

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM GALBRAITH and DONNA
GALBRAITH,

UNPUBLISHED
January 15, 2008

Plaintiffs/Counter-Defendants-
Appellees,

v

IVAN CAMPBELL and ENNETTE CAMPBELL,

No. 273725
St. Clair Circuit Court
LC No. 04-002928-CH

Defendants/Counter-Plaintiffs-
Appellants.

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order quieting title to a portion of property in favor of plaintiffs. We affirm.

Defendants and plaintiffs own adjacent real property in St. Clair County. Defendants' property was previously owned by Willard Hicks. Before defendants purchased their property, plaintiffs' and Hicks's properties were separated by a fence running along the boundary line in accordance with the property descriptions in their deeds. When Hicks's well needed servicing in 1989, plaintiffs agreed to move a portion of the fence onto their property at an angle to allow access for the repair crew's trucks. After the fence was moved a second time to allow for a second series of repairs, plaintiffs left the fence in the altered position to allow for well access in the future. Plaintiff William Galbraith left a post to mark the true location of the boundary, and Hicks etched the dimensions of the true boundary line on the side of his garage.

In 1989, Hicks agreed to sell his property to defendants. He allowed defendants access to the property to begin improvements in November 1989, although a land contract was not executed until January 1990. Defendants fulfilled the terms of their land contract and acquired legal title to the property in 1991.

Plaintiffs and defendants thereafter disputed the correct location of the boundary line and the ownership of the triangular-shaped piece of land between the fence line and the recorded boundary line. Plaintiffs had surveys conducted in 1997 and 2003 to mark the correct boundary line with survey stakes, but defendants subsequently removed the stakes, contending that the fence location marked the actual boundary. Plaintiffs subsequently brought this action to quiet

title in 2004. Defendants filed a counterclaim, contending that they were the owners of the disputed property under the doctrine of acquiescence. Following a bench trial, the trial court quieted title in favor of plaintiffs.

Actions to quiet title are equitable in nature and are reviewed de novo by this Court. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). The trial court's findings of fact in a bench trial are reviewed for clear error. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003); MCR 2.613(C).

Michigan law recognizes three theories of the doctrine of acquiescence, namely “(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. Defendants seek relief under the theory of acquiescence for the statutory period. This theory holds that “acquiescence to a boundary line may be established where the line is acquiesced in for the statutory period irrespective of whether there has been a bona fide controversy regarding the boundary.” *Id.* Under this theory, if the parties acquiesce to the placement of a boundary line for longer than the 15-year statutory period, MCL 600.5801(4) (the period of limitations for actions for the recovery of possession of land), the property owner of record can no longer enforce his title, and the other property owner acquires title by virtue of his possession of the land. *Sackett, supra* at 681-682.

This Court explained 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.

“Unlike a claim based on adverse possession, an assertion of acquiescence does not require that the possession be hostile or without permission.” *Killips v Mannisto*, 244 Mich App 256; 624 NW2d 224 (2001). In order to establish title by acquiescence, the claimant must show by a preponderance of the evidence that the parties acquiesced in the line and treated it as the boundary for the 15-year statutory period. *Walters v Snyder*, 225 Mich App 219, 223-224; 570 NW2d 301 (1997).

Defendants contend that the evidence establishes that the parties mutually treated the altered fence location as the boundary line. In support of this argument, defendants rely on evidence that they mowed the lawn, stored wood, and allowed their children to play on the disputed property, while plaintiffs did not enter the disputed property, plant trees on it, or

otherwise exercise ownership. However, regardless of the actual use of the property, the evidence established that plaintiffs knowingly altered the fence line for the express purpose of accommodating well maintenance on the neighboring property and then left the fence in the altered position for the convenience of their neighbors. Plaintiffs knew that the fence was being moved away from the true boundary. The fence line was not altered because of any uncertainty over the true boundary line, and plaintiffs never intended or represented that they were changing the boundary of the property. On the contrary, plaintiffs left a post in place to preserve a memorial of the true boundary location. Hicks similarly understood that the movement of the fence did not change the true boundary line, and he memorialized this understanding by recording the relevant boundary information on the wall of his garage.

Defendants argue that the trial court erred by failing to comment on evidence that they allowed their children to play on the disputed property and that they used the disputed area to access their well. Again, such usage does not detract from the fact that plaintiffs did not treat the fence as the boundary line marker. Further, the mere fact that plaintiffs did not plant trees on the disputed property does not indicate that they did not consider themselves the owners, given the large amount of adjacent acreage that plaintiffs owned and also given that the purpose of relocating the fence was to allow access to the well.

Defendants argue that plaintiffs' placement of survey stakes along the true boundary cannot defeat their claim of statutory acquiescence because the stakes did not block their access to the property. Defendants cite *Killips, supra*, in support of their argument, but this reliance is misplaced. The issue in *Killips* was whether the plaintiffs established a prescriptive easement to use a driveway on the defendant's property where the defendant failed to block their use of the driveway. *Killips, supra* at 258-261. The Court held that the defendant's placement of survey stakes did not constitute interference with the plaintiffs' use of the driveway because the stakes did not block the driveway or otherwise interfere with the plaintiffs' use. *Id.* at 261. The instant case involves a boundary line dispute, not an easement. Accordingly, the relevant inquiry is not whether plaintiffs blocked defendants' access to the disputed property, but whether plaintiffs acquiesced to the location of the boundary line. Plaintiffs' placement of stakes to mark the deed boundary as the correct boundary negates defendants' assertion that plaintiffs acquiesced to the fence line as the boundary marker.

Defendants also argue that the trial court erred in finding that Hicks did not treat the fence as the boundary line. However, defendants' reliance on Helen Ruffing's testimony to establish that Hicks believed that the fence location marked the boundary line is misplaced. Ruffing merely testified that Hicks told her that the property line "sort of" follows the fence line "and it angles off or something like that." In light of the evidence that the fence line was moved to accommodate repairs on Hicks's property and that Hicks recorded the true property line information on the wall of his garage, the trial court did not clearly err in finding that Hicks did not believe that the location of the property line changed when the fence was moved.

We disagree with defendants' argument that the trial court erred as a matter of law by finding that plaintiffs' alleged grant of permissive use defeated defendants' claim for statutory acquiescence. As defendants correctly argue, a claim of acquiescence does not require that the possession of the property be without permission. *Id.* at 260. In this case, however, the trial court did not conclude that permissive use negates a claim for statutory acquiescence. The court's comment regarding plaintiffs' "neighborly gesture" related to its findings that plaintiffs

did not intend to move the boundary when they moved the fence, and that plaintiffs and Hicks did not treat the altered fence as the boundary line, because plaintiffs' sole purpose in moving the fence was to accommodate Hicks's need for well maintenance.

For these reasons, the trial court did not err in rejecting defendants' claim of acquiescence and in quieting title in favor of plaintiffs. In light of our decision, it is unnecessary to address plaintiffs' argument relating to the statutory 15-year period.

Affirmed.

/s/ Michael J. Talbot

/s/ Brian K. Zahra

/s/ Patrick M. Meter