STATE OF MICHIGAN

COURT OF APPEALS

JAMES PARKER,

Plaintiff-Appellee,

v

JON GRECA,

Defendant-Appellant.

UNPUBLISHED
January 27, 2009

No. 281968
Monroe Circuit Court
LC No. 05-020463-CH

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right the judgment quieting title to a strip of land in favor of plaintiff under a theory of acquiescence for the statutory period of 15 years. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant own neighboring parcels of land on the eastern side of Steffas Road in Exeter Township in Monroe County. Plaintiff's parcel is south of defendant's. Plaintiff's home is on his parcel. Defendant has a junkyard on his. Both parcels were formerly owned by plaintiff's father. Plaintiff acquired his parcel from his father in 1983; defendant acquired his parcel from plaintiff's father in 1997. The dispute concerns land at plaintiff's northern boundary and defendant's southern boundary.

Actions to quiet title are equitable in nature and therefore the trial court's holdings are subject to de novo review. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001); *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). The trial court's conclusions of law are likewise reviewed de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). This Court reviews for clear error factual findings made by a trial court sitting without a jury, giving due regard to the trial court's special opportunity to judge the credibility of the witnesses appearing before it. MCR 2.613(C); *Killips*, *supra*; *Walters*, *supra*. "A finding is clearly erroneous when, 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." *Id.*

Defendant argues that the trial court erred in finding acquiescence to a particular boundary line for the statutory period. We disagree.

Acquiescence operates in limited circumstances to allow a party to acquire legal title to property that was not conveyed to that party by way of deed. "The underlying reason for the

doctrine of acquiescence is the peaceful resolution of boundary disputes." *Killips, supra* at 260. There are three legal theories by which acquiescence to a boundary other than the deeded property line can occur: (1) acquiescence for the statutorily-prescribed period of more than 15 years; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from an intention to deed to a marked boundary. *Walters, supra* at 456; *Sackett, supra* at 681. The relevant theory in this case is acquiescence for the statutory period. Under this theory, where adjoining property owners acquiesce to a boundary line for more than the statutorily-required 15 years, that line becomes the actual legal boundary line between their properties regardless of subsequent surveys or later conduct of the parties to disavow it. *Johnson v Squires*, 344 Mich 687, 692-693; 75 NW2d 45 (1956); *Killips, supra* at 260-261. A claim of acquiescence for the statutory period does not require that the possession of the property be hostile or without permission. *Killips, supra* at 260; *Walters, supra* at 456. Nor does it require that implied or passive assent to a boundary line be based on knowledge or on an objective transaction, and acquiescence can be established where the parties are unaware of the true location of the boundary line dividing their property for all or part of the fifteen-year period. *Walters, supra* at 457, 459.

Contrary to defendant's assertion here, the acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the required 15-year period. *Jackson v Deemar*, 373 Mich 22, 25-26; 127 NW2d 856 (1964); *Killips, supra* at 260. See also *Siegel v Estate of Renkiewicz*, 373 Mich 421, 426; 129 NW2d 876 (1964); *Renwick v Noggle*, 247 Mich 150, 152; 225 NW 535 (1929); *Walters, supra* at 458-460.

Defendant argues that the evidence did not establish a *specific*, defined boundary line for the statutorily required 15-year period, because the witnesses' testimony did not show that there was a "visible or recognizable boundary or line of demarcation between these parcels." However, the witnesses' testimony identified a boundary created by a utility pole and brush line. This description was sufficient for application of the doctrine. *Walters, supra* at 458-460. In *Walters*, the purported boundary line was a row of sporadically planted bushes and small trees extending approximately one-third of the length of the property. *Id*. at 460 n 3. This Court recognized that "the conduct of the parties establishes that while a precise line was never acknowledged, the boundary line was understood to have run along a line approximated by the bushes," and determined that acquiescence to a boundary at a fence line two to three feet from the bushes was established. *Id*. at 458. In the present case, the boundary began at a utility pole. The area south of the pole was grass that plaintiff kept mowed and had some landscaping, while the area north of the pole was brush until approximately 2005. The trial court noted that a video taken by the township in 2000 showed plaintiff's driveway "with a clear line of mowed grass to the utility pole with a brush line thereafter." Photographs show the brush line. Thus, the boundary created by the utility pole and the brush line was sufficiently identified as the acquiesced-to boundary line to permit the trial court to conclude that the parties had acquiesced to a particular boundary for the statutorily required 15-year period.

Defendant also argues that the doctrine of acquiescence requires agreement with regard to the boundary line. His reference to the need for an agreed upon boundary implies that there must be a dispute and resolution about the boundary. While an agreement following a dispute is one manner of establishing acquiescence, the theory of acquiescence at issue here, acquiescence for the statutory period does not require a dispute or controversy regarding the line. *Jackson, supra*

at 25-26; *Walters*, *supra* at 456; *Sackett*, *supra* at 681. Defendant further argues that the trial court's observation that there was a dispute about the true location of the property line as early as 1997, and its chiding of defendant for taking no action to assert ownership of the disputed tract of land shows the trial court's misapplication of the law of acquiescence. However, as the trial court properly recognized, acquiescence is not defeated because one of the parties knows that the line treated as the boundary is not the actual boundary where that party took no action to stop the other party's use of the property or to disavow the acquiesced boundary. *Killips*, *supra* at 260-261.

Defendant next asserts that there was no evidence in this case that his predecessor, plaintiff's father Raeford Parker, treated the utility pole as the boundary, other than plaintiff's "self-serving" testimony that he and his father consistently referred to the utility pole as marking the boundary between the parcels. We disagree. The testimony of plaintiff's brother-in-law, Kenneth Muir, corroborated plaintiff's testimony that both plaintiff and his father understood that plaintiff's property began at the utility pole. Further, plaintiff, Muir, and other witnesses testified that Raeford Parker did not use the property on the south side of the pole and that there was a "greenbelt" of brush and trees north of the gravel parking area, separating plaintiff's home from defendant's junkyard, from the time plaintiff built his home in 1985, until defendant removed the greenbelt between approximately 2003 and 2005.

Additionally, defendant contends that even if the 15-year period began when plaintiff received his deed in July 1983, the period did not run before defendant entered into the land contract to buy the land in July 1997, meaning that plaintiff must show that defendant also agreed or understood that the utility pole was the boundary line. According to defendant, there was no such showing. However, plaintiff, who was personal representative for his father's estate, testified that before entering into the land contract with defendant, he showed defendant the property and referenced the utility pole and the line of cut grass as the property line. Plaintiff's witnesses testified that plaintiff, not defendant, used the disputed property until approximately 2005, when defendant erected a fence. Although defendant presented testimony that he used the disputed property, the trial court's opinion indicates it was not persuaded by the testimony. Giving due regard to the trial court's special opportunity to judge the credibility of the witnesses appearing before it, MCR 2.613(C), we are not left with a definite and firm conviction that the trial court clearly erred in resolving this factual dispute in favor of plaintiff. *Walters*, *supra* at 456.

We affirm. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher