

## ARKANSAS COURT OF APPEALS

DIVISION III  
No. CA08-237

DEWAYNE SHARP and  
GWEN SHARP  
  
APPELLANTS

V.

JAMES TUCKER, DEBBIE TUCKER,  
SAMUEL FRANGENBERG, GLENDA  
FRANGENBERG and FIRST  
NATIONAL BANK OF LAWRENCE  
COUNTY

APPELLEES

**Opinion Delivered** December 17, 2008

APPEAL FROM THE RANDOLPH  
COUNTY CIRCUIT COURT,  
[NOS. CV-06-42, CV-06-43]

HONORABLE KEVIN KING,  
JUDGE

AFFIRMED

### LARRY D. VAUGHT, Judge

Appellants Gwen and Dewayne Sharp appeal the trial court’s decree entered on November 20, 2007, after a bench trial, in which the court denied their quiet-title action and instead ruled in favor of appellees Debbie and James Tucker and Glenda and Samuel Frangenberg on their counterclaim to quiet title.

The Tuckers are the legal title holders of real property located in Randolph County, Arkansas, as described in a warranty deed dated January 3, 1990. The deed is filed in the official records of Randolph County. The Frangenbergs are the legal title holders of real property located in Randolph County as described in a warranty deed dated April 4, 2005. That deed is also filed in the official records of Randolph County. The appellants contend to have purchased certain lands located in Randolph County in September 2005, although no deed in favor of appellants (or any of their predecessors in title) was introduced in evidence at trial.

In April 2006, appellants filed a petition to quiet title to approximately twenty-one acres of real property located in Randolph County as described in a survey dated March 16, 2005. The appellees are the legal title holders of the disputed land, and counterclaimed with a request that the court quiet title to the lands in them. At the bench trial, the court concluded that appellants had failed to show title, possession, or payment of taxes to the lands in dispute. The trial court also found that appellants' action to quiet title failed to meet the statutory requirements of either Ark. Code Ann. §18-60-502 (Repl. 2003) or Ark. Code Ann. §18-60-506 (Repl. 2003), and appellants' proof failed to meet the legal criteria necessary for a boundary by acquiescence because there was no mutual recognition of the existing fencing as a boundary. The trial court ultimately granted appellees' counterclaims and quieted and confirmed title to the disputed land in their favor. It is from that order that appellants now appeal.

At trial, it was not clear whether appellants were proceeding with a statutory or common law quiet-title action. However, taking this case from the viewpoint that appellants propose on appeal—that theirs is a common-law quiet-title action—the decision of the trial court must affirmed.<sup>1</sup> At trial, the court found that appellants did not prove title, which is a required element of proof to perfect a common law quiet-title action. *Brown v. Minor*, 305 Ark. 556, 810 S.W.2d 334 (1991). This finding was supported by the fact that no deeds in favor of appellants or any of their predecessors in title were introduced into evidence. The record also contains no proof of tax statement or receipts showing that appellants paid any of

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<sup>1</sup>By opting for this approach on appeal, we need not address whether the trial court erred in analyzing appellants' action under Arkansas's statutory scheme for quieting title in lands.

the tax liability on the disputed land. Further, there was no evidence introduced at trial showing the precise lands, if any, to which appellants claimed to have legal title.

The trial court also found that appellants failed to show that they possessed the land, another necessary element of a quiet-title action. *Gibbs v. Bates*, 150 Ark. 344, 234 S.W.175 (1921). Finally, there was no evidence introduced below indicating that the parties to the dispute recognized the north-to-south fence as a boundary line—delineating their respective property interests. Although appellants are correct in their assertion that a fence can become a boundary by acquiescence, a mutual recognition of the boundary is required. And in order to meet this requirement of proving boundary by acquiescence, there must be a showing of the parties' intentions as they relate to the proposed boundary and the significance they attach to the fence-line when determining if a boundary by acquiescence exists. *Robertson v. Lee*, 87 Ark. App. 172, 189 S.W.3d 463 (2004). Here, the record is completely void of proof that the parties intended that the fence serve as a common boundary.

As such, we are satisfied that the trial court carefully considered the evidence (and more importantly, the fundamental lack thereof) and reached a legally sound conclusion—that there was no basis for quieting title in appellants. Because the decision of the trial court is based on well-settled law, and we will not reverse the trial court's finding as to the factually detailed question relating to the precise location of a boundary line unless the finding is clearly erroneous, we affirm. *Jennings v. Burford*, 60 Ark. App. 27, 958 S.W.2d 12 (1997).

Affirmed.

MARSHALL AND BAKER, JJ., agree.