

IN THE COURT OF APPEALS OF IOWA

No. 6-1064 / 06-0441
Filed February 28, 2007

**STEVEN GURSKY and
BECKY GURSKY,**
Plaintiffs-Appellees,

vs.

ROBERT PHILLIPS,
Defendant-Appellant.

Appeal from the Iowa District Court for Mahaska County, James Blomgren, Judge.

Robert Phillips appeals from a district court order establishing title to land with Becky and Steven Gursky by adverse possession and establishing a boundary by acquiescence. **AFFIRMED.**

Robert Phillips, Oskaloosa, pro se.

Jeffrey Smith, Oskaloosa, for appellees.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

ZIMMER, P.J.

Following a bench trial, Robert Phillips appeals from a district court order establishing title to land with Becky and Steven Gursky by adverse possession and establishing a boundary by acquiescence. We affirm.

I. Background Facts and Proceedings

Becky and Steven Gursky own real estate known as 207 Rock Island Avenue, Oskaloosa. The Gurskys have resided at that location since 1987. They raised their family there.

The Gurskys purchased their property from Marilyn and Ervin Edel on contract.¹ They received a deed to the property on December 3, 1992, after they fulfilled the terms of their contract. At the time the Gurskys occupied the property, the Edels owned the adjoining property to the west.

Robert Phillips currently owns the property that adjoins the Gurskys' property on the west. His property is known as 205 Rock Island Avenue.² Phillips purchased the property on January 24, 2005. Ron Padgett owned the property Phillips purchased from 1988 to 1995. Padgett's father-in-law, Andy Vandegest, owned the property after 1995.

When the Gurskys began living on the property in 1987, a woven wire fence existed along the south side of their property. The fence extended to the edge of a brick building located directly west of their home. The fence was attached to the building. The Gurskys have replaced the fence on two separate occasions. First, they replaced the original fence with a chain-link fence that

¹ The contract was recorded on March 18, 1988.

² Phillips's property is also known as 204 Sixth Avenue East.

remained attached to the building on the west side of their property. Later, the Gurskys installed a wooden fence in the same location.

From the time the Gurskys began living on their property, they have used and maintained the area west of their house up to the brick building currently owned by Phillips. The area includes a concrete patio that has been used exclusively by the Gurskys as a gathering place for family and friends. The Gurskys have used the patio for recreation and cookouts. Their use of the patio has never been disputed. In addition to installing fences, the Gurskys have maintained the property, done landscaping, and attempted to grow grass. On one occasion, a tree fell in the area, and the Gurskys removed the tree without assistance from their neighbors.

The Gurskys have always known the deed to their property does not include a significant portion of the area they use as a patio, and it does not include the property next to the brick building. The location of the legal boundary line between the Gurskys and Phillips is not in dispute; it runs through roughly the center of the patio. The Gurskys have never paid taxes on the property now in dispute, and they have never rented the property. After Phillips purchased his property, a dispute arose between the parties regarding the land the Gurskys had been using.

On June 30, 2005, the Gurskys filed a petition requesting that title to the property in question be established by adverse possession and that a boundary line be established by acquiescence. Trial commenced on February 2, 2006, and the district court granted the Gurskys their requested relief in an order filed February 15, 2006. Phillips has appealed.

II. Scope and Standards of Review

Because this matter was tried to the district court as a law action, we review the district court order for the correction of errors at law. Iowa R. App. P. 6.4. We will affirm the district court if substantial evidence supports its finding. *Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997).

III. Discussion

Phillips contends the district court erred in finding the Gurskys acquired title to the property in question by adverse possession and by the acquiescence of prior owners in the brick building as the property line. In order to prove their claim of title by adverse possession, the Gurskys must establish hostile, actual, open, exclusive, and continuous possession of the contested area under claim of right or color of title for at least ten years. *C.H. Moore Trust Estate by Warner v. City of Storm Lake*, 423 N.W.2d 13, 15 (Iowa 1988). Proof of these elements must be “clear and positive,” and because the law presumes possession is under a regular title, the doctrine of adverse possession is strictly construed. *Id.*

The record, which we have already summarized, demonstrates the Gurskys had hostile, actual, open, exclusive, and continuous possession of the property in question for at least eighteen years. They occupied, used, maintained, and improved the property as if they were in fact the owners, and they never provided payment of rent or gave recognition of title to the actual owners; this is sufficient to establish a claim of right. *Id.* We conclude the district court did not err in finding the Gurskys acquired title to the property in question by adverse possession.

A boundary line may be established by showing adjoining landowners or their predecessors in title have acquiesced in a boundary line for more than ten years. Iowa Code § 650.6 (2005). As plaintiffs, it was the Gurskys' burden to prove each of the adjoining landowners or their grantors had knowledge of the asserted boundary line and consented to it. *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 806 (Iowa 1994). A party seeking to establish a boundary line other than a survey line must prove acquiescence by clear evidence. *Id.* Acquiescence need not be specifically proved; it may be inferred by the silence or inaction of one party who knows of the boundary line claimed by the other and fails to take steps to dispute it for a ten-year period. *Id.*

It is clear Phillips did not acquiesce in the boundary asserted by the Gurskys after he purchased the disputed property in 2005; however, the record reveals the predecessors in title to the property acquiesced in the boundary line of the property in question. Therefore, we find the district court did not err in finding the Gurskys met the requirements of acquiescence.

IV. Conclusion

The district court correctly ruled that the Gurskys acquired title to the property in question by adverse possession and by acquiescence of the prior owners in the brick building as the property line. Accordingly, we affirm the court's decision.

AFFIRMED.