STATE OF MICHIGAN

COURT OF APPEALS

STANLEY NOWAKOWSKI and HENRIETTA NOWAKOWSKI,

Plaintiffs-Appellants,

v

ROBERT C. HUGHES and BETTY S. HUGHES,

Defendants-Appellees.

UNPUBLISHED
May 26, 2000

No. 211406
Mackinac Circuit Court
LC No. 94-003759 CH

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiffs[1] appeal as of right from the court's judgment in favor of defendants in this action arising out of a property line dispute. We affirm.

The trial court found that defendants had acquired title to a strip of land pursuant to the doctrine of acquiescence. Plaintiffs appeal both the trial court's ultimate ruling regarding the boundary and the trial judge's refusal to disqualify himself and order a new trial.

Actions to quiet title are equitable, and therefore, the circuit court's holdings are reviewed de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993); *Michigan National Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). The factual findings of the trial court are reviewed for clear error. *Id*. at 410.

Initially, plaintiffs argue that the trial court erred in ruling acquiescence applied to this matter. The doctrine of acquiescence provides that where adjoining property owners acquiesce to a boundary line for more than fifteen years, that line becomes the actual boundary line. MCL 600.5801(4); MSA 27A.5801(4); *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 512; 534 NW2d 212 (1995); *McQueen v Black*, 168 Mich App 641, 644; 425 NW2d 203 (1988). In Michigan, acquiescence to a boundary for the statutory period of fifteen years converts the line as the legal and correct boundary between parcels. *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d

536 (1996); *Pyne v Elliott*, 53 Mich App 419, 426; 220 NW2d 54 (1974); *Johnson v Squires*, 344 Mich 687, 692; 75 NW2d 45 (1956).

Even a mistaken belief that a fence or other monument is the true boundary line can give rise to an acquiescence claim. *Sackett*, *supra* at 683. Here, Mrs. Nowakowski herself testified that the Helm's and later Hughes' split rail fence served as the boundary between the two lots from at least the mid-1970s. C. Boyd Helm stated that the split rail fence was in place at the time of his father's death in 1976. Other longtime area residents, who would seem to have no reason to be untruthful, Holle, Austin, Silet and Goudreau, testified that the split rail fence had been in place since at least 1976. Further, the fence has remained in the same location since defendants purchased the property. Photographs admitted at trial demonstrate the clear demarcation made by the fence that separates defendants' developed lot from plaintiffs' natural property. A preponderance of the evidence supports the factual finding that the split rail fence existed in the same location for over fifteen years. Therefore, the trial court did not err in ruling that this matter was governed by the doctrine of acquiescence.

Plaintiff also alleges that the trial court erred in allowing defendants to tack the ownership periods of Mr. Helm or C. Boyd Helm onto their own ownership periods. The acquiescence of predecessors in title can be tacked on to that of the parties in order to establish the statutorily mandated period of fifteen years. *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964).

While there appears to be some disagreement in case law about the requirements for tacking a predecessor's interest for the purposes of acquiescence (see *Caywood v Dep't of Natural Resources*, 71 Mich App 322, 334; 248 NW2d 253 (1976), superseded by statute, *Gorte v Dep't of Transportation*, 202 Mich App 161, 164; 507 NW2d 797 (1993), and *Siegel v Renkiewicz Estate*, 373 Mich 421, 425; 129 NW2d 876, 879 [1964]), parol evidence referencing the fence lines as the boundary was introduced by both Mr. Hughes and C. Boyd Helm's realtor. The statements by a real estate agent regarding the extent of an easement were equivalent to a parol transfer for the purposes of tacking. *Stewart v Hunt*, 303 Mich 161, 163; 5 NW2d 737 (1942). Further, the fact that C. Boyd Helm did not reside in the home during his period of ownership does not bar tacking of his period of ownership.

Plaintiffs further argue that it was improper for the court to find that defendants acquiesced to the fence line going to the water line because the fence did not physically extend all the way to the water's edge. The parties do not describe the condition or amount of property lying between the end of the fence and the high-water mark other than to state that the water line is twenty-four feet from the last fence post.[2] Mr. Hughes testified that he paid to place rocks on the beach to cut down on erosion.

The trial court did not err in ruling that the boundary represented by the fence ran to the high water mark because even without a fence the line served as the boundary between the two lots. While most acquiescence cases involve fences, case law establishes that acquiescence to any boundary may serve as a basis for the claim. See *Walters v Snyder*, 225 Mich App 219, 220; 570 NW2d 301 (1997). It is not unreasonable to find that the parties believed that the boundary established by the fence would implicitly extend that boundary out to the shore. This is especially true because both plaintiffs and defendants believed they were buying lots that went all the way to the shoreline. Further,

any fencing placed near the shoreline apparently suffers from wind and water damage that might make the installment in this area impractical.

Plaintiffs also argue that the split rail fence was in such poor condition that it could not put them on notice that it acted as a lot line. Photographs admitted at trial dating from the 1970s to 1996 demonstrate that while some of the rails had fallen out of the posts, the fence was highly visible. See *Geneja v Ritter*, 132 Mich App 206, 212-213; 347 NW2d 207 (1984).

Plaintiffs say that the trial court erred in failing to disqualify itself based on ex parte communications from defense counsel and failing to order a new trial. The findings of fact made during a motion to disqualify a judge are reviewed for an abuse of discretion. *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996). The application of facts to the relevant law is reviewed de novo. *Cain, supra* at 503 n 38. A trial court's decision to deny a motion for new trial is also reviewed for an abuse of discretion. *Setterington v Pontiac General Hospital*, 223 Mich App 594, 608; 568 NW2d 93 (1997). The trial court did not err in failing to disqualify Judge Breighner or to order a new trial. While defense counsel engaged in ex parte communication by sending a letter to the judge, MCR 2.612(A)(1) permits the court to correct clerical errors so they may accurately reflect what was done and decided. Further, a letter sent after the conclusion of trial and a decision by the trial court cannot be construed as an irregularity that denied plaintiffs a fair trial. MCR 2.611(A).

The trial court did not err in finding that the parties had acquiesced to a boundary for the statutory period and permitting defendants to tack on the acquiescence of their predecessors in interest. The trial court did not err in failing to disqualify Judge Breighner or order a new trial. While defense counsel engaged in improper ex parte communications, the judge was permitted pursuant to MCR 2.612(A) to correct clerical errors, such as mistaken directions, in orders. Further, neither the court's correction of the errors or defense counsel's communications represented an irregularity that denied plaintiff a fair trial.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell

[1] While this action was brought in the name of Stanley and Henrietta Nowakowski, Mr. Nowakowski apparently died sometime after the 1996 trial of this matter.

[2] The state of Michigan owns all the property below the high water mark of the Great Lakes. MCL 324.32502; MSA 13A.32504 provides in part:

> The waters covered and affected by this part are all of the waters of the Great Lakes within the boundaries of the state. This part shall be construed so as to preserve and protect the interests of the general public in the lands and waters described in this section[.] . . . The word "land" or "lands" as used in this part refers to the aforesaid described unpatented lake bottomlands and unpatented made lands and patented lands

in the Great Lakes and the bays and harbors of the great lakes lying below and lakeward of the natural ordinary high-water mark[.] . . . For purposes of this part, the ordinary high-water mark shall be at the following elevations above sea level, international Great Lakes datum of 1955: Lake Superior, 601.5 feet; Lakes Michigan and Huron, 579.8 feet; Lake St. Clair, 574.7 feet; and Lake Erie, 571.6 feet.