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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1821**

Todd Erickson, et al.,
Respondents,

vs.

James A. Symiczek, et al.,
Appellants,

vs.

Richard P. Vogel, et al.,
Third Party Defendants and Fourth Party Plaintiffs,

vs.

Dianna Marie Quist f/k/a Dianna Marie Strang, et al.,
Fourth Party Defendants.

**Filed June 3, 2013
Reversed
Stoneburner, Judge**

Chisago County District Court
File No. 13CV091081

Christopher D. Johnson, Johnson/Turner, Forest Lake, Minnesota (for respondents)

Courtland Borle, Tennis and Collins, P.A., Forest Lake, Minnesota (for appellants)

Considered and decided by Stoneburner, Presiding Judge; Connolly, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

In this dispute over the location of the common boundary between two properties, appellants argue that the district court erroneously found that respondents established a boundary by practical location by estoppel. We agree and reverse.

FACTS

In November 1987, development partners Ronald Strang and Peter Sampair purchased real property adjacent to Wallmark Lake in Chisago County. The following summer, the property was platted into 37 lots, together known as Wallmark Lake Estates.

In July 1988, Sampair and his wife granted lots 13 and 14 of Block One to Strang and his wife (Quist). These adjacent lots also border Wallmark Lake and Wallmark Lake Drive. Strang and Quist constructed a house on Lot 14; they moved into the house in October 1988.

At that time, Lot 13 was heavily wooded, except for a grassy lawn along Wallmark Lake Drive. To ensure that he did not cut firewood from the adjacent Lot 12, Strang ran a string between the lake and drive corners of lots 12 and 13; Strang tied the string to trees on Lot 13, keeping the string, which zig-zagged somewhat from tree to tree, within one to three feet of the actual straight-line boundary with Lot 12.

In September 1992, Strang and Quist granted several lots, including Lot 12 of Block One, to Sampair and his wife. At approximately the same time, another party constructed a house on Lot 11. Prior to 1992, Sampair had accessed Wallmark Lake via a road through Lot 11. After the house was built on Lot 11, the owner of Lot 11 gave

Sampair permission to continue using that lake access. Although that permission was never revoked, in approximately 1994, Sampair began to build his own access to the lake, clearing a road through the woods on what he believed to be Lot 12.¹ Sampair worked on the road “for a couple years.” After the road was complete, Sampair used it primarily during duck-hunting season, transporting his boat across the road once at the beginning and once at the end of the season and accessing the lake once or twice a week during the season. Outside of duck-hunting season, Sampair used the road two to five times per year, and mowed it “maybe once a year.” Strang testified that he knew about Sampair’s use of Lot 11 to access the lake but was not sure if Sampair used Lot 12 to access the lake. Strang was not asked if he was aware that Sampair used a portion of Lot 13 to access the lake.

In 1998, Strang moved out of the house on Lot 14. The following year, he and Quist divorced and, as part of the divorce decree, Quist was awarded the undeveloped Lot 13. Shortly thereafter, in early 2000, Sampair and his wife sold Lot 12 to respondent Todd Erickson, and Quist sold Lot 13 to Richard and Cheryl Vogel. Both sales were by contract for deed.

In May 2001, Erickson obtained a plot plan for Lot 12 from a licensed land surveyor. He used the plot plan to apply for a building permit. Both the plot plan and building permit reflect the original plat and show that Erickson’s proposed house and garage would be approximately 10 feet from the platted boundary with Lot 13. Both

¹ Sampair testified that, while building the road, he initially crossed onto Lot 13 to avoid a low area, but after discovering “cut limbs . . . pushed along the string line,” he redirected the road to “his side” of the string line.

documents show a straight-line boundary between lots 12 and 13 from Wallmark Lake Drive to Wallmark Lake and that a portion of Sampair's road is located on the Lot 13 side of that line. Erickson testified that the building permit does not say the straight line is a boundary line, and he considered it just "a reference line." Erickson testified that the realtor told him that Lot 12 includes the road, which curves outward toward Lot 13 from the proposed house shown on the documents. On appeal, Erickson argues that the road already constituted the boundary between lots 12 and 13, regardless of what boundary line is shown on the plat. Erickson constructed the house, which is 10.76 feet from the platted boundary between lots 12 and 13, and he took full title to Lot 12 in February 2002. The Ericksons contoured, landscaped, and maintained the land up to the road and maintained the road.

In January 2008, the Vogels sold Lot 13 to appellants John J. Symiczek, Linda D. MacEachern, and James A. Symiczek (the Symiczeks). Shortly thereafter, James Symiczek (Symiczek) strung a line from corner markers of lots 12 and 13 near Wallmark Lake Drive and Wallmark Lake. Erickson testified that the line ran "halfway over the road and . . . alongside the road," crossing onto Erickson's driveway then continuing on Symiczek's side of the landscaping installed by Erickson. In the spring of 2008, the Ericksons planted some small pine trees along Symiczek's line. In late fall or early winter, Symiczek asked Erickson about a partially dead tree, wondering if Erickson knew whose property the tree was on. Erickson said he did not know and that Symiczek would have to get a survey to know for sure. Symiczek obtained a survey on which the

boundary line corresponded with the boundary lines shown on Erickson's plot plan and building permit, showing that Sampair's road is partially on Lot 13.

On June 4, 2009, Symiczek notified the Ericksons by letter that he "want[ed] the items [they had] installed on [his] property removed on or before June 30, 2009," including the Ericksons' garage floor-drain line, the concrete from their driveway that crosses onto Lot 13, the electrical sprinkler valve box, the sprinkler heads on Lot 13, all landscaping materials, all newly planted trees, and a 12-inch drainage pipe. The Ericksons responded through counsel and "demand[ed] that [Symiczek] cease and desist from entering onto [their] property and damaging their personal property and landscaping." The Ericksons claimed that the disputed property belonged to them because (1) Symiczek was relying on a mistaken survey or (2) they had acquired the land through adverse possession. In response, Symiczek built a 400-foot-long wall out of stacked firewood along what he believed to be the platted boundary between lots 12 and 13. He posted the wall with "no trespassing" signs facing Lot 12.

The Ericksons sued the Symiczeks, asserting ejectment, trespass, adverse possession, boundary by practical location, reformation of deeds, estoppel and acquiescence, violation of restrictive covenants, treble damages, and private nuisance. The Symiczeks asserted counterclaims for ejectment, trespass, slander of title, nuisance, and other tort claims. The Symiczeks moved for summary judgment, and the district court denied their motion. Shortly before trial, Erickson hired a survey company to survey his property. The survey identifies the platted boundary consistent with previous surveys and provides a legal description for a proposed 15-foot access easement over

Sampair's road and for approximately 0.19 acres of land north of the road, labeled as land acquired by "adverse possession."

Following a bench trial, the district court awarded the disputed property to the Ericksons on the theory of practical location by estoppel. The Symiczeks moved for an amended order or, in the alternative, a new trial; the Ericksons moved for amended findings of fact. The district court denied the parties' motions. The Symiczeks appeal, arguing that the Ericksons failed to establish the practical location of a boundary line by estoppel.

D E C I S I O N

A boundary determination presents mixed questions of fact and law. *Slindee v. Fritch Investments, LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009). We review the district court's factual determinations for clear error. *Id.* But whether these factual determinations support the district court's legal conclusions is a question of law, subject to de novo review. *Id.*

Under Minnesota law, a district court may establish the "practical location" of a boundary line between two adjoining properties. *Theros v. Phillips*, 256 N.W.2d 852, 858 (Minn. 1977); *see* Minn. Stat. § 559.23 (2012). There are three methods of establishing the practical location of a boundary line: acquiescence, agreement, and estoppel. *Theros*, 256 N.W.2d at 858. To establish the practical location of a boundary line by estoppel, "[t]he party whose rights are to be barred must have silently looked on with knowledge of the true line while the other party encroached thereon or subjected himself to expense which he would not have incurred had the line been in dispute." *Id.*

Estoppel “requires knowing silence on the part of the party to be charged and unknowing detriment by the other.” *Id.* at 859. “Because the effect of a practical location is to divest one party of property that is clearly and concededly his by deed, the evidence establishing the practical location must be clear, positive, and unequivocal.” *Id.* at 858. The evidence must be strictly construed, “without resort to any inference or presumption in favor of the disseizor, but with the indulgence of every presumption against him.” *Phillips v. Blowers*, 281 Minn. 267, 269-70, 161 N.W.2d 524, 527 (1968) (quotation omitted).

Here, the district court analyzed two discrete events—the construction and use of Sampair’s road in the mid-1990s and Erickson’s subsequent lot development—and determined that each established a boundary by practical location by estoppel. But on appeal, the Ericksons rely solely on Sampair’s road construction, implicitly conceding that their development of the disputed property does not establish a boundary by practical location by estoppel. Because the record does not clearly establish (1) the Vogels’s *knowing* silence while observing the encroachment and (2) *unknowing* detriment by the Ericksons, we accept this concession and focus our analysis on construction and use of Sampair’s road.

Based on evidence presented at trial, the district court found that the string that Strang strung between the shared corners of lots 12 and 13 “was never more than one to three feet south of the boundary line.” The district court also found that although Sampair believes that the road he constructed did not cross Strang’s string, “overwhelming” evidence shows that the road was constructed several yards into Lot 13. The district court found that Sampair constructed the road by “removing smaller trees and

stumps, routing an eight foot wide roadway around and between larger trees and installing fill and a culvert,” and thereafter Sampair treated the southern border of the road as the boundary between lots 12 and 13. These findings are supported by the record, are not clearly erroneous, and support a conclusion that Strang had knowledge of the true boundary and that Sampair encroached on the boundary and subjected himself to expenses inconsistent with a disputed boundary.

But estoppel also requires clear, positive, and unequivocal evidence that Strang silently looked on as Sampair encroached on Lot 13. *See Theros*, 256 N.W.2d at 858. The district court concluded that this element is satisfied because the record contains evidence that Strang walked on Lot 13 daily and no evidence that Strang objected to the road. But the district court did not find, and the record does not establish, that Strang walked in the area where Sampair was clearing a road or was *aware* of the road, which ran through a densely wooded portion of the properties. Strang testified that he was not sure if Sampair accessed the lake via Lot 12. And he was never asked about any knowledge that Sampair was using a portion of Lot 13 to access the lake. Strang also testified that an aerial photo from October 1994 depicted “[n]o road entering [Lot] 12 at all.” Strang testified that he moved away from Lot 14 in 1998. Sampair testified that he began constructing the road in approximately 1994, it took a couple of summers to complete, and his use of the road was minimal except during duck-hunting season, when he used the road once or twice per week. Because the district court was required to make all inferences and presumptions against the Ericksons, the district court erred by concluding that the Ericksons proved by *any* evidence that Strang silently looked on

while Sampair encroached on Lot 13, let alone clear and unequivocal evidence of such conduct. *See id.*; *Phillips*, 281 Minn. at 269-70, 161 N.W.2d at 527.

Estoppel also requires that Sampair's encroachment was unknowing. *See Theros*, 256 N.W.2d at 859. The district court found that while Strang's string approximated the boundary between lots 12 and 13, missing it by no more than one to three feet, Sampair built the road "well over the lot-line between Lots 12 and 13. . . . In certain areas, [the] road was constructed several yards into . . . Lot 13." Indulging every presumption against the Ericksons, as is required, it must be presumed that because the string was visible when Sampair built the road, he knowingly encroached on Lot 13. *See Phillips*, 281 Minn. at 269-70, 161 N.W.2d at 527.

Because Sampair's road construction does not meet the elements of a boundary by practical location by estoppel, the district court erred by determining that Sampair's road established a boundary by practical location. We therefore reverse the judgment awarding the disputed property to the Ericksons.

Reversed.