

STATE OF MICHIGAN
COURT OF APPEALS

LISA MORELLI, LAURA A. MORELLI, and
ANTHONY P. MORELLI,

UNPUBLISHED
December 13, 2005

Plaintiffs-Appellees,

v

No. 263814
Oakland Circuit Court
LC No. 03-054870-CH

YVONNE TUDOR,

Defendant-Appellant,

and

WALTER HAGEN and HARRY H. KEMNITZ,

Defendants.

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from an opinion and order granting partial summary disposition in favor of plaintiffs in this action to quiet title and for trespass damages. Because of the operation of the doctrine of repose, we uphold the boundary line claimed by plaintiffs, and affirm.

This property dispute stems from conflicting surveys and concerns the proper border between residential parcels. In 1979, the Leaches owned all of the property at issue and commissioned a parcel split of their land. A registered land surveyor, David C. Finney, surveyed the land at issue and marked the parcel corners with iron rods and caps. Finney's survey defined the properties at issue and three other parcels to the north. The property now owned by defendants was shown on Finney's survey as an "exception" in the southeast corner of the larger parcel. The Finney survey was recorded on August 7, 1979. Some nine years later, the Leaches conveyed the "exception" parcel to the Stanleys by warranty deed. The deed was recorded on August 31, 1988. After changing hands three more times by warranty deed, the "exception" parcel was ultimately transferred to defendants by warranty deed recorded on September 15, 2000. All of the warranty deeds used Finney's description of the property.

On November 7, 1988, the lot that is currently owned by plaintiffs was transferred by warranty deed from the Leaches to the Paulls. This parcel of land was the lot from which the

“exception” lot had originally represented the southeast corner. In anticipation of a lot split, the Paulls commissioned a survey of their property in 1990. A registered land surveyor, Raymond Kostecke, divided the parcel into two parcels, also using the Finney survey to define the property boundaries. In 1999, apparently in accordance with the State Survey and Remonumentation Act,¹ MCL 54.264 *et seq.*, Oakland County hired another surveyor, Grant J. Ward, to survey the property. Ward established a new corner on the property and set a new corner monument without referencing the Finney survey. Ward placed his new monument approximately thirty feet north of the location marked by the pre-existing Finney corner irons. When plaintiff purchased the property in 2002 there was a fence established on the line between plaintiffs’ and defendants’ property as indicated by the Finney description.

Defendants approached plaintiffs about purchasing a thirty foot strip of plaintiffs’ property the length of defendants’ north property line. After plaintiffs declined to sell the property, defendants hired a registered land surveyor, Harry H. Kemnitz, to perform a survey of their land and establish their property dimensions. Kemnitz used Ward’s new section monument, which placed defendants’ north property line thirty feet further north than Finney’s northerly demarcation. Defendants removed the wire fence along the northern boundary of their property and erected a new fence thirty feet to the north and marked new corners.

Plaintiffs consulted a surveyor, Boss Engineering, who reviewed the Kemnitz survey. Boss Engineering realized that the Finney corner irons and the newly placed section corner monument created a thirty foot discrepancy. Boss Engineering considered the Finney corner irons as the description of the property. Plaintiffs thereafter commenced this action to quiet title to the thirty foot strip of land at issue and also brought a damages claim for intentional trespass against defendants. After applying the doctrine of repose, the trial court granted plaintiffs’ motion for partial summary disposition. The trial court then held a bench trial where it found defendants liable to plaintiffs for damages in the amount of \$500 for intentional trespass.²

On appeal, defendant argues that the trial court erred when it granted partial summary disposition in favor of plaintiffs because a question of fact clearly remains since two competing surveys exist, and because the trial court erred when it applied the doctrine of repose.³ This Court reviews a trial court’s grant or denial of summary disposition *de novo* to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118-121; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden, supra* at 120. When deciding a motion brought under MCR 2.116(C)(10), we consider affidavits, pleadings, depositions, admissions, and other evidence

¹ The parties have not argued, and we have not found that the statute in any way creates an inference that the county sponsored survey supersedes previously established boundaries.

² Neither party raises issues relating to the trespass claim on appeal.

³ Defendant also raises an argument that plaintiffs are not entitled to relief based on the doctrine of acquiescence. Because the trial court did not grant relief to plaintiffs based on the doctrine of acquiescence and in fact never considered it, and in light of our disposition on appeal, we decline to address the argument.

submitted by the parties in the light most favorable to the non-moving party. *Id.*; MCR 2.116(G)(5). Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Maiden, supra* at 120.

The doctrine of repose provides that long established occupational lines and settled boundaries are not to be disturbed by recent surveys. *Adams v Hoover*, 196 Mich App 646, 650; 493 NW2d 280 (1992). Further, public policy clearly favors consistency in ascertaining boundary lines, especially where a multitude of boundaries have been established in reliance on prior surveys and monuments. *Id.* at 651. This Court has previously affirmed a trial court's grant of title in favor of the plaintiff to a strip of land based on the doctrine of repose under a similar factual scenario. *Id.* at 647-648, 655. Here, the boundary between the parties' parcels was established through a survey conducted in 1979 by David C. Finney. The survey was duly recorded and subsequently relied on by later surveyors and property owners. Because the boundary was based on a properly recorded survey, we conclude that the doctrine of repose prevents defendant from using a subsequent survey to alter previously established boundary lines. Thus by operation of law, no question of fact remains, and we hold that the trial court did not err in granting summary disposition in favor of plaintiffs based on the doctrine of repose.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper
/s/ Pat M. Donofrio