

IN THE COURT OF APPEALS OF IOWA

No. 2-345 / 11-1792
Filed August 8, 2012

RANDY M. GRIFFIN and PEGGY A. GRIFFIN,
Plaintiffs-Appellees,

vs.

DAVID L. THARP and BERNICE M. THARP,
Defendants-Appellants.

Appeal from the Iowa District Court for Louisa County, John G. Linn,
Judge.

Defendant landowners contend that the district court erred in declining to
find a boundary by acquiescence and in quieting title to the disputed tract in favor
of the plaintiffs. **AFFIRMED.**

Roger A. Huddle of Weaver & Huddle, Wapello, for appellant.

Jay T. Schweitzer of Schweitzer & Wink, Columbus Junction, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

VAITHESWARAN, P.J.

This appeal involves a boundary dispute and the question of whether defendants in a quiet title action established a boundary by acquiescence.

I. Background Facts and Proceedings

More than thirty years ago, David and Bernice Tharp purchased three adjoining lots in Louisa County. Legal and tax documents contained varying descriptions of the lots' dimensions.

In 2008, Randy and Peggy Griffin purchased a tract of land lying immediately west of the Tharp property. When Randy Griffin began cutting trees and building a fence along the eastern boundary of his real estate, the Tharps objected, contending Griffin was encroaching on twenty to twenty-two feet of their land.

The Griffins filed suit to quiet title to the disputed land. They also raised trespass, slander of title, and damage claims. The Tharps denied these claims and stated by way of affirmative defenses and counterclaims that they were entitled to the disputed tract under boundary by acquiescence and estoppel theories. Following trial, the district court rejected the Tharps' counterclaims and all but the Griffins' quiet title claim. The court quieted title to the disputed tract in favor of the Griffins. The Tharps appealed.

II. Analysis

The Tharps contend "the issue between the parties is a 'boundary dispute,' pure and simple," pursuant to Iowa Code chapter 650 (2009), titled "Disputed Corners and Boundaries." "An action brought under Iowa Code section 650 is a special action and is heard on appeal as an ordinary action."

Ollinger v. Bennett, 562 N.W.2d 167, 170 (Iowa 1997). “[R]eview is on assigned errors of law.” *Id.* “The district court’s judgment has the effect of a jury verdict; thus, we are bound by the district court’s findings of fact if supported by substantial evidence.” *Id.*

Iowa Code section 650.14 states:

If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established.

Acquiescence “is the mutual recognition by two adjoining landowners for ten years or more that a line, definitely marked by fence or in some manner, is the dividing line between them.” *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). “Acquiescence exists when both parties acknowledge and treat the line as the boundary.” *Id.*

The district court made detailed findings of fact on the history of the disputed tract, beginning with the prior ownership of the Griffin property by Lee Werner. The court noted that neither party commissioned a survey of the properties. Examining surveys of neighboring properties, a city survey, plat maps, other documents, photos, and testimony, the court found that lot descriptions that included the disputed tract and on which the Tharps partially relied to support their claim to the tract were “simply erroneous, incorrect, and wrong.” The court further found that the disputed tract lay west of a “fairly obvious” tree line along “the quarter quarter line of section 22.” The court then made the following findings pertinent to the Tharps’ boundary by acquiescence claim:

It does appear, over the years, that the Tharps placed on the twenty-foot grassy strip tractors, a mower, and other pieces of equipment. However, it appears that other than a few stray items, occasionally left on this grassy strip, the vast majority of junk owned by the Tharps was stored under the trees of the tree line and to the east of the quarter quarter section line. Years ago when David left equipment on the twenty-foot strip, Lee Werner apparently tolerated the behavior, but those individuals who were farming the property regularly pushed the equipment, owned by the Tharps, to the east so it did not interfere with the farming operation.

Finally, David claims that he regularly mowed the grassy strip. Although this may be true, mowing this twenty-foot by 180-foot strip of land in and of itself does not establish that a boundary had been agreed upon to the west of the quarter quarter section line.

Fatal to the Tharps' claim of establishing a boundary by acquiescence is the fact that there is no line definitely marked by fence, or in some manner, as establishing the dividing line between the Tharp lots and the Werner farmland. The Tharps simply make reference to a grassy strip of land some twenty to twenty-two feet west of the quarter quarter section line. The only definite line in the area which seems to demark the City lots from the neighboring farmland is the tree line, which closely follows the quarter quarter section line. In many areas of the tree line, an old wire fence also established a boundary line. Although the wire fence does not appear to have bordered the Tharp lots in the recent past, nonetheless, it clearly marked the west boundary of the Schweitzer lots to the south and the Gilchrist lots to the north. When David built a wooden fence on the west side of Lot 8 approximately five years ago, he placed the fence on the tree line, which would correspond to the quarter quarter line. Had David wholeheartedly believed his land extended twenty feet to the west of the tree line, one must wonder why he did not build the privacy fence twenty feet to the west.

Finally, the Tharps have failed to establish a mutual recognition by the Werners that the boundary between the Tharp lots and the Werner farmland extended twenty feet to the west of the quarter quarter section line. Boundary by acquiescence means both adjoining landowners recognize, acknowledge, and affirmatively treat the definite line (marked by a fence or in some manner) as the true boundary. The trial record contains no facts establishing that Lee Werner ever recognized his farmland ended twenty feet west of the quarter quarter section line along the three lots owned by the Tharps. Without this affirmative proof, the Tharps' claim must fail.

These findings are supported by substantial evidence, including the testimony of two individuals who farmed the disputed tracts on behalf of the Griffins and their predecessor, as well as the testimony of Tharp himself. For that reason, we conclude the district court did not err in declining to find a boundary by acquiescence and in quieting title to the disputed tract in favor of the Griffins.

AFFIRMED.