated and acquiesced in as the true line, ought not to be disturbed on new surveys, and that 15 year's recognition and acquiescence are ample for this purpose." "[T]he peace of the community requires that all attempts to disturb lines with which the parties concerned have long been satisfied should not be encouraged." *DuPont v Starring*, 42 Mich 492, 494; 4 NW 190 (1880).

While the record does not support a claim of acquiescence under either the first or third theories outlined above, genuine issues of material fact exist under the second theory. "[A] claim of acquiescence to a boundary line based upon the statutory period of fifteen years,

[1] To prove a claim of adverse possession, a plaintiff must establish that his possession of the property at issue is actual, visible, open, notorious, exclusive, hostile, under cover of claim of right, and continuous and uninterrupted for fifteen years. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Because plaintiffs have not argued the merits of their claim of adverse possession, they have abandoned their claim of error on the summary dismissal of their adverse possession claim. *Dresden v Detroit Macomb Hosp Corp*, 218 Mich App 292, 300; 553 NW2d 387 (1996). In any event, plaintiffs' evidence did not establish a genuine issue of material fact on the issue of hostility. See *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976). All of plaintiffs' evidence is directed at showing that the parties had agreed to abide by a recognized boundary line that was not the platted boundary.

requires merely a showing that the parties acquiesced in the line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary." *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). Absent an express agreement, if an established boundary between adjacent landowners is recognized for fifteen years or more, then a presumption is raised that the landowners have fixed this boundary by agreement. See *Johnson v Squires*, 344 Mich 687, 692; 75 NW2d 45 (1956). If a dispute arises between the landowners about the location of the true boundary, courts should examine their behavior with respect to the presumed boundary in order to determine the validity of the presumed agreement. *Kipka*, *supra* at 437-439. The conclusiveness of such an agreement is, therefore, implied by the conduct of the landowners. See *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974); Browder, *The practical location of boundaries*, 56 Mich L Rev 487, 506-507 (1958). If it is proved that the landowners have recognized and acquiesced to the placement of a long established boundary, then that boundary will be found to be the true boundary line. *Johnson*, *supra* at 693. Conversely, if the evidence indicates that both landowners have not acquiesced in the presumed boundary, then the presumption of agreement is overcome. *Wood*, *supra* at 53. Tacking is permitted. *Johnson*, *supra* at 693.

If a boundary line is going to be recognized by acquiescence, "it is essential that its precise location be apparent." Browder, *supra* at 514. In furtherance of this end, Michigan courts often refer to the need for the recognized boundary to be marked by some type of monument. The *Murray* Court defined a "monument" as being "any physical object on the ground which helps establish the location of the line called for, and . . . when used in reference to boundaries indicates a permanent object which may be either a natural or an artificial one." *Murray*, *supra* at 387. Michigan appellate courts have recognized boundary lines marked by a fence, *Corrigan v Miller*, 96 Mich App 205, 209; 292 NW2d 181 (1980), a hedge, *Gregory v Thorrez*, 277 Mich 197, 198; 269 NW 142 (1936), shrubs, *Murray*, *supra* at 386-387, and artificial monuments, *Dehl v Zanger*, 39 Mich 601, 605-606 (1878) (Campbell, C.J., & Cooley, J., concurring).

Additionally, a boundary need not be marked by a continuous, inviolate physical monument. For example, the Michigan Supreme Court has indicated that the location of a boundary can be established by the placement of a single monument. In *Breakey v Woolsey*, 149 Mich 86, 87, 90; 112 NW2d 719 (1907), the Michigan Supreme Court referenced a boundary marked by a single iron spike to support the court's finding that the plaintiff and the defendant had agreed and acquiesced to a boundary line between their adjacent properties. It is true that *Breakey* dealt with an express agreement and subsequent acquiescence. However, the importance of the monument in that case was that it marked an apparent boundary line; this importance is not mitigated by the subdivision of acquiescence law at issue.

In 1990, plaintiffs entered into a land contract to buy their property from Cathy Riffenburg's parents, who had purchased the lot in 1953. Defendants moved into their home in 1963. Defendants argue that the only facts plaintiffs set forth to establish the location of the presumptive boundary line is an alleged pattern of mowing, watering, and fertilizing up to the claimed boundary. This is not an accurate characterization of plaintiffs' evidence. In addition to these activities—which plaintiffs allege have occurred since defendants moved onto their lot in the early 1960s—plaintiffs also point to the planting of flowers, trees, and the placement of a split-rail corner fence in the disputed area. These items were not removed until the onset of the

dispute between the parties. Additionally, there is evidence that a box elder tree, recognized as belonging to Cathy Riffenburg's parents, was located in the disputed area from sometime in the 1950s until it was removed in the 1980s.

We believe that a reasonable argument can be made that this evidence does raise a presumption that an agreed boundary different from that on the plat had been established for the requisite time period. Thus, an argument can be made that defendants and the courts should not "disturb lines with which the parties concerned have long been satisfied." *DuPont, supra* at 494. Accordingly, the grant of summary disposition to defendants should be reversed and the case remanded for further proceedings on plaintiffs' claim of acquiescence.

We reject, however, plaintiffs' claim that the trial court erred in failing to review certain photographs offered at the summary disposition hearing. We note that the record indicates that plaintiffs only attempted to introduce a single photograph. When the court indicated that it would not look at the photo because it was not a part of the file, nor had it been submitted through discovery, plaintiffs did not object nor did they make an offer of proof. Accordingly, this issue is not preserved for our review. MRE 103(a). Moreover, plaintiffs' failure to identify the picture makes it impossible for this Court to effectively review the matter.

Docket No. 229925

Finally, we find no abuse of discretion in the circuit court's denial of defendants' motion for sanctions. *Richardson v Ryder Truck*, 213 Mich App 447, 450; 540 NW2d 696 (1995). As we have just concluded above, plaintiffs' claim of ownership to the disputed property under the theory of acquiesce is not devoid of legal merit.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder