

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD D. CLOR and EVELYN M. CLOR,

Plaintiffs/Counter-Defendants-
Appellants,

v

IVAN A. BUNTING and DONNA K. BUNTING,

Defendants/Counter-Plaintiffs-
Appellees.

UNPUBLISHED
December 14, 2006

No. 269011
Lapeer Circuit Court
LC No. 02-031297-CH

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Plaintiffs in this boundary line dispute appeal as of right from the trial courts' orders granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants¹ and from the court's orders denying their motion for reconsideration. The trial court held that plaintiffs had failed to establish a genuine issue of material fact concerning their claim of ownership by acquiescence. Consequently, it dismissed their claim to the disputed property. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs own 4641 Cusenza Drive in Marathon Township. Defendants own the adjacent property to the east, known as Cusenza Landing Lot 1. At issue in this appeal is a strip of land measuring approximately 13.5 to 15.6 feet in width that lies between the eastern boundary of plaintiffs' parcel and the western boundary of defendants' parcel. Neither plaintiffs nor defendants held title ownership to the disputed strip at the time this litigation ensued. The warranty deed by which plaintiffs purchased the formerly vacant lakefront lot from Leonard and Dianne Schott in August 1997 described the land as "The East 100 feet of the South 518.50 feet of the Southeast quarter of the Southwest quarter of the Northeast quarter of Section 9, Town 9 North, Range 9 East, Marathon Township, Lapeer County, Michigan." A similar legal description limiting the lot to the "East 100 feet of the Southeast quarter" is present in the

¹ The term "defendants" as used herein refers only to appellees Ivan A. Bunting and Donna K. Bunting. Default judgments were granted against the remaining defendants below, who are not parties to this appeal.

warranty deed by which the Schotts obtained the lot in 1993, as well as in the Schotts' predecessors' 1969 deed.

In 2001, plaintiffs constructed a permanent residence on the lot. As plaintiffs were in the process of installing a fence along the eastern boundary of the property, a deputy sheriff informed them that defendants had filed a trespass complaint against them, alleging that the fence encroached on their property. Plaintiffs ordered a survey, which was conducted on November 7, 2001. The survey revealed that the subject strip of land lies in between the eastern deed line of plaintiffs' property and the west plat line of Cusenza Landing Lot 1.

Plaintiffs filed a complaint against defendants and several others seeking to quiet title to the strip of land, alleging that in quieting title in favor of plaintiffs the trial court would simply be establishing the boundaries as they had been occupied by all parties and their predecessors in title prior to October 2001. Plaintiffs produced a 1990 survey of the area, the "Gravlin Survey," which apparently placed the eastern boundary of their lot at the western boundary of defendants' lot. However, the survey further provides a written description of plaintiffs' lot, consistent with plaintiffs' deed, as being limited to the "*East 100 feet of the South 518.50 feet of the Southeast quarter of the Southwest quarter....*" (Emphasis supplied.)

Defendants originally filed an answer and cross- and counter-complaint in which they maintained that they had adversely possessed the disputed strip for the statutory 15-year period. However, approximately 10 months after the litigation began, defendants were permitted to amend their answer and counter-complaint to allege instead that the subject strip had never been deeded to anyone since development of the Cusenza Landing Subdivision by Frank Cusenza in 1946, and that, therefore, the strip was technically still titled in the Estate of Frank Cusenza at the time plaintiffs' complaint was filed. Rose Cusenza, Personal Representative of the Estate, had since deeded the disputed property to defendants. Accordingly, defendants alleged that they now held title to the property. Defendants later filed a Second Amended Counter-Complaint in which they claimed they had obtained title to the disputed strip of property from the heirs of one Leonard Cusenza by way of attached deed, and that defendants were therefore the true owners of the property.

The trial court granted defendants' motion for summary disposition and entered an order dismissing plaintiffs' claim to the disputed strip on the ground that plaintiffs had failed to establish a claim of ownership by acquiescence.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). "When a motion under [MCR 2.116(C)(10)] is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4). The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material

fact and the moving party is entitled to judgment as a matter of law. *Lind, supra* at 238; *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999); see also MCR 2.116(G)(6).

Plaintiffs admittedly have no title ownership to the subject property. Their deed, as well as the deeds held by predecessors going back to at least 1969, makes no mention of the disputed strip and, in fact, specifically limits the boundaries of the parcel to the 100 feet ending at the eastern boundary of that strip. Nor do plaintiffs claim ownership under a theory of adverse possession. Rather, plaintiffs' sole claim to the property is asserted under the doctrine of acquiescence.

The doctrine of acquiescence arose to promote peaceful resolutions of boundary line disputes. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). There are three distinct ways that the doctrine of acquiescence may apply: "(1) acquiescence for the statutory period, (2) acquiescence following a dispute and agreement, and (3) acquiescence arising from intention to deed to a marked boundary." *Walters v Snyder*, 239 Mich App 453, 457; 608 NW2d 97 (2000). Plaintiffs' acquiescence claim, although quite underdeveloped, appears to focus on the third type of acquiescence, which applies when a land conveyance has been made with intent to reference it from a physical boundary, marked on the ground, to which adjoining land owners have previously acquiesced. See *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964); *Daley v Gruber*, 361 Mich 358, 363; 104 NW2d 807 (1960).

As explained in *Maes, supra*, this third type of acquiescence arises out of "the practical location of a boundary line by a common grantor":

"Where adjoining owners took their conveyances from a common grantor with reference to a boundary line he had located on the ground, and deeds describing the tracts as certain lots in a block, the location was, irrespective of lapse of time, binding on the owners and those claiming under them." [*Maes, supra* at 184 (citation omitted).]

Plaintiffs appear to assert that the boundary line established in the Gravlin Land Survey constitutes the true boundary of the property, to which all current and prior land owners have acquiesced. However, plaintiffs are mistaken in their understanding of this type of acquiescence, which only applies when a conveyance is made with reference to a "boundary marked *on the ground* ... between adjoining owners" that has been previously "established." *Daley, supra* at 363 (emphasis supplied). Although plaintiffs vaguely asserted below that their and defendants' predecessors in interest had acknowledged there were "visible markers" at the western boundary line of the Cusenza Landing subdivision, it is unclear what these "visible markers" were or who acknowledged them. Plaintiffs cite no testimony or other record evidence to support their assertion.

Moreover, plaintiffs have simply failed to present any record evidence demonstrating that anyone at any time acquiesced in the establishment of the boundary line for plaintiffs' lot at the western edge of Cusenza Landing Lot 1. Defendants produced unrefuted evidence that the Cusenzas intended that the disputed strip remain their own property, perhaps for the purpose of installing a dock. Defendants additionally produced evidence that they are now the title owners of the subject property. Plaintiffs have produced no evidence whatsoever to contest defendants'

proffered evidence. Under these circumstances, summary disposition was appropriately granted. See *Walters, supra* at 458.

However, plaintiffs on appeal do not address the merits of the trial court's decision, but rather argue simply that the position taken by defendants at summary disposition was "untimely" asserted. It must be noted that plaintiffs have not appealed from the trial court's rulings permitting defendants to file first amended and second amended counter-complaints presenting the defenses that plaintiffs now complain about. Accordingly, plaintiffs' argument on appeal is not properly before this Court. Moreover, plaintiffs have failed to properly support their claim of "untimeliness" with any citations of authority. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

In any event, plaintiffs have wholly failed to establish any prejudice resulting from the defenses and arguments that were raised by defendants in February and March 2003, less than one year after institution of this lawsuit. The subject motion for summary disposition was not filed until December 2004, giving plaintiffs well over two years to conduct "further discovery" concerning defendants' claims. Yet, plaintiffs never requested additional time for discovery. Moreover, plaintiffs had long been aware of defendants' primary defenses, which were (1) that plaintiffs could not establish ownership, either by title, adverse possession, or acquiescence, of the subject property, and (2) that neither plaintiffs nor defendants had, prior to the institution of the litigation, any claim to the subject property, since the property had never been deeded to anyone from its original owners, the Cusenzas. The trial court properly determined that plaintiffs had failed to establish a genuine issue of material fact concerning their claim of ownership by acquiescence, and summary disposition was appropriately granted on that basis.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis