

STATE OF MICHIGAN
COURT OF APPEALS

ANDREW JACKSON HENSON and ETHELENE
JUNE HENSON,

UNPUBLISHED
February 5, 2009

Plaintiffs/Counter Defendants-
Appellants,

v

SCOTT BOAL,

Defendant/Counter Plaintiff-
Appellee.

No. 280796
Antrim Circuit Court
LC No. 06-008243-CH

Before: Beckering, P.J., and Whitbeck and M. J. Kelly, JJ.

PER CURIAM.

In this suit to quiet title, plaintiffs appeal as of right the circuit court's September 11, 2007 decision and order granting judgment in defendant's favor. On appeal, plaintiffs challenge the trial court's findings and contend that the trial court erred when it concluded that plaintiffs had not established the elements of adverse possession or acquiescence. We conclude that the trial court erred when it required plaintiffs to prove that they or a predecessor in title used the disputed land with the knowledge that the land did not belong to them in order to establish adverse possession. We further conclude that, under the undisputed facts and the facts found by the trial court, plaintiffs have established their claim of title by adverse possession. We also agree that the trial court clearly erred when it found that there was no evidence that defendant's predecessor in title acquiesced to the fence-line as the boundary between the properties at issue. For these reasons, we reverse the trial court's decision and order granting judgment in favor of defendant and remand for entry of judgment in plaintiffs' favor.

I. Basic Facts and Procedural History

Plaintiffs purchased an undeveloped 15-acre parcel in 1980. The previous owner of the entire 120-acre farm told them that an old fence line was the property's eastern boundary. Plaintiffs built a house in 1985 and made other improvements to the property. Although some of the disputed land remained undeveloped, plaintiffs maintained the property to the fence line.

In 2006, defendant purchased an adjacent parcel to the east. Based on a survey done before closing on the property, defendant learned that the deeded property line was west of the

old fence line. As listed on the deed, the property line goes through plaintiffs' garage. Plaintiffs also had planted a small orchard and installed an unpaved driveway in the disputed area.

In August 2006, plaintiffs sued defendant to quiet title to the disputed land. The trial court held a bench trial in June 2007 and visited the property at issue. In September 2007, the trial court issued its decision. The trial court concluded that plaintiffs had not established title to the disputed property through adverse possession or through the doctrine of acquiescence. Specifically, the trial court found that there was no evidence that plaintiffs or a predecessor in title believed that the disputed land was owned by another. The trial court further ruled that there was no evidence that defendant's predecessor in interest had acquiesced to the fence-line as a boundary. For these reasons, the trial court granted judgment in favor of defendant. However, the trial court did grant plaintiffs an easement in gross for their garage during their lifetimes. Plaintiffs now appeal.

II. Quiet Title

A. Standard of Review

This Court reviews de novo actions to quiet title. *Wengel v Wengel*, 270 Mich App 86, 91; 714 NW2d 371 (2006). A trial court's factual findings are reviewed for clear error. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008). This Court also reviews de novo a trial court's conclusions of law, and, where the trial court's factual findings may have been influenced by an incorrect view of the law, this Court will not limit its review of those findings to clear error. *Walters v Snyder (After Remand)*, 239 Mich App 453, 456; 608 NW2d 97 (2000) (*Walters I*).

B. Adverse Possession

A claim of adverse possession requires clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years. *Wengel, supra* at 92. Additionally, to acquire land by adverse possession, the possession must be hostile and under cover of a claim of right. *Connelly v Buckingham*, 136 Mich App 462, 467-468; 357 NW2d 70 (1984). Hostile use is use that is "'inconsistent with the right of the owner, without permission asked or given,' and which 'would entitle the owner to a cause of action against the intruder.'" *Wengel, supra* at 92-93, quoting *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976). Hostile use is a term of art in adverse possession law that does not imply ill will. *Id.*

In this case, the lower court relied on *Warner v Noble*, 286 Mich 654; 282 NW 855 (1938), for the proposition that, in order to establish adverse possession, plaintiff had to prove that they or a predecessor in title occupied the disputed land with the knowledge that the land was owned by someone else. We do not agree that this is an accurate statement of the law. In *Warner*, the Court held that possession of land is not hostile and cannot ripen into title when the possession is up to a fixed boundary under a mistake as to the true line and where the parties intended to hold only to the true line. *Warner, supra* at 660. However, simply being mistaken with regard to the true boundary does not defeat a claim of adverse possession. See *DeGroot v Barber*, 198 Mich App 48, 53; 497 NW2d 530 (1993).

In *DeGroot*, this Court explained the difference between two types of claims involving a mistaken boundary: those with an intent to hold to the true boundary line, which does not satisfy the hostility requirement; and those with an intent to claim land to a visible and recognizable boundary regardless of the true boundary, which does manifest hostility. *Id.* at 51. This Court clarified that the “distinction is between (1) failing to respect the true line, while attempting to do so, and (2) respecting the line believed to be the boundary, but which proves not to be the true line.” *Id.* at 52. The Court further explained that it would be unjust to limit adverse possession to those possessors who knew the possession was wrong, while excluding those whose possession was by mistake, in essence rewarding the thief while punishing the person who was merely mistaken. *DeGroot, supra* at 53.

The Court in *DeGroot* noted that the plaintiffs in that case had established the hostility requirement by demonstrating an intent to possess the land to a road that was a mistaken boundary. *Id.*; see also *Gorte v Dep’t of Transportation*, 202 Mich App 161, 170-171; 507 NW2d 797 (1993). This intention was manifested by the plaintiffs’ conduct, such as the plaintiffs’ exclusive use of the property, their posting of no trespassing signs, and their denial of permission to the defendants’ predecessors in title to use the disputed parcel. *DeGroot, supra* at 53. Hence, in this case, plaintiffs were not required to demonstrate that they or their predecessors in title occupied the disputed land with the knowledge that it belonged to another in order to establish the hostile character of the occupation. Instead, if plaintiffs’ predecessors in title intended to possess the land to the fence line—even if that intent was based on a mistaken belief that this was the true boundary—that intent can satisfy the hostility requirement. *Id.*

In this case, plaintiffs held the land to a visible and recognizable boundary under the belief that the boundary was true. Although they did not apparently intend to occupy the land of another, their maintenance and use of the property over 26 years clearly established their intent to claim title to all the land up to the fence line, and the hostile character of the possession follows from this conduct. *Connelly, supra* at 468 (noting that the intention of the parties is the dispositive test in determining whether land is held adversely, and the conduct of the parties in openly manifesting a claim of ownership is sufficient to determine this intent). Further, there is no evidence that they intended to respect only the true boundary. See *DeGroot, supra* at 52-53. Thus, the trial court erred when it concluded that plaintiffs failed to establish the element of hostility. Further, under the undisputed facts and the facts found by the trial court, we conclude that plaintiffs established each of the remaining elements of adverse possession. Therefore, the trial court should have quieted title to the disputed land in plaintiffs.

C. The Doctrine of Acquiescence

Plaintiffs also argue that the trial court erred when it determined that plaintiffs failed to establish title to the fence-line under the theory of acquiescence.

The doctrine of acquiescence is a rule designed to promote the peaceful resolution of boundary disputes. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). Under the rule, “where adjoining property owners acquiesce to a boundary line for at least fifteen years, that line becomes the actual boundary line.” *Id.* In order to establish such a claim, it must be shown that the parties treated the line as the boundary for the statutory period of 15 years. *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996); MCL 600.5801(4). The doctrine of acquiescence does not require proof that the possession was hostile or without

permission. *Walters v Snyder*, 225 Mich App 219, 224; 570 NW2d 301 (1997). Further, there are no set elements to the doctrine of acquiescence. *Walters I, supra* at 457. Instead, when examining these cases, the totality of the evidence must be viewed to determine whether the conduct of the parties established that they had an understanding about the boundary. *Id.* at 458. Thus, plaintiffs were not required to show that defendant's predecessor in interest actually used the land up to the fence-line; they only had to show that defendant's predecessor in interest assumed that the fence was the proper boundary and treated it as such for the statutory period. See *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993).

The record indicates that defendant's predecessor in interest regularly visited plaintiffs throughout all stages of the development of plaintiffs' property. Hence, plaintiffs' improvement and use of the land up to the fence line would have been obvious. Daily, for about 25 years, he had a view of plaintiffs' occupation of the land to the fence line and never challenged it. Indeed, he allegedly told other family members that a tree near the fence line was the boundary line. Moreover, plaintiffs' predecessor in interest, who sold the parcels to both plaintiffs and defendant's predecessor, told plaintiffs the fence line was the property line. Thus, for at least 25 years before defendant had his survey done, everyone treated the fence line as the boundary line. Based on this evidence, plaintiffs clearly established acquiescence to the boundary line. See *Walters I, supra* at 458; *Kipka, supra* at 439. Consequently, plaintiffs were entitled to relief on this basis as well.

Reversed and remanded for entry of judgment consistent with this opinion. We do not retain jurisdiction. Plaintiffs having prevailed, they may tax costs under MCR 7.219.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly