STATE OF MICHIGAN

COURT OF APPEALS

HENRY SALVATORE JR., Trustee of the HENRY SALVATORE REVOCABLE TRUST, JAMES V. SALVATORE, JOHN SALVATORE, NANCY SALVATORE, DORSEY SALVATORE, and FRANCINE SALVATORE,

Plaintiffs-Appellants,

v

NBD BANK, N.A., Trustee of RICHARD S. VANPELT TESTAMENTARY TRUST, and GARY J. STEPHAN,

Defendants-Appellees.

UNPUBLISHED
June 3, 1997

No. 194699
Alcona Circuit Court
LC No. 95-009085-CH

Before: Neff, P.J., and Wahls and Taylor, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) that, based on the determination that all parties recognized a boundary marked by a fence for over fifteen years, defendants acquired the disputed property by means of acquiescence. We affirm.

Plaintiffs argue that the trial court erred in granting defendants summary disposition because defendants failed to establish that plaintiffs had ever acquiesced to the concept that the wire fence marked the boundary between the parties' two properties. Michigan case law has identified three subdivisions of the law of acquiescence: (1) acquiescence to a boundary established following the express settlement of a bona fide dispute; (2) in the absence of an express agreement, acquiescence to a boundary for the statutory period applicable to adverse possession, *Maes v Olmsted*, 247 Mich 180, 183; 225 NW 583 (1929); *Tritt v Hoover*, 116 Mich 4, 8; 74 NW 177 (1898); *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993); *Pyne v Elliott*, 53 Mich App 419, 426-427; 220 NW2d 54 (1974); *McGee v Eriksen*, 51 Mich App 551, 558-559; 215 NW2d 571 (1974); and (3) acquiescence to the boundary established by the common grantor, regardless of the validity of that

boundary. *Maes, supra* at 184; *Murray v Buikema*, 54 Mich App 382, 387; 221 NW2d 193 (1974); *Pyne, supra* at 427-428; *McGee, supra* at 559. The trial court's grant of summary disposition in favor of defendants was based on the law of the second of these subdivisions.

In Michigan, the time limit applicable in the second subdivision of acquiescence is fifteen years, the statutory time limit for acquiring land by adverse possession. *Tritt, supra* at 8; *Kipka, supra* at 438. Absent an express agreement, if an established boundary between adjacent landowners is recognized for fifteen or more years, then the presumption is raised that the landowners have fixed this boundary by agreement. See, e.g., *Kipka, supra* at 437-439. If a subsequent dispute rises between the landowners about the location of the true boundary, then courts examine the landowners' behavior with respect to the boundary in order to determine the validity of the presumed agreement. *Id.* The conclusiveness of such an agreement is, therefore, implied by the conduct of the landowners. See *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974); Browder, *The Practical Location of Boundaries*, 56 Mich L R 487, 506-507 (1958).

In order to prevent confusion, the location of the boundary should be physically marked by a monument or monuments. If a boundary line is going to be recognized by acquiescence, "it is essential that its precise location be apparent." Browder, *supra* at 514. "[T]he term 'monument' when used in reference to boundaries indicates a permanent object which may be either a natural or an artificial one." *Murray, supra* at 387. In the absence of the original survey monuments, other artificial or natural monuments can serve to mark the boundary line. For example, Michigan courts have recognized the existence of boundary lines marked by a hedge, *Gregory v Thorrez*, 277 Mich 197, 198; 269 NW 142 (1936), shrubbery, *Renwick, supra* at 151, trees, *Murray, supra* at 386-387, or artificial monuments, *Diehl v Zanger*, 39 Mich 601, 605-606 (1878) (Campbell, C.J., & Cooley, J., concurring). Michigan courts are particularly inclined to recognize a fence as marking the apparent boundary between adjacent properties. *Corrigan v Miller*, 96 Mich App 205, 209; 292 NW2d 181 (1980). However, the presumption that a fence is intended to mark a boundary line can be overcome if evidence can establish that the fence was actually constructed for some other reason. *McGee, supra* at 557.

Plaintiffs purchased their property from Albert Gonsler and have had sole physical possession of the property since 1969. Plaintiffs received the deed to their property on May 8, 1980, following their fulfillment of a land contract dated May 17, 1969. Plaintiffs initiated this litigation on May 8, 1995, the date their complaint was filed with the Alcona County Clerk. Accordingly, exactly fifteen years had passed between plaintiffs receiving title and the filing of their complaint. The trial court considered the date the deed transferred as the controlling date. However, a purchaser of a land contract is vested with equitable title in the land. *Darr v First Federal*, 426 Mich 11, 19-20; 393 NW2d 152 (1986). Thus, the fifteen-year period began to run in 1969 when the land contract was executed; not in 1980 when the deed passed.[1]

Although their descriptions of the wire fence differed, both plaintiffs and defendants agreed that the fence was in place the entire time they each owned their adjacent properties. Plaintiffs asserted, however, that because the fence had not been maintained over the years, it was not visible in many

spots. The fact that the course of the fence was interrupted does not mean that the fence could not serve to mark the boundary line. The requirement that a boundary be marked by a monument does not mean that the monument must be inviolable. For example, this Court has noted that trees can serve as monuments. *Murray, supra* at 386-387. Further, defendants noted, and plaintiffs did not challenge, that the wire fence was attached at either end to two conical monuments. Although plaintiffs acknowledged the existence of both monuments, they asserted that the western monument was irrelevant to this litigation, because it was not situated on either their property or defendants' property. Plaintiffs' observation about the location of the western monument is of no consequence to the outcome of this appeal, however, because as the Supreme Court indicated in *Breakey v Woolsey*, 149 Mich 86; 112 NW 719 (1907), the location of a boundary can be established by the placement of a single monument. *Id.* at 87, 90 (referencing a boundary marked by a single iron spike to support its finding that the plaintiff and the defendant had acquiesced to the boundary line).[2] Consequently, because the wire fence and at least one concrete conical monument marked both the existence and location of the boundary line for at least twenty-six years, a presumption was raised that the parties to this dispute had fixed the boundary between their properties by agreement.

In order to overcome this presumption, the plaintiffs would have had to establish that the parties' behavior regarding the boundary showed that there was no acquiescence to the boundary. *Kipka, supra* at 437-439; *Wood, supra* at 439-440. No one disputes that defendants' behavior evidenced acquiescence to the boundary marked by the fence. Thus, we focus on the behavior of plaintiffs to see if it shows that they had not actually acquiesced to the boundary. Plaintiffs admitted that they never had any direct and specific discussions with defendants concerning their belief that the fence was improperly placed until this litigation arose. However, they argued that their nonacquiesence to the boundary line established by the fence was evidenced over the years by their removal of "No Hunting" signs posted by defendants or their agents in the disputed area south of the fence, and by their hunting of deer roaming in this disputed area.

The cited actions are not sufficient proof of nonacquiescence to overcome the presumption of a boundary line agreement. Because plaintiffs never told defendants that they disagreed with the fence's marking of the boundary line, defendants' only notice of plaintiffs' disagreement would have come through these actions. These actions are, however, far too ambiguous to serve as a notice to defendants that plaintiffs disputed the placement of the boundary fence. Unless they had actually witnessed plaintiffs hunting across the boundary, defendants would not have known that plaintiffs had hunted across the line. Further, it is not unusual for hunters to ignore boundaries while they are hunting. As for the removal of the signs, there is no indication that defendants ever knew that it was plaintiffs who removed the signs.[3] Even if defendants knew it was plaintiffs who removed the signs, it would have been reasonable for defendants to conclude that plaintiffs were just making a statement about their right to hunt in the general area irrespective of boundary lines.

Plaintiffs did remove the fence in early 1994. If defendants had known that it was plaintiffs who had done so, they would have been put on notice that plaintiffs had some sort of problem with the fence. However, because plaintiffs had been in possession of the land since 1969, their removal of the fence

came much too late to affect any rights acquired by acquiescence. Therefore, the boundary line created by the long-existing wire fence must be recognized as the true boundary line dividing the properties.

Affirmed. Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Janet T. Neff
/s/ Myron H. Wahls
/s/ Clifford W. Taylor

[1] Additionally, because "[p]roof of privity is not necessary…to employ tacking of holdings to obtain the 15-year minimum under the doctrine of acquiescence," *Siegel v Renkiewicz*, 373 Mich 421, 426; 129 NW2d 876 (1964), if the time that plaintiffs had physical possession of the property during the course of the land contract is tacked on, then the wire fence was in place for at least twenty-six years before this litigation was initiated. As with adverse possession, in appropriate circumstances Michigan courts will tack on the time of possession of previous owners of the property involved in a boundary dispute in order to satisfy the fifteen year rule. *Johnson v Squires*, 344 Mich 687, 693; 75 NW2d 45 (1956).

[2] It is true that *Breakey* dealt with an express agreement and subsequent acquiescence, while this case involves the implication of an agreement after the passage of the fifteen-year time limit. In both instances, however, the importance of the monument is that it marks an apparent boundary line; this importance is not diminished by the subdivision of acquiescence law at issue.

[3] The plat of the surrounding area indicates that east of both defendants' and plaintiffs' property is the Brousseau Hunting Club. There is some indication in the record that this hunting club has been in existence since at least 1965. If defendants had not actually seen plaintiffs remove the signs, it would have been reasonable for defendants to assume that someone from the hunting club had removed them.