STATE OF MICHIGAN

COURT OF APPEALS

THOMAS A. HANNAH and LORI SISK,

Plaintiffs-Appellants,

v

BEVERLY KAISER and THOMAS KAISER,

Defendants-Appellees.

UNPUBLISHED
December 20, 2005

No. 255880
St. Clair Circuit Court
LC No. 02-001813-CZ

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants a three-foot strip of plaintiff's property along their shared property line. We affirm in part, reverse in part and remand.

Plaintiffs and defendants are neighbors who share a property line in a subdivision that was originally platted in 1923. Defendants' home was built in 1929. Two surveys were admitted into evidence, one of which showed defendants' home several inches short of the common property line and the other of which showed defendants' home encroaching by 8.4 inches at its northwest corner. Defendants admitted that the eaves and troughs on the house when they purchased it in 1987 overhung plaintiffs' property. The leading edge of the troughs overhang defendants' own fence. Defendants' subsequent renovations mitigated but did not eliminate the overhang. In 1990, defendants installed an underground sprinkler system and ran electrical service ("the utilities") under a three-foot strip of plaintiffs' property. Plaintiffs bought their home in 1997 and discovered the underground utilities in 2000 while attempting to install a tile field. They eventually sued for ejectment, trespass, and nuisance. Under the doctrine of acquiescence, the trial court awarded defendants a three-foot strip along the entire length of plaintiffs' property to eliminate the encroachments and to accommodate defendants' continued use of the west side of their property.

"We review the trial court's findings of fact in a bench trial for clear error and conduct a review de novo of the court's conclusions of law." *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made. *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000). However, if the factual findings might have been influenced by an incorrect view of the

law, review is not limited to clear error. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Plaintiffs first argue that the trial court clearly erred in finding acquiescence. We disagree. It is undisputed that the eaves and troughs of the original 1929 roof on defendants' house encroached upon plaintiffs' property for more than the statutory 15 years. The trial court properly found that plaintiffs' predecessors in interest must have acquiesced to a property line somewhere slightly west of the most westerly point on the original roof. Indeed, the only objection of record comes from plaintiffs' complaint, which was filed roughly seventy-three years later. Defendants may satisfy the required time period by accumulating the acquiescence of predecessors in interest. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). The trial court did not clearly err in finding that defendants did so here.

Plaintiffs next argue that the trial court erred in granting defendants an additional three feet of plaintiffs' property. We agree. As discussed, the parties acquiesced to a property line just west of the leading edge of the original 1929 roof. It is unclear from the record how far that line extends, but it is clearly less than three feet. Defendants placed the utilities under plaintiffs' property only 12 years before plaintiffs commenced this action, so defendants failed to meet the statutory period for acquiescence. Plaintiffs discovered the utilities when attempting to install a tile field on the eastern edge of their property and subsequently permitted defendants to keep the utilities on their property so long as the utilities continued to function properly, which halted the running of the statutory period. "Defendant's use with plaintiff's permission of property that was acknowledged to belong to plaintiff could not, as a matter of law, entitle defendant to acquire property rights . . . by either adverse possession, prescriptive easement, or acquiescence." *West Michigan Dock & Market Corp. v Lakeland Investments*, 210 Mich App 505, 512; 534 NW2d 212 (1995). The trial court clearly erred in finding acquiescence to the three feet of property under which defendants' utilities lie.

We note that defendants have an uncontested need to access a water spigot located on the west side of their home. In order either to access the spigot or to renovate their home to move the spigot, defendants would need to trespass on plaintiffs' property. That does not form a basis for awarding defendants' any part of plaintiffs' property under the doctrine of acquiescence. Defendants are entitled to seek use of the statutory license provided by MCL 600.2944. Furthermore, we note that defendants apparently have erected a fence along the west side of their property within the overhang of their roof. Because defendants are presumably physically capable of accessing the spigot notwithstanding the fence, they presumably also do not need more property than what our opinion already grants.

We affirm the trial court's finding of acquiescence to the extent of the maximum encroachment of the original 1929 roof on defendants' house. We reverse the trial court's finding of acquiescence to a property line based on the utilities, and we reverse the trial court's grant of three feet of plaintiffs' property. We remand for further proceedings consistent with this opinion, including a determination of how far to the west of defendants' property line the original 1929 roof extended. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Alton T. Davis