

IN THE COURT OF APPEALS OF IOWA

No. 7-506 / 07-0097
Filed November 15, 2007

GARRETT D. POST,
Plaintiff-Appellant.,

vs.

JAMES E. BARNETTE,
Defendant-Appellee.

JAMES E. BARNETTE,
Counterclaimant-Appellee,

vs.

GARRETT D. POST, and his unknown heirs, devisees, grantees, assignees, successors in interest and the unknown claimants of the following described real estate situated in Clinton County, Iowa: "Lot eight (8) in Block six (6), in Gish's Addition to the Town of Lost Nation, Iowa; ALSO that portion of vacated alley described as: Commencing at the southwest corner of Lot eight (8), Block six (6), Gish's Addition to the Town of Lost Nation, Clinton County, Iowa, thence east on the south line of said Lot eight (8), thence south fourteen (14) feet, more or less, on the west line of Broadway Street to the northeast corner of Lot seven (7), in said Block six (6), thence west on the north line of said Lot seven (7) and extending west on the north line of Lot six (6), in said Block six (6), to the northwest corner of said Lot six (6), Gish's Addition to the Town of Lost Nation, Iowa, thence north fourteen (14) feet, more or less, to the place of beginning,"

Defendants to Counterclaim-Appellants.

Appeal from the Iowa District Court for Clinton County, Nancy S. Tabor,
Judge.

Garrett Post appeals from a district court ruling denying his motion for
summary judgment and granting James Barnette's motion for summary judgment
regarding a boundary line dispute between the parties. **AFFIRMED.**

Timothy Baumann and Christopher Surls of Wm. B. Norton Law Firm,
P.C., Lowden, for appellant.

David Pillers of Pillers and Richmond, Dewitt, for appellee.

Heard by Zimmer, P.J., and Eisenhauer and Baker, JJ.

ZIMMER, P.J.

Garrett Post appeals from the district court's order denying his motion for summary judgment and granting James Barnette's motion for summary judgment. The court's ruling established a boundary line between the parties' properties as the line determined by two surveys and quieted title of a certain parcel of property in Barnette. Upon our review, we affirm.

I. Background Facts and Proceedings.

Post and Barnette own adjoining parcels of land in Lost Nation, Iowa. Post owns lots six and seven in block six in Gish's Addition to the town of Lost Nation. Post purchased his lots in August 2003 from Virgil and Vivian Mowry, who had owned the property since 1991. Barnette owns lot eight of the same block, which is located adjacent to and directly north of Post's property. Barnette also owns a vacated alley between his lot and Post's property. Barnette purchased his property in December 1993 from Ronald and Victoria Keitel. Located between these two properties is a pine tree that is at the center of this dispute.

Post undertook a project to construct a fence around his property in 2004. After a dispute arose between Post and Barnette over the common boundary line between their properties, Post commissioned a survey of the line by Crapnell Land Surveying (Crapnell survey). The Crapnell survey was completed and filed in 2005. It established the boundary line at issue was several feet to the south of the pine tree located between the two properties. Thus, it revealed the pine tree was located entirely on Barnette's property. Post disagreed with the survey he had commissioned. Barnette then commissioned a survey by Hinkle Engineering

and Surveying (Hinkle survey). The results of the Hinkle survey were consistent with the Crapnell survey.

On December 21, 2005, Post filed an action against Barnette claiming trespass and nuisance and seeking both damages and an injunction. On March 15, 2006, Barnette filed an answer and a counterclaim against Post. The next day, Barnette filed an amended and substituted answer. Barnette also counterclaimed against Post, seeking to quiet title to a parcel of land located between their properties and seeking to establish a lost corner and boundary pursuant to Iowa Code section 650.5 (2005). On March 28 Post filed an answer to Barnette's counterclaims, denying his allegations. On September 27 the district court granted Post's motion to amend his answer to include the affirmative defense of boundary by acquiescence pursuant to section 650.14. The court also granted Barnette's oral motion to file a motion for summary judgment.

On October 16 Post filed a motion for summary judgment. In his motion Post asserted the boundary line between his and Barnette's properties was marked by the pine tree by acquiescence pursuant to section 650.14. On October 19 Barnette filed his own motion for summary judgment, asserting the common boundary lines to his property are as set forth in the Crapnell and Hinkle surveys.

Following a hearing on the pending motions for summary judgment, the district court denied Post's motion. Based on the undisputed facts, the court concluded Post had failed to establish a "definite line" that is required to find a boundary by acquiescence. The court then granted Barnette's motion for summary judgment. The court found there was no genuine issue of material fact

that the southern boundary of Barnette's property was located by the two surveys commissioned by the parties.

On December 8 Post filed a motion for reconsideration, which Barnette resisted. Following a hearing on the motion, the court denied Post's motion, stating "the facts do not support a finding that one point of reference is sufficient to establish a boundary line by acquiescence." On January 4, 2007, Post filed a motion to dismiss his claims for trespass and nuisance without prejudice. The court granted the motion on the same day.

Post now appeals. He contends we should vacate the district court's granting of summary judgment in favor of Barnette and asks us to either: (1) enter summary judgment in favor of Post, establishing the parties' common boundary line at the line marked by the pine tree, because all of the requirements necessary for establishing a common boundary line by acquiescence pursuant to section 650.14 were met, or (2) remand this case to the district court for a trial on the merits, because there was a genuine issue of material fact as to whether the parties and their predecessors in title treated a line marked by the pine tree as their common boundary for the required ten-year period necessary to establish the line by acquiescence under section 650.14.

II. Scope and Standards of Review.

We review the district court's summary judgment rulings for correction of errors at law. *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). We uphold summary judgment when the moving party shows no genuine issue of material fact exists and it is entitled to judgment as a matter of law. *Shaw v. Soo Line R.R. Co.*, 463 N.W.2d 51, 53 (Iowa 1990). To decide if

the moving party has met this burden, we review the record in the light most favorable to the party opposing summary judgment. *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994). We reverse the grant of summary judgment if it appears from the record there is an unresolved issue of material fact. *Meylor v. Brown*, 281 N.W.2d 632, 634 (Iowa 1979).

III. Discussion.

Post contends we should vacate the district court's granting of summary judgment in favor of Barnette and should enter summary judgment in favor of Post, establishing the parties' common boundary line at the line marked by the pine tree, because all of the requirements necessary for establishing a common boundary line by acquiescence pursuant to Iowa Code section 650.14 were met. Section 650.14 provides: "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." Our supreme court has defined "acquiescence" as follows:

[T]he 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. Acquiescence exists when both parties acknowledge and treat the line as the boundary. When the acquiescence persists for ten years the line becomes the true boundary even though a survey may show otherwise and even though neither party intended to claim more than called for by his deed.

Ollinger v. Bennett, 562 N.W.2d 167, 170 (Iowa 1997).

To establish a boundary by acquiescence Post must show he and Barnette own adjacent properties, and that for a period in excess of ten years,

Post and Barnette and/or their predecessors in title mutually recognized, acknowledged, and treated as the boundary between the properties, a line, definitively marked by a fence or in some manner. *See id.* Post must make this showing by clear evidence. *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 806 (Iowa 1994). The district court concluded that based on the undisputed facts of the parties, as a matter of law, Post cannot establish by clear evidence the location of a “definite line” that is required to find a boundary by acquiescence. Upon our review of the summary judgment record, we agree.

Post contends he considered the east-west line “passing through the center of the pine tree” as the common boundary line between his and Barnette’s properties. However,

The line acquiesced in must be known, definite, and certain, or known and capable of ascertainment. The line must have certain physical properties such as visibility, permanence, stability, and definite location. The edge of a hayfield is not a sufficiently visible line, but a hedge or a roadway are visible lines.

Heer v. Thola, 613 N.W.2d 658, 662 (Iowa 2000) (citing 12 Am. Jur. 2d *Boundaries* § 86, at 487 (1997)); *see also De Viney v. Hughes*, 243 Iowa 1388, 1393-94, 55 N.W.2d 478, 481 (1952) (concluding two visible ends of drainage tile were not “sufficiently definite to run a line in accordance therewith”). We agree with the court’s conclusion that the pine tree at issue here is insufficient as a reference point to establish a clear and definitive boundary line.¹

¹ Post also argued the boundary was marked by a “downhill slope.” After examining the photographs in the summary judgment record, the district court concluded that “this slope is so gradual as to be almost non-existent.” We agree with the court’s conclusion that this slope provides no basis for establishing a boundary by acquiescence.

In support of his claim that the east-west line through the pine tree was definite and acknowledged by both parties, Post stated that he placed an LP tank just south of this line and Barnette never complained. However, the summary judgment record also indicated that both parties and their predecessors mowed their lawns up to various points around the pine tree at different times. Additionally, one of Post's witnesses stated in his affidavit that Barnette replaced a portion of the sidewalk to a point two and one-half feet to the south of a line running east and west through the pine tree. Therefore, we agree with the district court that the undisputed facts are not sufficient to support a finding of boundary by acquiescence by clear evidence.

Alternatively, Post requests that we vacate the district court's ruling granting summary judgment in favor of Barnette and remand for trial on the merits. He contends summary judgment in favor of Barnett is inappropriate regardless of what the surveys show, because issues of material fact exist regarding whether the pine tree marks a common boundary line established by acquiescence. For the reasons which follow, we conclude the district court's decision should stand.

Iowa Code section 650.1 allows the district court to make a determination of disputed corners and boundaries of land. While the Crapnell survey and the Hinkle survey were not identical, they were substantively consistent. Both surveys indicated there was a vacated alley immediately adjacent to and south of lot eight. The court determined "there is no genuine issue of material fact that the southern boundary of the vacated alley, as indicated on both surveys, marks the true southern boundary of Barnette's property, and that it marks the true

northern-most of Post's property." Moreover, the court noted that Post acknowledged in his memorandum in support of summary judgment that "[i]t is true that the actual boundary line is located to the south of the line marked by the pine tree."

Post asserts that a material issue of fact existed because the summary judgment record reveals Barnette was unaware the pine tree was located entirely on his property until the Crapnell survey was completed. However, an issue of fact is "material" for purposes of summary judgment only when the dispute is over a fact that might affect the outcome of the suit given the applicable governing law. *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992). Here, the district court correctly determined Post failed to establish clear evidence of a definite and certain line capable of ascertainment. Thus, even if Barnette did not realize his actual property line was as far south as the surveys show, Post must also show clear evidence of a definite and certain line capable of ascertainment in order to establish boundary by acquiescence. Because Post cannot show a definite line existed, he is unable to establish that a boundary line other than the one determined by the surveys existed. Therefore, we conclude the district court properly granted summary judgment in favor of Barnette.

IV. Conclusion.

We affirm the district court's order denying Post's motion for summary judgment and granting Barnette's motion for summary judgment.

AFFIRMED.