

STATE OF MICHIGAN  
COURT OF APPEALS

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KAREN GAFFNEY,

Plaintiff-Appellee,

v

CRAIG M. MORRIS and KATHLEEN A.  
O'CONNOR,

Defendants-Appellants.

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UNPUBLISHED

November 15, 2002

No. 238915

Houghton Circuit Court

LC No. 00-011228-AZ

Before: Hood, P.J., and Bandstra and O'Connell, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment in favor of plaintiff. We affirm.

This dispute arose after defendants discovered that their riparian parcel was ten feet narrower at the shoreline than was called for in their legal description. They attempted to occupy ten feet of plaintiff's parcel and plaintiff sued to establish the shared boundary line where it had been at least since a 1983 survey. After trial, the court agreed with plaintiff and confirmed the 1983 boundary.

The trial court's decision in this regard was largely a finding of fact. We review findings of fact by a trial court sitting without a jury under the clearly erroneous standard, to determine whether, on the entire record, we are left with the definite and firm conviction that a mistake has been committed. *Gumma v D & T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999).<sup>1</sup> Defendants argue that the testimony and evidence submitted by Hein, the surveyor who located plaintiff's parcel corner pins in 1983 was not credible. Specifically, defendants argue that Hein was in error when he concluded that the pins located in 1983 were in approximately the same location when he revisited the property during trial.

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<sup>1</sup> Although plaintiff points out that our review of factual findings is not so limited in cases where factual findings may have been influenced by an incorrect review of the law, citing *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990), we do not conclude that the trial court's factual findings here regarding the propriety of the Hein survey were influenced in any fashion by its legal conclusions with respect to the application of the doctrine of acquiescence or adverse possession, about which the parties argue, or by any other question of law.

While Hein did not actually perform a resurvey of the property during trial, he had explanations for the discrepancies defendants pointed out in the condition and location of the pins. The decision to accept his testimony and report was a determination of his credibility. Although the trial court is not considered infallible, we are generally of the opinion that it is in a better position to weigh evidence and evaluate credibility. *Fletcher v Fletcher*, 229 Mich App 19, 28; 581 NW2d 11 (1998). For that reason, we give deference to the trial court's unique ability to judge the weight and credibility of the testimony and we do not substitute our judgment for that of the factfinder. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).

Further, we note that the trial court here handled this matter in a manner similar to that approved by our Court in *Adams v Hoover*, 196 Mich App 646; 493 NW2d 280 (1992). There, we rejected a "technically correct but maverick" survey that would have unsettled boundaries beyond those at issue between the litigants at hand. *Id.* at 654. Similarly here, even if we were to assume that the later Hitch survey was correct, the trial court properly confirmed the Hein survey which located existing pins that were apparently in place many years before that survey occurred and which were placed in a manner consistent with the uses of the property by adjoining landowners. Having reviewed the record, we are not left with a definite and firm conviction that the trial court was mistaken in its finding of fact that the Hein survey represented the appropriate boundary. Plaintiff was entitled to the relief afforded on the basis of a theory of repose. *Id.* at 655.

That determination was sufficient to support the trial court's ruling without need for application of the doctrines of acquiescence or adverse possession. Accordingly, we need not consider the parties' arguments regarding those doctrines on appeal.

We affirm.

/s/ Harold Hood  
/s/ Richard A. Bandstra  
/s/ Peter D. O'Connell