

STATE OF MICHIGAN
COURT OF APPEALS

DAVID P. TAGGART and BONNIE J.
TAGGART,

UNPUBLISHED
June 17, 2004

Plaintiffs/Counter-Defendants-
Appellants,

v

No. 247060
St. Clair Circuit Court
LC No. 97-003568-CH

TERRY L. TISKA,

Defendant/Counter-Plaintiff-
Appellee,

and

JAK CONSTRUCTION, INC.,

Defendant/Counter-Plaintiff-Third-
Party Plaintiff-Appellee,

and

KEITH SMITH,

Defendant-Appellee.

Before: Griffin, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a final judgment, entered after a bench trial, quieting title in a disputed strip of land in favor of defendant Terry L. Tiska, the titled owner of the property. Plaintiffs also challenge the pretrial grant of summary disposition to defendants Keith Smith and JAK Construction, Inc., prior owners of the disputed strip. We affirm.

Plaintiffs first argue that the trial court erred in finding that there was no mutual agreement to the disputed boundary, defeating a claim to the disputed strip based on acquiescence. The trial court's findings of fact are reviewed for clear error, which occurs if, "although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich

App 453, 456; 608 NW2d 97 (2000). Acquiescence requires that all relevant parties treat the disputed line as the true line. *Id.* at 460. The evidence supported the trial court's conclusion that, although plaintiffs regarded the tree line as the boundary, neither defendants nor their predecessors in title treated this tree line as the boundary. Thus, we find no error.

Plaintiffs argue that the agreement or acquiescence in the boundary may and should be inferred from the *conduct* of defendants' predecessors in title. However, plaintiffs' authority, *Gorte v Dep't of Transportation*, 202 Mich App 161, 170-171; 507 NW2d 797 (1993), is an adverse possession case and does not support plaintiffs' argument that acquiescence may be inferred. Plaintiffs also rely on *Walters, supra*, where this Court found that the plaintiffs had acquiesced to a very clear demarcation line, which was formed first by a row of bushes and then by a fence and garage. However, the evidence of mutual agreement and widespread recognition of that agreement cited in *Walters* do not exist in the present case. In *Walters*, this Court noted a neighbor's testimony "that the belief in the community was that the bushes marked the boundary" and that "plaintiff himself testified that he believed that the bush line approximated the property line, and also that he was aware that 'everybody else' thought the property line was marked by the bushes," *Walters, supra* at 459. However, in the instant case, plaintiffs provided no evidence that they clearly marked the boundary or that it was "understood to have run along" the tree line by anyone other than plaintiffs. Thus, the trial court did not clearly err in finding that the tree line did not form the clear boundary as alleged by plaintiffs.

Next, plaintiffs argue that the trial court erred in finding that they had not established a claim to the disputed strip based on adverse possession. "[A]dverse possession requires clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period." *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993). The evidence indicates that plaintiffs' actions on the disputed property were ambiguous and often subtle to the point of invisibility, falling far short of the "open and notorious" possession necessary to charge title-holders with notice of the competing claim to the land. Accordingly, we affirm the court's rejection of the adverse possession claim because plaintiffs failed to offer "clear and cogent proof" to support it.

Finally, plaintiffs argue that the trial court erred in granting summary disposition to defendants Smith and JAK Construction on the adverse possession claim.¹ Summary disposition decisions are reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Plaintiffs claim that, when they settled the remainder of this action with these defendants, they did not release them from the adverse possession claim. However, there is no authority under which a prior owner of land can be held liable to a third party for a claim of adverse possession the third party brings against a subsequent owner of the land. Therefore, summary disposition was properly granted.

¹ A previous grant of summary disposition to these defendants, on alternative grounds, was reversed. *Taggart v Tiska*, 465 Mich 665; 641 NW2d 240 (2002).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood