STATE OF MICHIGAN

COURT OF APPEALS

ERNEST R. BARTZ, a/k/a ROBERT BARTZ, and MARIE BARTZ, Plaintiffs-Appellants, v RENEE ESSENBURG, Defendant-Appellee.	UNPUBLISHED December 26, 2000 No. 214959 Shiawassee Circuit Court LC No. 95-004564-CH

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment of no cause of action in favor of defendant in this property dispute. We affirm.

Plaintiffs Ernest R. and Marie Bartz and defendant Renee Essenburg are neighbors on Vandekarr Road in Owosso. Plaintiffs' property borders defendant's land to the north. Defendant has lived on her property since December 1990, and purchased it from her parents, Glen Weister and Francis Jean Weister, in December 1991. Defendant's parents purchased the property from Francis Jean's aunt, Lucille Richardson, in 1973. The land has been in the Richardson family since 1854. Plaintiffs, who are mother and son, run Bartz Pools and Excavating from their property. Marie Bartz has lived on the property since she and her late husband purchased it in 1946. Plaintiffs operate heavy machinery such as trucks, excavators, and bulldozers on their property. In 1992, they erected a barn-like repair shop on the south end of their property, where they work on their equipment. The door to the repair shop, through which plaintiffs and their employees drive the machinery, faces the southern boundary of their property. A gravel driveway runs along the boundary and connects to a parking area. Trial testimony showed that the driveway has expanded since first created, and plaintiffs have filled in some of the swampy land along the property line for the driveway and parking area.

In 1991, the Weisters commissioned a survey in order to convey their property to defendant. The certified survey was conducted by Landmark Surveying and was recorded. In December 1994, after disagreements with plaintiffs over the expansion of their driveway, defendant erected a fence along the surveyed line, which she claims is the true boundary between her property and plaintiffs' property. Plaintiffs objected to the fence's construction because it ran

down the middle of their driveway. They filed suit to quiet title, claiming that they were entitled to ownership of approximately twenty feet of land south of defendant's fence, by prescriptive easement, by adverse possession, or under the doctrine of acquiescence. The trial court found that plaintiffs had not established ownership of the disputed strip of land under any of the theories advanced and entered a judgment of no cause of action in favor of defendant.

On appeal, plaintiffs argue that the trial court clearly erred in finding that there was no evidence of acquiescence by defendant or her predecessors in title to a boundary line different from that determined by the Landmark survey. Although actions to quiet title are equitable in nature and are reviewed de novo by this Court, we review the trial court's findings of fact for clear error. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). A finding is clearly erroneous when, although there is evidence to support the trial court's decision, we are left with a definite and firm conviction that a mistake has been made. *Meek v Dep't of Transportation*, 240 Mich App 105, 115; 610 NW2d 250 (2000). In our review, we defer to the trial court's assessment of credibility. *Mahrle v Danke*, 216 Mich App 343, 352; 549 NW2d 56 (1996).

Plaintiffs claim that defendant and her predecessors in title acquiesced to a boundary line south of plaintiffs' driveway, and that this line has been regarded as the property line for more than the fifteen-year statutory period. Accordingly, they argue that the line has become the fixed property line. 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 the plaintiff to prove by a preponderance of the evidence 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, 223-224; 570 NW2d 301 (1997). Where all parties to a boundary acquiesce to the use of a line separating their properties, the line should not be disturbed by subsequent surveys. *Walters v Snyder*, 239 Mich App 453, 458; 608 NW2d 97 (2000).

Here, Marie Bartz testified that when she and her husband purchased their property in 1946, Lucille Richardson, defendant's predecessor in title, told them that an old fence line marked the boundary between the properties.[1] This "observed boundary" is, according to plaintiffs, approximately fifteen to twenty feet south of the fence erected along the surveyed line. However, the trial court, which decides issues of credibility, disregarded this testimony in the face of contradictory evidence that plaintiffs knew their property ended north of the "observed boundary." *Mahrle, supra*. Testimony showed that plaintiffs removed a gate they had installed that extended over the surveyed line at the south end of their property when defendant complained that part of it was on her property, and that they later asked defendant for permission to reinstall the gate because they were experiencing vandalism on their property. Defendant agreed. Moreover, prior to the filing of this lawsuit, plaintiff Ernest Bartz offered to purchase at least a portion of the disputed strip of land. The trial court further found that while Richardson did, when asked, allow plaintiffs to erect a horse corral on her property, and that the fence on one

[1] Lucille Richardson died in 1991.

side of that corral ran roughly along the "old fence line," those facts did not establish that Richardson acquiesced to a boundary line different from that depicted on the Landmark survey.

Considering the entire record, we are not convinced that the trial court clearly erred in finding that plaintiffs had, at most, permission to use the land south of the property line depicted in the Landmark survey for specific purposes only and that neither defendant nor defendant's predecessors in title acquiesced to a boundary different from that determined by the Landmark survey.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ William C. Whitbeck