# STATE OF MICHIGAN

# COURT OF APPEALS

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| DONALD MACDONALD,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>March 6, 2007 |
| v | No. 265399<br>Sanilac Circuit Court |
| DONALD REID and MARY JANE REID,<br><br>Defendants-Appellants. | LC No. 04-029819-CH |

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendants appeal by right from the trial court judgment quieting title in favor of plaintiff to a strip of property owned by defendants under the theory of acquiescence. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This action arises out of a dispute over a strip of land located between adjacent lots owned by plaintiff (owner of lot 23) and defendants (owners of lot 22). The property has been used as part of plaintiff's driveway since before 1977 but defendants actually owned it.

On appeal, defendants argue that the trial court erred in ruling that plaintiff had acquired rights to the disputed portion of property by acquiescence. Actions to quiet title or remove a cloud on a title are equitable in nature. We review equitable actions de novo, but review the factual findings of the trial court for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). A finding is clearly erroneous when the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

In this case, plaintiff asserted ownership to the disputed portion of property under a theory of acquiescence for the statutory period. Such a claim requires that the plaintiff show by a preponderance of the evidence that the parties acquiesced in the boundary line and treated it as the boundary for the statutory period of 15 years, irrespective of the existence of a controversy regarding the correct boundary. *Walters v Snyder*, 225 Mich App 219, 223-224; 570 NW2d 301 (1997); MCL 600.5801(4). "Only when there has been some agreement, whether tacit or overt, as to the location of the boundary does the question of acquiescence become important." *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974). This Court has further explained the theory in *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993):

> The law of acquiescence is concerned with a specific application of the statute of limitations to cases of adjoining property owners who are mistaken about where the line between their property is. Adjoining property owners may treat a boundary line, typically a fence, as the property line. If the boundary line is not the recorded property line, this results in one property owner possessing what is actually the other property owner's land. Regardless of the innocent nature of this mistake, the property owner whose land is being possessed by another would have a cause of action against the other property owner to recover possession of the land. After fifteen years, the period for bringing an action would expire. The result is that the property owner of record would no longer be able to enforce his title, and the other property owner would have title by virtue of his possession of the land.

"[A]n assertion of acquiescence does not require that the possession be hostile or without permission." *Killips*, *supra* at 260. Furthermore, acquiescence is not defeated because one of the parties is aware that the line treated as the boundary is not the actual boundary, when that party took no action to prohibit the other party's use of the property or to deny the acquiesced boundary. *Id*. at 260-261.

Here, there was evidence of a tacit agreement that the driveway was the boundary line between the respective owners of lots 22 and 23 for a period in excess of 15 years. According to Mary K. Doran, plaintiff's predecessor, the driveway at issue remained in the same location from before 1977 to at least 1992. During that time plaintiff's predecessors actively used the driveway and, apparently, maintained both it and the nearby lawn. Sometime during Doran's ownership of lot 23, she and one of defendants' predecessors, Eugene Oldford, became aware that the actual boundary was other than the driveway. At that time, Oldford could have commenced an action to recover possession of the property. However, like the defendant in *Killips*, *supra* at 260-261, Oldford took no action pertaining to the boundary line during the entire time he owned lot 22. Instead, Oldford said that the encroachment was "fine," and plaintiff's predecessors continued to use the driveway as before. Moreover, none of Oldford's successors in interest, except defendants, sought to prohibit the owners of lot 23 from using the encroaching portion of the driveway or otherwise pursued an action to recover the property. Thus, the tacit agreement between the respective owners of the properties was in existence in excess of the mandated statutory period of 15 years. Hence, the trial court did not clearly err in finding that the doctrine of acquiescence applied.

Furthermore, the trial court did not clearly err in ruling that the boundary line was to reflect what was established by a survey completed in May 2004. There was evidence that the driveway existed in essentially the same location from before 1977 to the present. There was also evidence that a survey was conducted in May 2004, showing the location of the actual boundary and indicating that the driveway encroached on defendants' lot. Defendant Donald Reid claimed that plaintiff had improved the driveway and thereby increased the encroachment and that the biggest movement onto his property occurred in October 2004. Apparently, the trial court found credible defendant Donald Reid's testimony that the encroachment had recently expanded, and therefore, the court concluded that the proper boundary was to be determined by the May 2004 survey, which was performed before the October 2004 improvements. Because

there was evidence to support the trial court's decision, we hold that it did not clearly err in utilizing the May 2004 survey to establish the correct boundary line.

We affirm.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder