IN THE COURT OF APPEALS OF IOWA

No. 6-688 / 05-1847
Filed February 28, 2007

STEVEN W. LUCAS AND
JOYCE E. LUCAS,
Plaintiffs-Appellants,

vs.

DONALD H. FORRESTER, VALORI G. FORRESTER,
PERRY KYLE HUMMEL, AND SHIRLEY RUTH HUMMEL,
Defendants-Appellees.

Appeal from the Iowa District Court for Benton County, David L. Baker, Judge.

Property owners challenge the district court's ruling regarding a boundary line by acquiescence. **AFFIRMED.**

John M. Titler of Titler & Monroe, Cedar Rapids, for appellants.

Kevin D. Ahrenholz of Beecher Law Firm, Waterloo, for appellees Donald H. Forrester and Valori G. Forrester.

Robert Fischer of Fischer Law Firm, L.L.P., Vinton, for appellees Perry Kyle Hummel and Shirley Ruth Hummel.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.* Baker, J. takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

VAITHESWARAN, J.

The Lucases and Forresters owned adjacent properties. Between their properties was a pin staked in the ground as part of a land survey. Also between the properties was a vertical white line painted above the pin on a building wall. The Forresters maintained that these demarcations had, for years, served as an acknowledged boundary between the properties. The Lucases disagreed. They filed a quiet title action to resolve this dispute. In response, the Forresters raised several counterclaims including a claim that a boundary by acquiescence had been created. *See Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997) (defining "acquiescence" as "the mutual recognition by two adjoining landowners for ten years or more that a line, definitively marked by fence or in some manner, is the dividing line between them") (citation omitted).

The parties agreed to a trial before the district court on the acquiescence issue. *See* Iowa Code § 650.6 (2003) (authorizing trial before court or commission). After accepting evidence on this issue, the district court found and concluded that the parties and their predecessors acquiesced in the boundary line.

On appeal, the Lucases challenge the district court's findings and the conclusion that flowed from them. The parties agree that our review is on error, with the court's fact-findings binding us if supported by substantial evidence. *Ollinger*, 562 N.W.2d at 170. The court's fact findings in this case are key, as "[d]etermining whether acquiescence has been established requires an inquiry into the factual circumstances of each case." *Id.* at 171. *See also Heer v. Thola*, 613 N.W.2d 658, 662 (Iowa 2000) (noting fact question might exist as to "whether

the parties intended that a fence or other marker was to be treated as a boundary rather than for some other purpose" and stating "*establishment* of title by acquiescence is effective only on a finding by the court that the requirements for acquiescence have been met") (emphasis in original).

The district court found that before the Forresters purchased the property, "a vertical white line was painted on the wall of a brick building bordering the disputed area on the south." The court further found "it was common knowledge that the owners of the Forrester[s]' property could use the property up to the white line but not beyond." Based on these and other findings, the court made an ultimate finding that, "[T]he parties or their predecessors in interest, for ten or more consecutive years, have mutually acquiesced in the line definitively marked by the white painted line and the pin underneath it."

These findings are supported by substantial evidence. Pictures admitted into evidence clearly show a white dotted line on the side of a building. The owner who preceded the Lucases testified that he painted the line to deter his neighbor from placing tiles beyond it. He stated the line had been there since at least 1989, without alteration. He admitted that, at the time he painted the line, he assumed, based on the pin below it, that this was the boundary line between the properties. He also admitted that he allowed Mr. Forrester to use the property east of the line to park cars and to gain access to his property. He said he never parked his own cars east of the line. On two occasions, he charged the Forresters to have snow cleared from the area east of the line, leading to an inference that he believed that property belonged to them. He acknowledged he took no action to assert a claim to any part of the land east of the line. *Ollinger*,

562 N.W.2d at 171 ("There is no requirement of some overt act in order to establish acquiescence."); *Tewes v. Pine Lane Farms, Inc.,* 522 N.W.2d 801, 806 (Iowa 1994) (stating acquiescence "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"). Finally, he stated Lucas "probably seen" the line when he purchased the property, "[b]ecause it was visible." *See Tewes*, 522 N.W.2d at 807 (noting that "opportunity to know is properly considered in determining knowledge of a fact"). *See also Heer*, 613 N.W.2d at 662 ("The line must have certain physical properties such as visibility, permanence, stability, and definite location.") (quoting 12 Am. Jur. 2d *Boundaries* § 86, at 487 (1997) (footnotes omitted)).

Mr. Forrester also testified. He stated that he believed the pin and line demarcation was his "property boundary to the west." He used the property up to the line from 1989 to 2004. He stated he needed the land due east of the demarcation to park cars and trucks that were left at his garage for servicing. He admitted the line was "wavy" but this admission does not render the demarcation indefinite, where the landowners recognized the demarcation as the boundary. *Tewes*, 522 N.W.2d at 806.

Other witnesses corroborated Mr. Forrester's testimony. Forrester's adult daughter testified that, when her parents moved to the property years earlier, the white line served as the boundary. A man who plowed snow for Forrester testified that Forrester told him not to cross over the white line. A man who knew Lucas's predecessor testified he was aware that he was to stay west of the white

line. *See Egli v. Troy*, 602 N.W.2d 329, 333 (Iowa 1999) (citing testimony of several witnesses that parties had used land up to a fence and no further).

Because substantial evidence supports the district court's findings on acquiescence, we discern no error in the court's conclusion that the elements for a boundary by acquiescence were proven. Accordingly, we affirm the judgment of the district court.

AFFIRMED.