

STATE OF MICHIGAN
COURT OF APPEALS

TERRY R. SMITH and DEENA A. SMITH,

Plaintiffs-Appellants,

v

G. SCOTT AMBS and SUSAN M. AMBS,

Defendants-Appellees.

UNPUBLISHED

December 13, 2002

No. 232345

Jackson Circuit Court

LC No. 00-001203-CH

Before: Neff, P.J., and Hoekstra and O’Connell, JJ.

PER CURIAM.

Plaintiffs Terry R. and Deena A. Smith appeal as of right from the circuit court judgment finding in favor of defendants G. Scott (hereinafter “Scott”) and Susan M. Ambs. Plaintiffs had brought suit to settle a boundary dispute between the parties. We affirm.

The parties, who are adjoining neighbors, dispute the ownership of a fence and shrubbery area between their respective properties. At trial the parties stipulated that plaintiffs’ predecessors in title had constructed the fence, that the fence was erected for the purpose of confining adult foster care patients living in the home at the time, and that the fence had been in existence since at least 1980. In 1997, defendants had a survey made in preparation for building a garage on their land and this dispute arose.

Scott testified that before this survey, defendants had never had any discussions with plaintiffs’ predecessors in title, with previous tenants of plaintiffs’ predecessors in title, or with plaintiffs as to where the boundary lay or whether the fence marked that boundary. Scott did admit that when defendants bought their property, they did not believe they were buying anything on the other side of the fence. However, he also stated that defendants had always maintained the grass and bushes between the parties’ homes beyond the fence line. Terry, on the other hand, testified that when plaintiffs bought their property they believed that the fence accurately depicted the boundary line, that defendants had never maintained the bushes or grass lying beyond the fence line.

Plaintiffs’ sole argument on appeal is that the trial court made an error of fact in finding that a fence located between the parties’ adjacent homes was never intended to demarcate the boundary between the parties’ lots and that, based on this error of fact, the trial court made an error of law in finding that the doctrine of acquiescence did not apply to the facts of the case. We disagree.

We review a trial court's findings of fact under a clearly erroneous standard. *Grievance Administrator v Lopatin*, 462 Mich 235, 247, n 2; 612 NW2d 120 (2000). This means that we will not modify or overturn a trial court's findings of fact unless we are left with a definite and firm conviction that a mistake has been made. *Markillie v Livingston Co Rd Comm*, 210 Mich App 16, 22; 532 NW2d 878 (1995). Moreover, it is well settled that this Court will not interfere with the factfinder's role of determining the evidence's weight or witnesses' credibility. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"The doctrine of acquiescence usually arises in the context of border disputes." *Genaja v Ritter*, 132 Mich App 206, 210; 347 NW2d 207 (1984). The doctrine is comprised of three distinct theories of acquiescence: "(1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from an intention to deed to a marked boundary." *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996) (citation omitted). In the present case, plaintiffs have asserted only the first of these theories. With regard to the first theory, when abutting landowners acquiesce to a boundary line is for the statutory period of fifteen years, the boundary line becomes fixed. MCL 600.5801(4); *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964). Moreover, "a claim of acquiescence to a boundary line based upon the statutory period . . . 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." *Walters v Snyder (After Remand)*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Furthermore, the acquiescence of predecessors in title as to the location of the boundary line may be tacked on to that of the parties in order to establish the fifteen-year statutory period. *Jackson, supra* at 26.

We hold that the trial court's findings of fact were not clearly erroneous. The court did not make an error of fact in holding that the fence was never intended to mark the true boundary between the parties' properties, and that defendants did not acquiesce to such a boundary for the statutory period. In making its findings of fact, the trial court stated repeatedly that it found Scott to be a credible witness. While the court failed to explicitly discuss the credibility of Terry, the court's failure to do so while clearly crediting the testimony of Scott suggests that the court found Scott to be the more credible of the two witnesses. Accordingly, the trial court correctly found that the doctrine of acquiescence did not apply and, therefore, properly reset the property line in favor of defendants. We therefore affirm the trial court's judgment.

Affirmed.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell