STATE OF MICHIGAN

COURT OF APPEALS

GLENNA B. MOOSE,

Plaintiff/Counter-Defendant-Appellee,

v

ROGER JOHNSON,

Defendant/Counter-Plaintiff,

and

MILDRED JOHNSON,

Defendant/Counter-Plaintiff-Appellant,

UNPUBLISHED
February 24, 2009

No. 280590
Livingston Circuit Court
LC No. 04-020624-CZ

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

In this property dispute, defendant[1] appeals as of right from the trial court's judgment that plaintiff owned the disputed property by acquiescence. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The real property at issue is a narrow strip of land abutting Lobdell Lake in Deerfield Township, Livingston County ("Property"). Plaintiff and defendant both claim ownership of the Property. Plaintiff's property is adjacent to the north of the Property and defendant's property is adjacent to the south. In other words, the Property lies between the parties' parcels. The Property is narrow and cannot be developed standing alone. The Property includes approximately 30 feet of frontage on Lobdell Lake.

[1] Defendant Roger Johnson died before trial, so he is not a party to this appeal. Reference to "defendant" in the singular is to the surviving defendant, Mildred Johnson, only. The term "defendants" refers to both Roger and Mildred Johnson.

The evidence concerning the chains of title to the relevant parcels established that on November 13, 1941, Albert and Violet McClatchey owned plaintiff's parcel, defendant's parcel and the Property as a single parcel. Accordingly, the McClatcheys are the common grantors of the parties' parcels.

Defendant's chain of title originated from the January 8, 1942, conveyance of property from the McClatcheys to Carlyle and Anna Goss. This conveyance included the parcel currently owned by defendant along with the Property. In July 1946, the Gosses conveyed the parcel to Edward and Frieda Bond. This conveyance also included the Property. In 1951, the Bonds conveyed the parcel to Osckar Miegel. The parties do not dispute that this conveyance did not include the Property. Miegel conveyed the parcel, now exclusive of the Property, to Thomas and Patricia Stacey in May 1958. In December 1967, the Staceys conveyed the parcel to defendants.

Plaintiff's chain of title originated from the conveyance from the McClatcheys to H. Keith and May Myers in 1941. This conveyance did not include the Property. In October 1950, the Myers conveyed the parcel to Gerard Sirois, Sr., and Patsy Sirois. Gerard Sirois, Jr., was later added as a joint tenant of that parcel. In June 2003, Gerard Sirois, Jr., as surviving joint tenant, conveyed the parcel, exclusive of the Property, to plaintiff by warranty deed. After a survey indicated that the Property was not included in either of the parties' deeds, Gerard Sirois, Jr., quit claimed the Property to plaintiff based on his belief that he owned the Property.

We review de novo equitable issues such as quiet title actions and the applicability of the doctrines of acquiescence and adverse possession, but we review the circuit court's findings of fact for clear error. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). "A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Markillie v Bd of Co Rd Comm'rs of Co of Livingston*, 210 Mich App 16, 22; 532 NW2d 878 (1995).

"The doctrine of acquiescence usually arises in the context of border disputes." *Geneja v Ritter*, 132 Mich App 206, 210; 347 NW2d 207 (1984). The doctrine is comprised of three distinct theories: "(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." *Sackett*, *supra* at 681. The trial court based its ruling on the first and third theories, and these theories are at issue in this case.

A plaintiff is required to establish a claim of acquiescence by a preponderance of the evidence. *Walters v Snyder*, 239 Mich App 453, 455; 608 NW2d 97 (2000). Under the "acquiescence for the statutory period" theory of acquiescence, a boundary line becomes fixed when abutting landowners acquiesce to the boundary for the statutory period of 15 years. *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964); MCL 600.5801(4). As our Supreme Court stated, "'[a] boundary line, long treated and acquiesced in as the true line, ought not to be disturbed on new surveys, 15 years' recognition and acquiescence being ample for purpose of establishing the boundary.'" *Walters v Union Nat'l Bank of Marquette*, 314 Mich 699, 706; 23 NW2d 184 (1946), quoting *Gregory v Thorrez*, 277 Mich 197, 201; 269 NW 142 (1936). "[A] claim of acquiescence to a boundary line based upon the statutory period . . . requires merely a showing that the parties acquiesced in the line and treated the line as the boundary for the statutory period, despite whether there was a bona fide controversy regarding the boundary." *Walters v Snyder*, 225 Mich App 219, 224; 570 NW2d 301 (1997).

In this case, the trial court did not clearly err in determining that the parties or their predecessors in interest acquiesced to the southern line of the Property (the occupation line) as the boundary line between their parcels for the statutory period. First, two surveyors concluded that the "line of occupation" is the southern boundary of the Property. This is the boundary that plaintiff advocates for. The surveyors also agree that this line was established no later than 1949, as evidenced by stakes placed during a 1949 survey.

The existing physical evidence also suggests that the parties, or their predecessors in interest, adopted the same line as their boundary line for the statutory 15-year period. The sewer grinder pump, which services both parcels, and an electrical panel are located on the occupation line. Defendants moored their boat just to the south of the occupation line. The shoreline vegetation on plaintiff's parcel is cleared up to the occupation line. Defendants' man-made terracing stops at or near the occupation line. Defendants' propane tank is situated just to the south of the occupation line, on their property. Defendants' driveway runs parallel to the occupation line but never encroaches on the Property. Lilac trees, some planted by defendants approximately 40 years ago, run along the occupation line. It is not disputed that defendants previously stored personal property on the Property. However, when plaintiff's predecessor in interest demanded, on plaintiff's behalf, that the personal property be removed from the Property, defendants complied without protesting or otherwise claiming ownership.

Plaintiff further introduced evidence indicating that from 1950 to 2003, plaintiff's predecessors in title (the Sirois family) also believed that the Property belonged to them. The Sirois family treated the occupation line as the boundary line from the outset of their ownership in 1950, and defendants acquiesced to the occupation line as the boundary between defendants' and the Sirois family's parcels. In particular, plaintiff presented evidence that the Sirois family paid defendants to mow the Property.[2] Based on his belief that his family owned the Property in 2003, Gerard Sirois, Jr., the surviving joint tenant of the parcel, conveyed the Property to plaintiff by quitclaim deed.

Conversely, defendant offered evidence, based on prior use, that the boundary line was at the northern edge of the Property. Notably, defendant set forth evidence of her children sledding and playing on the Property. Defendant testified that she and her late husband had stored personal property on the Property and had routinely maintained the Property. Defendant's son also testified that he mowed the Property. Finally, defendant argued that a meandering tree line established a boundary along the northern line of the Property. This is the boundary line that she advocates for.

Viewing this evidence as a whole, the trial court did not clearly err in concluding that plaintiff proved by a preponderance of the evidence that she had title to the Property under the

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[2] Although defendant denied that plaintiff's predecessor paid her and her husband to mow the Property, when testimony before the trial court conflicts, as it does here, we will accord great deference to the trial court's assessment of credibility because of its superior opportunity and ability to hear and see the witnesses as they testify. *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998).

doctrine of acquiescence. The evidence indicated that defendant's and plaintiff's predecessors in interest had viewed the Property as belonging to plaintiff's predecessors (the Sirois family) for at least 15 years. Defendant's evidence to the contrary was not so strong as to suggest clear error by the trial court. Accordingly, pursuant to MCL 600.5801(4), the trial court did not err when it established the boundary line at the southern edge of the Property.

The third theory of acquiescence, acquiescence arising from intention to deed to a marked boundary, applies when a common grantor has made a land conveyance with the intent to reference the conveyance from a physical boundary, marked on the ground, to which adjoining landowners 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). In this case, defendant fails to show that the common grantors, the McClatcheys, intended to deed the parcels to a marked boundary line in 1941 when they divided the parent parcel into the parcels currently at issue. The earliest indication of the establishment of a marked boundary line for the Property are the stakes planted pursuant to a survey that took place in 1949, seven-and-a-half years after the common grantors conveyed their property. However, establishment of the third type of acquiescence is not necessary because plaintiff established under the first theory of acquiescence that the occupation line was the boundary line between the parties' parcels for the statutory period.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Donald S. Owens