STATE OF MICHIGAN

COURT OF APPEALS

KELLY KARPP and LINDA KARPP,

Plaintiffs-Appellants,

v

RANDALL G. LANSKI, LOIS M. LANSKI, LYNNETTE LANSKI, and JULIE DEWYSE,

Defendants-Appellees.

UNPUBLISHED
June 18, 2002

No. 230825
Alcona Circuit Court
LC No. 98-010063-CH

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Following a bench trial, the trial court entered judgment for defendants on plaintiffs' suit, which sought to quiet title in land that was the subject of a boundary dispute between the parties. Plaintiffs appeal as of right. We reverse and remand.

Plaintiffs' land is surrounded on three sides by two parcels owned by defendants; the fourth side of plaintiffs' parcel is bounded by Bamfield Road. Plaintiffs purchased their parcel in 1984 and defendants purchased theirs in 1989. The source of this dispute is plaintiffs' eastern boundary, which is defendants' western boundary. Defendants sought to erect a fence on their western boundary to prevent trespassing and demarcate the boundary. Initially, defendant followed an old fence line that predated both parties' ownership, but in retracing the line, defendant was unable to follow the line to Bamfield Road because most of the old fence had been removed in the early 1970's by mutual agreement of the parties' predecessors in title. Defendants' surveyor placed the property line approximately thirty feet to the west of the old fence line.

Plaintiffs' suit claimed title to the strip of land lying between the old fence line and defendants' surveyor's property line, under theories of adverse possession and acquiescence. Plaintiffs' adverse possession claim was dismissed by a grant of partial summary disposition. Following a bench trial, the trial court granted judgment for defendants on the acquiescence issue.

Plaintiffs contend that the trial court erred by declining to apply the doctrine of acquiescence to establish the old fence line as the boundary line. Specifically, plaintiffs contend that the trial court's ruling erroneously required plaintiffs to prove that defendants "impliedly or expressly assented to the boundary line based on defendants' perception, knowledge, notice, or

recognition of some event, conduct, or circumstance occurring continuously for the statutory period." Plaintiffs also argue that the trial court's addition of an unnecessary element to the doctrine of acquiescence influenced its factual findings.

Actions to quiet title are equitable in nature and are, therefore, reviewed de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). A trial court's factual findings made when sitting without a jury are reviewed for clear error. MCR 2.613(C); *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court after examining the entire record is left with the definite and firm conviction that a mistake was made. *Id*. However, where a trial court's factual findings may have been influenced by an incorrect view of the law, this Court's review of those findings is not limited to clear error. *Id.* We review de novo a trial court's legal conclusions. *Id.*

In Michigan, we recognize three theories of acquiescence: (1) acquiescence for the statutory period, (2) acquiescence following a dispute and agreement, and (3) acquiescence arising from an intention to deed to a marked boundary. *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). In this case, the relevant theory is acquiescence for the statutory period. Under this theory, "where adjoining property owners acquiesce to a boundary line for at least fifteen years, that line becomes the actual boundary line." *Killips, supra* at 260. A claim of acquiescence only requires proof by a preponderance of the evidence. *Id.*

Proof of an agreed-to boundary line is crucial to a claim of acquiescence. *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974). Our Supreme Court has long held that "a boundary line long treated and acquiesced in as the true line ought not to be disturbed on new surveys. . . . Fifteen years' recognition and acquiescence are ample for this purpose." *Johnson v Squires*, 344 Mich 687, 692; 75 NW2d 45 (1956), quoting *Dupont v Starring*, 42 Mich 492, 494; 4 NW 190 (1880).

Here, an affidavit submitted by Herb Garrett, plaintiffs' predecessor in title, attested that the old fence line was the eastern boundary of his property during his entire residency on the property, from 1953 through 1982, notwithstanding his removal of the old fence in the early 1970's. No evidence was introduced to refute this assertion.[1] Thus, we believe that there the facts plainly indicate that there was an acquiesced fence line. In fact, defense counsel conceded that "there is absolutely no doubt in my mind, and I think the evidence shows, that there was an acquiesced fence line back in the [19]70's, and probably well beyond that."

Defense counsel noted, however, that the issue was essentially what legal effect, if any, the subsequent removal of the fence had on the boundary line between transferees of the bordering property. Although there is some dispute regarding when the fence was taken down,

[1] The trial court opined that plaintiffs "failed to show that any owners past or present treated the fence as it previously existed as the legal boundary between the properties." However, Garrett's affidavit attested that both he and the neighboring property owners did, in fact, treat the old fence lines as the properties' boundaries. Because no evidence was to the contrary was introduced, we believe that the trial court's aforementioned factual finding was clearly erroneous.

there is no dispute that the fence was taken down more than fifteen years after 1953. We have opined that once the statutory period is satisfied, the acquiesced-to boundary line "becomes the actual boundary line." *Killips, supra* at 260. Accordingly, we believe that the removal of the fence alone could not alter the boundary line once it had been properly established.

The trial court's opinion placed particular emphasis on defendants' lack of actual or constructive notice that the old fence line was treated as a boundary line by the parties' predecessors in title. To be sure, there is no evidence that the old fence line was recorded, and the fence was removed well before defendants acquired their property. However, in *Walters, supra* at 458, we rejected the position that a necessary element of acquiescence was the continued existence of an objective transaction. In other words, there is no requirement in law for a continuous presence of the fence line to fix the boundary. Accordingly, we are not persuaded that actual or constructive notice is relevant to the doctrine of acquiescence. In light of the trial court's repeated references to the notice issue during the trial, we agree with plaintiffs' assertion that the trial court's factual findings may have been erroneously influenced by its legal error. Consequently, we believe that the trial court clearly erred by failing to find that plaintiffs established by a preponderance of the evidence that the boundary line was the old fence line for sufficient duration to control over any title description. *Killips, supra* at 260.

Therefore, we remand to the trial court for further factual findings regarding the exact path of the old fence line. In light of our decision, we need not reach plaintiffs' remaining challenge.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper