STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0182

James A. Nilsson,
Respondent,

vs.

Jeannie Ball,
Appellant,

Ryan Haugen, et al.,
Defendants.

Filed August 7, 2017
Reversed and remanded; motion denied
Connolly, Judge

St. Louis County District Court
File No. 69DU-CV-15-2911

Gregory M. Erickson, James R. Magnuson, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for respondent)

Jeannie Ball, Duluth, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

In this boundary dispute, the district court granted summary judgment in respondent's favor declaring that he is the exclusive owner of the disputed property, finding no issues of material fact on his trespass and ejectment claims, and awarding damages on the trespass claim. Appellant argues on appeal that the district court was biased, the evidence in the record does not support the judgment, she was deprived of her jury-trial rights, and there were procedural irregularities that require reversal. Because we conclude that the district court erred in its application of the doctrine of boundary by practical location and because there are genuine issues of material fact, we reverse and remand.

FACTS

Appellant Jeannie Ball and respondent James Nilsson own adjacent properties. Appellant purchased her property in 1998 and, in that year, she placed a mobile home, at least one shed, an outhouse, a septic system, and two fences (the improvements) on what she believed was her property, located as near as possible to the boundary line. Appellant claims that 600 feet of fence was located at what she believed to be the boundary line as well as a kennel building that has been in its location since 1991. Appellant relied on contractors to place the improvements.

Multiple surveys of the properties conducted on respondent's behalf show that these improvements were constructed across the property line. Specifically, the septic mound, at least half of the trailer home, and multiple sheds are on respondent's property. The former owner of respondent's property was aware of the improvements and never

complained about the location, but there was no express agreement with the previous owner that allowed appellant to locate the improvements on the property adjacent to hers.

In 2005, respondent purchased the property adjacent to appellant. In 2014, respondent surveyed the property and discovered appellant's encroachment. In December 2014, respondent sent a letter demanding that appellant vacate the property. After negotiations between the parties failed, respondent sued appellant in October 2015.

Ruling on summary judgment, the district court found that there were no genuine issues of material fact regarding the ownership of the property. Specifically, the district court found that the property in dispute is owned by respondent, as evidenced by the Torrens certificate and confirmed by the surveys done in 1990 and 2014. The district court also found that the doctrine of boundary by practical location did not apply because appellant's claim that a new boundary was created by respondent's acquiescence was deficient. The district court reserved its decision on damages until June 15, 2016, giving appellant the opportunity to remove the improvements from respondent's property. Appellant failed to remove the improvements in the time allotted and respondent was granted damages to remove the improvements.

D E C I S I O N

"We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted).

"[T]he common law doctrine of practical location of boundaries applies to registered land whenever registered." Minn. Stat. § 508.02 (2016); *Britney v. Swan Lake Cabin Corp.*, 795 N.W.2d 867, 871 (Minn. App. 2011). The practical location of a boundary line may be established by acquiescence, express agreement, or estoppel. *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 768 (Minn. 1982). Appellant argues that the doctrine of practical location of boundaries was established in this case through acquiescence. "To acquire land by practical location of boundaries by acquiescence, a person must show by evidence that is clear, positive, and unequivocal that the alleged property line was acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations." *Britney*, 795 N.W.2d at 872 (quotation omitted). The applicable statute of limitations is 15 years. Minn. Stat. § 541.02 (2016). The burden of proof is on the party asserting the practical boundary. *Britney*, 795 N.W.2d at 872. The conduct cannot be merely passive consent but rather "conduct from which assent may be reasonably inferred." *Id*.

We conclude that the district court erred in its application of boundary by practical location and in finding that there are no genuine issues of material fact. On summary judgment, a district court assumes the facts in favor of the nonmoving party. *Montemayor v. Sebright*, ___ N.W.2d ___, ___, 2016 WL 2961118, at *4 (Minn. July 12, 2017). Appellant submitted an affidavit stating that a fence[1] runs along the common boundary line and has been there for 20 years, and that the improvements made to the property have

[1] Appellant claims that the fence is over 600 feet long.

always been treated as marking the common boundary line. Respondent's survey does not indicate the fence or whether the improvements form a clear boundary line, but a survey conducted by one party is not dispositive when considering boundary by practical location. *See Slindee v. Fritch Invs., LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009) (implying that boundary by practical location applies independent of a survey).

Appellant also states in her affidavit that her former neighbor walked over to appellant's property on a regular basis and never objected to the placement of any of the improvements. Based on this information, appellant could show at trial that respondent and his predecessors in interest acquiesced to the change in the boundary. If the improvements were present and forming a boundary line for at least 15 years and the previous owner and respondent acquiesced to the boundary line change, then the doctrine of boundary line by practical location applies.[2]

[2] We note that appellant is required to comply with the requirements of Minn. Stat. § 508.671 (2016) in order to have all or some of the common boundary lines judicially determined. Failure to do so, or a failure to seek a temporary stay from the district court in order to do so, could result in the dismissal of appellant's claim of boundary by practical location. *See Britney*, 795 N.W.2d at 871. Appellant should have the opportunity to comply with the statute.

Because there are genuine issues of material fact to be reviewed by a fact-finder, we conclude that the district court erred in dismissing appellant's case. Accordingly, we reverse.[3]

Reversed and remanded; motion denied.

[3] Appellant filed a motion to supplement the record with her answer to respondent's complaint and a self-prepared transcript of a telephone scheduling conference. Papers filed in district court, the exhibits received in evidence, and the transcript of the proceedings, if any, shall constitute the record on appeal. Minn. R. Civ. App. P. 110.01. An appellate court ordinarily does not consider matters outside the record. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Because the documents presented in appellant's motion to supplement the record are not pertinent to our decision that a genuine issue of material fact exists, we deny that motion. *See Thomas A. Foster & Assocs. v. Paulson*, 699 N.W.2d 1, 9 (Minn. App. 2005) (denying a motion to supplement the record because the document submitted was not pertinent to the issue on appeal).