STATE OF MICHIGAN

COURT OF APPEALS

VINCENT SIMON and AUDREY SIMON,

Plaintiffs-Appellees,

v

EDMUND KOLINSKE and CHARLENE KOLINSKE,

Defendants-Appellants.

UNPUBLISHED
February 24, 1998

No. 199500
Emmet Circuit Court
LC No. 94-002876-CH

Before: McDonald, P.J., and Sawyer and Hoekstra, JJ.

PER CURIAM.

Defendants appeal as of right a judgment establishing the boundary line running east and west between the parties' properties and quieting title to a portion of defendants' land with plaintiff.[1] We affirm.

In 1966, plaintiff sold the lot lying north of his lot to defendants. Neither party had a survey of defendants' lot conducted, although money was allocated for such a purpose. A survey subsequently conducted in 1994 revealed that a portion of plaintiff's gravel driveway, which runs between the parcels, was included within the description of defendants' property. Plaintiff sought to quiet title based on various arguments, and following the bench trial in this case, the court found in plaintiff's favor. We review this quiet title action de novo, although we review the factual findings of the trial court for clear error. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996).

Defendants argue that the trial court erred in finding that plaintiff was not estopped from making the claim to a portion of defendants' property due to the warranty deed plaintiff gave defendants at the time of purchase. It is true that a warranty deed guarantees that the grantor is "lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims." MCL 565.151; MSA 26.571. See e.g., *Hollinsworth v Johnson*, 48 Mich 140, 142-143; 11 NW 843 (1882). A grantor is also generally estopped by deed to deny the title of the grantee. *Damouth v Klock*, 29 Mich 289, 294 (1874). However, plaintiff did not challenge defendants' title or

right to the property, but the boundary line separating their two parcels. Where boundary lines are in dispute, courts look beyond the language in a deed and instead resolve the dispute by considering the doctrines of mistake, acquiescence, or adverse possession. See *Newell v Jeffries*, 6 Mich App 279, 282; 148 NW2d 886 (1967); 1 Cameron, Michigan Real Property Law (2d ed), §§ 5.7-5.8, pp 163-169. Therefore, defendants' defense of estoppel by deed is without merit.

Next, defendants argue that the trial court clearly erred in finding acquiescence to a boundary line within their property because the parties did not mutually intend to establish the line. The lower court's decision that plaintiff had established acquiescence was based on all three theories of acquiescence. See *Pyne v Elliott*, 53 Mich App 419, 426-428; 220 NW2d 54 (1974) (describing the three theories). We agree with defendants' argument to the extent that the trial court relied on the theory of acquiescence following a dispute and agreement. See *Pyne, supra* at 427. Because neither party was certain of the location of the boundary line for many years, no dispute transpired between them until the instant action.

However, we disagree with defendants with regard to the remaining two bases for the lower court's decision, which are acquiescence for the statutory period and acquiescence arising out of the intention to deed to a marked boundary. Unlike the theory of acquiescence following a dispute and agreement, neither of these two theories of acquiescence requires an expressed mutual intent. See *Daley v Gruber*, 361 Mich 358, 362; 104 NW2d 807 (1960) ("But if the lack of an agreement threatens a settled boundary we do not hesitate to 'imply' agreement, sometimes from the conduct of the parties, or from surrounding circumstances, just as we do in other cases."). A claim of acquiescence to a boundary line based upon the statutory period of fifteen years, MCL 600.5801(4); MSA 27A.5801(4), requires merely a showing that the parties acquiesced in the line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary. *Walters v Snyder*, 225 Mich App 219, 224; 570 NW2d 301 (1997). Here, testimony at trial established that the driveway had been in its present location since before defendants bought their property in 1966. Testimony also established that defendants never objected to plaintiff's improvement or use of the driveway, his extension of the gravel portion westward, or his use of the triangle of land southeast of the driveway in which he piled snow from the driveway. Therefore, plaintiff established acquiescence for the statutory period.

Similarly, plaintiff established acquiescence arising from an intention to deed to a marked boundary. Plaintiff's uncontradicted testimony was that when he discussed deeding over the north portion of his property to defendants, he told defendants that he was retaining the driveway and only selling everything north of the driveway. These statements of plaintiff, as well his open and daily use of the driveway, establish the driveway as the intended boundary at the time of the grant and afterward, and constitute obvious and ample notice to defendants regarding their boundary. See *Daley, supra* at 363. In summary, the trial court correctly found acquiescence based on either acquiescence for the statutory period or acquiescence arising out of the intention to deed to a marked boundary.

Affirmed.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Joel P. Hoekstra

[1] Audrey Simon was deceased at the time of trial; therefore, we use the word "plaintiff" to refer only to Vincent Simon.