*This opinion will be unpublished and*
*may not be cited except as provided by*
*Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-100**

Wenzel Soland, et al.,
Respondents,

vs.

Jon D. Evert, et al.,
Appellants.

**Filed December 5, 2011**
**Affirmed**
**Schellhas, Judge**

Otter Tail County District Court
File No. 56-CV-08-4204

Charles A. Krekelberg, Mathew A. Soberg, Krekelberg, Skonseng, Soberg & Miller P.L.L.P., Pelican Rapids, Minnesota (for respondents)

Greg Larson, Svingen, Karkela & Cline P.L.L.P., Pelican Rapids, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Schellhas, Judge.

## U N P U B L I S H E D O P I N I O N

**SCHELLHAS**, Judge

In this boundary dispute, appellants challenge the district court's conclusion that respondents acquired title to a tract of land by adverse possession and boundary by practical location. We affirm.

## FACTS

This appeal arises from a dispute over the location of the property line between two adjacent parcels of real property located in Otter Tail County. Appellants Jon and Phyllis Evert own land to the south of the disputed property line in the township of Edna. Respondents Wenzel and Florence Soland own property to the north of the disputed property line in the township of Hobart. The disputed property lies south of the township line, as located by a survey in 2007, and north of a fence line.[1]

The Everts, together with Glenn Anderson, purchased their property from Ervin and Alma Antonsen in 1978. Anderson subsequently conveyed his interest in the property to the Everts. The Solands purchased their property from Muriel Keane, also in 1978. In December 2008, the Solands commenced this action against the Everts to quiet title. The Solands alleged that they owned the disputed property under the doctrines of adverse possession and boundary by practical location.

At the bench trial, David Antonsen, the son of the Antonsens, the Everts' predecessors in interest, testified on behalf of the Solands. Antonsen lived on his parents' property from his birth in 1943 until he was 18 years old and continued to live in the immediate vicinity until the time of trial. Antonsen testified that from at least 1947 to 1973, the fence was used to divide two hog pastures: one used by his parents south of the fence and the other continuously used by Daniel Modrow north of the fence. Antonsen's

---

[1]The 2007 survey locates the township line differently than two surveys in 1978. Regardless of the location of the township line, for purposes of this appeal, the property at issue is north of a fence line, and the location of the fence line is undisputed.

parents referred to that portion of their property as the "hog lot." The property north of the fence, which Modrow used as a hog pasture, was owned by Keane.

Antonsen testified that the existing fence line was the boundary line between his parents' property and Keane's property and that his parents never used or claimed ownership of the land north of the fence. Antonsen's family cut the trees only up to the fence. Before Antonsen's father sold the property, he said that the fence marked the property line, and when he sold the property, he told Antonsen that he was selling the "hog lot," which Antonsen understood to mean the land up to the fence.

Respondent Wenzel Soland testified that he was raised in the area and was familiar with the property before he purchased it. Soland knew that Modrow, his wife's uncle, used the land as a hog pasture. When Soland purchased the property, there was evidence that the disputed property had been used for hogs, and the fence clearly delineated the property he purchased from the property to the south. Soland said that the fence was then in better condition than it is today and could have been used for a hog pasture in the time shortly before he purchased the land. Soland testified that Modrow told him that the property line was the fence line.

In 2007, Glenn Howe, a licensed land surveyor, completed a survey for the Solands in which he located the township line. Howe testified that in conducting the survey, he discovered that, in 1978, two surveyors, Robert Oslund and Wesley Belling, conducted separate surveys, both locating the township line in the same place south of where Howe located the township line. Howe testified that Oslund and Belling both marked the line with iron stakes, which remain situated on the line they located and are

marked on Howe's survey. The stakes depict a township boundary about 50 feet south of the township line that Howe located and about five to seven feet south of the existing fence line. Howe said that although the fence had not been recently maintained, it remained visible.

Jon Evert and Anderson testified that they did not know about the use of the disputed property prior to their purchase. They further testified that when they purchased the property from the Antonsens, they clearly saw the fence and inspected it. Oslund completed his survey for the Everts' and Anderson's realtor, and Anderson testified that prior to purchasing the property, he saw Oslund's survey. The survey indicated that the northern property line was approximately 274 feet, which is the same length as the line marked by the stakes that Howe discovered that runs five to seven feet south of the fence line. The legal description set forth in a letter to the realtor is the same legal description used in the Everts' and Anderson's contract for deed and deed.

After purchasing the property, the Everts and Anderson platted seven lots, but left unplatted the most westerly portion of land adjacent to the north line of their property, which they referred to as "Lot 8." They left this land unplatted because it lacked sufficient lakeshore to be buildable. Anderson placed a post containing a sign marked "Lot 8" at the northwestern corner of the entire tract of land. The sign post is located immediately next to the corner stake from Oslund's survey and just south of the fence line.

In 1999, the Everts and Anderson applied for a variance for "Lot 8." A map attached to the application indicates that the northern line of the property is 274 feet long,

which is the same length as shown on Oslund's survey. The map shows the lakeshore footage of "Lot 8" to be 50 feet, which is consistent with the amount of lakeshore footage from the western line of lot seven to the fence line indicated by Howe's survey. The application did not include the additional 53 feet of lakeshore north of the fence line, which is part of the disputed property.

After a bench trial, the district court found that the Solands established their ownership to the disputed property by adverse possession and that the parties and their predecessors acquiesced to a boundary by practical location. The court concluded that the Solands are the owners of the disputed property by the doctrines of adverse possession and practical location. This appeal follows.

**D E C I S I O N**

**I. Adverse Possession**

The Everts challenge the district court's conclusion that the Solands established their ownership of the disputed area by adverse possession. Whether the elements of adverse possession are satisfied is a question of fact. *Wortman v. Siedow*, 173 Minn. 145, 148, 216 N.W. 782, 783 (1927); *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. App. 2003). A district court's factual findings will not be reversed unless they are clearly erroneous, giving deference to the district court's credibility determinations. Minn. R. Civ. P. 52.01. Findings are not clearly erroneous if there is reasonable evidence supporting them. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). "But whether the findings of fact support a district court's conclusions of law and

judgment is a question of law," which is subject to de novo review. *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. App. 2002).

To establish ownership by adverse possession, a party must show actual, open, hostile, exclusive, and continuous possession for the statutory period of 15 years. Minn. Stat. § 541.02 (2010); *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972). The disseizor, the landowner seeking title, must prove the elements of adverse possession by clear and convincing evidence. *See, e.g.*, *Gandy Co. v. Freuer*, 313 N.W.2d 576, 578 (Minn. 1981); *Ehle*, 293 Minn. at 189, 197 N.W.2d at 462.

The district court found that Keane, the Solands' predecessor in title, had actual, open, continuous, and hostile possession of the disputed tract for approximately 26 years, from 1947 through 1973, through the use of the property as a hog pasture by her tenant, Modrow.

In challenging the district court's conclusion that the Solands acquired the disputed property by adverse possession, the Everts argue that the evidence does not support the district court's finding that two surveyors, Oslund and Belling, located the township line in 1978. The court made the following finding:

> The township line between Edna Township and Hobart Township was located by two surveyors, [Oslund] and [Belling] in 1978. Both of these surveyors located the line in exactly the same place and monumented the line with iron stakes. These stakes still exist today and were pointed out at trial by surveyor [Howe] of Anderson Land Surveying, and are clearly marked on trial exhibit 12.

The district court based its finding on Howe's testimony and the survey marked as exhibit 12.

The Everts rely on *Lechner v. Adelman*, 369 N.W.2d 331, 334 (Minn. App. 1985), *review denied* (Minn. Aug. 29, 1985), to assert that the district court should have "strictly construed" Howe's testimony "against [the Solands]" and that his testimony should have been "inferred to determine that the Oslund and Belling surveys of 1978 did not accurately locate the township line." The Everts' argument lacks merit.

In *Lechner*, which involves an adverse-possession claim, this court quoted *Vill. of Newport v. Taylor*, 225 Minn. 299, 303, 30 N.W.2d 588, 591 (1948), for the following proposition: "The evidence must be strictly construed, 'without resort to any inference or presumption in favor of the disseizor, but with the indulgence of every presumption against him.'" 369 N.W.2d at 334. But just one year after *Newport*, in *Alstad v. Boyer*, 228 Minn. 307, 311, 37 N.W.2d 372, 375 (1949), the Minnesota Supreme Court limited the *Newport* rule to its facts. And more recently, in *Rogers v. Moore*, 603 N.W.2d 650, 657 (Minn. 1999), the Minnesota Supreme Court rejected the argument that *Newport* created a higher standard of proof for prescriptive easements by requiring "strict construction" of the evidence, reiterating that *Alstad* limited the *Newport* rule to its facts. The *Rogers* court stated that an argument premised on the *Newport* rule "ignores our most recent decisions which describe the level of proof for adverse possession as clear and convincing evidence." 603 N.W.2d at 657 (noting that the elements of proof required to establish a prescriptive easement are the same as those required to establish adverse possession).

Because the district court did not apply an improper standard of proof, we review the challenged finding for clear error. Minn. R. Civ. P. 52.01 (stating that district court's

findings of fact are set aside only if they are clearly erroneous); *Wojahn v. Johnson*, 297 N.W.2d 298, 303 (Minn. 1980). Howe testified that in 1978, Oslund and Belling each conducted surveys of the area in which they located the line between Hobart Township and Edna Township, just south of the fence line. Howe testified that he located the stakes that remained in the ground from the surveys and included their locations on exhibit 12. Because Howe's testimony about Oslund's and Belling's surveys amply supports the court's finding that in 1978 each surveyor located the township line, the finding is not clearly erroneous.

Next, the Everts assert that the Solands failed to prove by clear and convincing evidence that Keane acquiesced or consented to Modrow's use of the disputed property sufficient to show that Modrow was Keane's tenant. *See Ramsey v. Glenny*, 45 Minn. 401, 404, 48 N.W. 322, 324 (1891) (holding that in claim for adverse possession, actual possession may be accomplished through a tenant). But the Everts' assertion is based on the argument concerning the standard of proof that we determine lacks merit—the Everts argue that the Solands failed to satisfy their burden of proof because the "evidence must be strictly construed against respondents." Accordingly, we reject the Everts' assertion that the district court improperly construed the evidence and review the district court's finding for clear error.

The district court made the following finding:

> [Modrow] and [Keane] are now deceased. It is clear that [Modrow] had continuous use of the disputed property from 1947 to 1978, raising the hogs on the property with the consent and acquiescence of [Keane], but that she continued to own the property until it was sold to the [Solands].

Antonsen testified that from at least 1947 to 1973, the fence divided two hog pastures: one owned and used by his parents and the other owned by Keane, whose tenant for 26 continuous years, continuously used Keane's property as a hog pasture. And Soland testified that before purchasing the property from Keane, he was familiar with the property and knew that Modrow had used Keane's land as a hog pasture. The record supports the district court's finding that Keane consented to Modrow's use of the disputed property as a hog pasture and the inference that Modrow was Keane's tenant. *See Ramsey*, 45 Minn. at 404, 48 N.W. at 324 (holding that although no testimony showed landowner positively assented to tenant's construction and maintenance of shed, in light of other evidence, "his assent may readily be inferred").

The Everts also argue, without citation to authority, that claims derived from Modrow's use of the disputed property should be construed as personal to him, and therefore should be deemed relinquished when he executed a quitclaim deed in favor of the Everts' predecessor in interest in 1984. This argument is unavailing for several reasons. First, the argument is premised on the Everts' assertion, which we reject, that the district court's finding that Keane consented to Modrow's use of the disputed property is unsupported by the record. Second, the district court concluded that Modrow's use of the disputed property from 1947 to 1973 satisfied the statutory period required for an adverse-possession claim, which was well before the execution of the quitclaim deed in 1984. Third, through the quitclaim deed, Modrow could convey only his ownership interest in the property at the time of the conveyance, and nothing in the record shows

that Modrow possessed any interest in the disputed property in 1984. *See* Minn. Stat. § 507.06 (2010) (providing that a quitclaim deed is "sufficient to pass all the estate which the grantor could convey by a deed of bargain and sale"); *Caughie v. Brown*, 88 Minn. 469, 473, 93 N.W. 656, 657 (1903) (noting that a quitclaim deed "passes such rights and interests as the grantor possesses at the time [of the conveyance]").

In light of substantial record support for the district court's findings, the district court did not err by concluding that the Solands and their predecessors maintained actual, open, continuous, hostile, and exclusive use of the disputed property for the statutory period necessary to establish ownership by adverse possession.

## II. Boundary by Practical Location

The Everts challenge the district court's conclusion that the Solands and their predecessor established the true boundary line by practical location. A district court's conclusion concerning a boundary, including whether a landowner acquiesced in a boundary by practical location, is a factual finding, which we review for clear error. *Wojahn*, 297 N.W.2d at 303. To prevail on appeal, the Everts must "show that there is no substantial evidence reasonably tending to sustain the trial court's findings." *Gifford v. Vore*, 245 Minn. 432, 434, 72 N.W.2d 625, 627 (1955).

The doctrine of boundary by practical location transfers title between neighboring landowners when the disseizor can prove one of three circumstances: (1) the disseized, the party against whom a claim of title is made, acquiesced in a practical boundary for a statutory limitations period; (2) the disseized (or predecessor in interest) expressly agreed to a boundary line, and all interested parties then acquiesced in that boundary for a

"considerable time"; or (3) by estoppel. *Beardsley v. Crane*, 52 Minn. 537, 545–46, 54 N.W. 740, 742 (1893); *see also Theros v. Phillips*, 256 N.W.2d 852, 858 (Minn. 1977). Under any of these circumstances, the disseizor must present clear and convincing evidence that establishes the practical boundary clearly, positively, and unequivocally. *Phillips v. Blowers*, 281 Minn. 267, 274, 161 N.W.2d 524, 529 (1968); *Slindee v. Fritch Invs., LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009).

When adjoining landowners occupy their respective premises up to a certain line that they both recognize and acquiesce in for 15 years, they are precluded from contesting that boundary line. *Amato v. Haraden*, 280 Minn. 399, 403, 159 N.W.2d 907, 910 (1968); *see* Minn. Stat. § 541.02 (stating 15-year limitation on real-estate actions). Acquiescence requires actual or implied consent to some action by the disseizor, such as construction of a boundary or other use of the disputed property, and acknowledgement of that boundary by the disseized party for an extended period of time. *Engquist v. Wirtjes*, 243 Minn. 502, 507–08, 68 N.W.2d 412, 417 (1955); *LeeJoice v. Harris*, 404 N.W.2d 4, 7 (Minn. App. 1987). To demonstrate acquiescence in a boundary location, the line must be "certain, visible, and well-known." *Beardsley*, 52 Minn. at 546, 54 N.W. at 742.

The district court found that the parties and their predecessors in interest acquiesced in the fence line as the property line since at least 1947. In challenging this finding, the Everts again argue that the district court was required to strictly construe the evidence without giving any presumption or inference to the disseizor. The Everts cite different authority for this proposition, *Phillips*, 281 Minn. at 269–70, 161 N.W.2d at 527, and *Phillips* in turn cites *Newport*. The *Newport* rule is not applicable. *See Rogers*,

603 N.W.2d at 657 (reiterating that *Newport* is limited to its facts and rejecting that *Newport* rule creates burden of proof for prescriptive easements).

The Solands presented substantial evidence that the Everts and their predecessors acquiesced in the fence line as the certain, visible, and well-known boundary between the properties. Antonsen testified that for 26 years, from 1947 to 1973, the fence divided two pastures that were used as hog pastures: one owned and used by his father, the Everts' predecessor, and the other owned by Keane, the Solands' predecessor, and used by Modrow. Antonsen testified that his family cut trees only up to the fence; that before selling the property, his father said that the fence marked the property line; and when his father sold the land, he said he was selling the "hog lot," meaning the land up to the fence. Soland testified that he knew that Modrow had used Keane's land as a hog pasture and that Modrow told him that the property line was the fence line. And, evidence of the Everts' conduct showed their acquiescence to the fence as the boundary line: a map attached to their variance application illustrates the length of the disputed boundary line as consistent with the length of the fence line, and Anderson placed a stake marking the northwesterly corner of the property purchased from the Antonsens immediately next to a stake from the Oslund survey and south of the fence line.

The Everts argue that the record does not support the district court's finding that the parties and their predecessors acquiesced in the fence line as the property line. Specifically, they challenge the following finding: "The survey drawing, stakes, and legal description indicate that the disputed property is clearly not part of the property sold to [the Everts] by [Antonsen] in 1978." The Everts assert this finding is not supported by

record because neither the Oslund nor the Belling surveys reflect a fence line. But the record shows that in 1978 Oslund and Belling set out to locate the township line; they located the line five to seven feet south of the fence line; Howe located the position of the stakes from the Oslund and Belling surveys; and Howe's survey reflects the location of the stakes. Based on this record, the district court's finding is not clearly erroneous.

The Everts also challenge the district court's finding that Anderson placed a post with a sign marked "Lot 8" in the northwesterly corner of the property they and Anderson purchased from the Antonsens. They point to Anderson's testimony that he posted the sign to reflect the westerly boundary, not the northerly boundary. The district court, however, found that this testimony was not credible. This court defers to the district court's credibility determinations. *Slindee*, 760 N.W.2d at 907. The court's finding that Anderson placed the post to mark the northwesterly corner of the property purchased from the Antonsens is not clearly erroneous.

The Everts also challenge the district court's finding that they attached a map to the variance application that "clearly indicates that the north line of the property owned by the [Everts] is the same length as shown on the Oslund survey, 274 feet." The court's finding is as follows:

> In the spring of 1999, the [Everts] attempted to obtain a variance regarding "Lot 8." "Lot 8" was a substandard lot and they wished to make it a saleable and buildable lot. In the application for the variance, the [Everts] attached a map which clearly indicates that the north line of the property owned by the [Everts] is the same length as shown on the Oslund survey, 274 feet. In addition, the map indicates that the lakeshore footage of "Lot 8" is 50 feet. The survey drawing of the Anderson Survey, trial exhibit 12, shows that

> the lake shore footage from the west line of lot 7 to the fence line is the same 50 feet. The variance application did not include the additional 53 feet of lakeshore of the disputed property.

The Everts argue that the finding is clearly erroneous because of the following evidence in the record: the Everts did not draft the map, the application does not reference the map, and Anderson testified that he had never seen the map. But the record contains the variance application, which is signed by Anderson. And, the attached map is on a form instructing an applicant to sketch their lot and contains a signature that reads, "Tom Falk (for Glenn Anderson)." In light of the record evidence, the district court's finding is not clearly erroneous.

The Everts again allege that Modrow's use is insufficient because Modrow terminated any adverse claim he may have had by executing a quitclaim deed in favor of the Everts' predecessors. We reject this argument for the same reasons that we reject it in the Everts' challenge to the district court's conclusion under the doctrine of adverse possession. Nothing in the record shows that Modrow possessed any interest in the disputed property that he could have lawfully conveyed in 1984. *See* Minn. Stat. § 507.06 (providing that a quitclaim deed is "sufficient to pass all the estate which the grantor could convey by a deed of bargain and sale"); *Caughie*, 88 Minn. at 473, 93 N.W. at 657 (noting that quitclaim deed passes grantor's rights at time of conveyance).

No dispute exists about the fact that from 1947 to 1973, Modrow used the disputed property as a hog pasture; that the fence line was the boundary between the Antonsens' hog pasture and the hog pasture that Modrow used; and that Keane, Modrow, and the

Antonsens all treated the fence line as the boundary. The Antonsens cut trees only up to the fence and never claimed or disputed ownership of property beyond the fence line. The record supports the district court's finding that the parties and their predecessors acquiesced in the fence line as the property line. *See Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 850 (Minn. App. 2001) (stating that acquiescence requires "conduct from which assent may be reasonably inferred").

In consideration of the clear, positive, and unequivocal evidence in the record supporting the district court's findings and the deference we afford the district court's credibility determinations, the district court did not err by concluding that the Everts and their predecessors acquiesced to the fence line as the true boundary between the properties and that the Solands own the disputed property by boundary by practical location.

**Affirmed.**