STATE OF MICHIGAN

COURT OF APPEALS

RAYMOND D. LOFGREN and GERTRUDE A. LOFGREN,

Plaintiffs-Appellees/Cross-Appellants,

v

LEWIS BROOKS, HAZEL BROOKS, and LAWRENCE BROOKS,

Defendants-Appellants/Cross-Appellees,

and

ALLEN PENOYER,

Second Third-Party Defendant-Appellant/Cross-Appellee,

and

ROYAL GOUINE,

Defendant/Third-Party Plaintiff,

and

CARL F. SCHAEFER,

Third-Party Defendant/Second Third-Party Plaintiff.

UNPUBLISHED
October 26, 2004

No. 247314
Cheboygan Circuit Court
LC No. 96-005469-CH

Before: Murphy, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendants Lewis Brooks, Hazel Brooks, Lawrence Brooks, and third-party defendant Allen Penoyer ("appellants") appeal as of right the February 26, 2003, order quieting title to the properties owned by appellants, plaintiffs Raymond D. Lofgren and Gertrude A. Lofgren, and two additional neighbors.[1] Plaintiffs cross-appeal. We affirm.

Appellants first argue that the trial court erred in its finding that Earl Abrahamson, the common grantor of the properties at issue, intended to deed to a marked boundary in his conveyances to the Brookses and Lofgrens, thus resulting in acquiescence to the boundary between those properties. We disagree.

We review actions to quiet title, which are equitable in nature, de novo. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). We review the findings of fact of a trial court sitting without a jury for clear error and its legal conclusions de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

There are three theories of acquiescence: (1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from intention to deed to a marked boundary. *Sackett, supra* at 681. Our Supreme Court explained acquiescence arising from the grantor's intention to deed to a marked boundary in *Daley v Gruber*, 361 Mich 358, 363; 104 NW2d 807 (1960):

> It arises from the intention to describe in the deed the boundary marked on the ground by a common grantor.
>
> * * *
>
> The doctrine of acquiescence would not permit the line of the old fence, so marked, to be disputed as a boundary between adjoining owners. Nor, it follows, may it be disputed with respect to other descriptions dependent upon its location. Under these circumstances, after such a boundary has been so established, it must be presumed that descriptions in later conveyances by one of these parties, necessarily involving such boundary, are intended to refer to the boundary so located on the ground and not to some other imaginary line or point which might have been taken in the absence of such location. Lapse of time is not involved in the situation, nor a compromise line after dispute, but, rather, an identification of intended location by those who are to be affected. [See also *Pyne v Elliott*, 53 Mich App 419, 427-428; 220 NW2d 54 (1974).][2]

In reaching its decision here, the trial court relied on Abrahamson's deposition testimony regarding his intention to sell property that abutted the roadway and the fence line. We find no

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[1] The neighbors, Royal Gouine and Carl F. Schaefer, are not parties to this appeal.

[2] Boundary lines long treated and acquiesced in as the true lines ought not to be disturbed. *Johnson v Squires*, 344 Mich 687, 692; 75 NW2d 45 (1956).

clear error as the deposition testimony supports the trial court's findings, nor do we find error in the court's application of the law. The trial court further relied on equitable principles. It determined that if it allowed appellants to receive title to the disputed property along their boundary with the Lofgrens as well as the disputed property along the road on the west side of appellants' property, they would receive more property than Abrahamson intended.[3] The court also expressed its concern with the effect its decision in this dispute would have on the disputes between the other parties in this case. In other words, it "look[ed] at the whole situation and grant[ed] . . . relief as good conscience dictate[d]." *Hunter v Slater*, 331 Mich 1, 7; 49 NW2d 33 (1951). We affirm the court's reasonable and equitable resolution of the parties' boundary disputes.

We decline to consider defendants' other issues on appeal. Defendants have failed to adequately argue these issues, or to cite supporting authority for their arguments. Therefore, we deem these issues abandoned. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Further, the issues of procedural due process, res judicata, collateral estoppel, and mandatory joinder were not raised below and thus not preserved for appeal. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471-472; 628 NW2d 577 (2001). Moreover, assuming the matters are properly before us, they lack merit as presented and do not require reversal.

Plaintiffs argue on cross appeal that the trial court erred in denying their motion for costs after the trial concluded. We disagree. We review this issue for an abuse of discretion. *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 518; 556 NW2d 528 (1996), aff'd 458 Mich 582; 581 NW2d 272 (1998). An abuse of discretion exists where the result is "palpably and grossly violative of fact and logic." *Spalding v Spalding*, 355 Mich 382, 384; 94 NW2d 810 (1959).

MCR 2.625(A)(1) provides, "Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action." Section (B)(2) of the rule provides:

> In an action involving several issues or counts that state different causes of action or different defenses, the party prevailing on each issue or count may be allowed costs for that issue or count. If there is a single cause of action alleged, the party who prevails on the entire record is deemed the prevailing party.

To be considered a "prevailing party" within the meaning of this rule, the party seeking costs must show that "its position was improved by the litigation." *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 81; 577 NW2d 150 (1998).

Here, the trial court stated that plaintiffs prevailed "in a certain way," but it remarked as well that all the parties were "in the same position . . . and there [wa]s nothing really for the

[3] The trial court ordered that the legal description of appellants' property be changed to show the road as its western boundary. Previously, its legal description showed appellants' property line as fifty feet short of the road, resulting in their property being landlocked.

Court to change." In other words, while plaintiffs arguably prevailed, the court's order gave all the other parties in this case quieted title to the properties they occupied. In light of this, we do not find that the trial court abused its discretion in denying plaintiffs' motion for costs.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Jane E. Markey