

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2328**

Phillip C. Juntti, et al.,
Respondents,

vs.

James L. Bedore,
Appellant,

and

Craig D. Anderson, et al.,
Respondents,

vs.

Phillipp C. Juntti, et al.,
Respondents,

vs.

James L. Bedore,
Appellant.

**Filed August 24, 2010
Affirmed
Bjorkman, Judge**

Itasca County District Court
File No. 31-CV-08-0378

Richard K. Sellman, Sellman Law Office, Hibbing, Minnesota (for respondents Phillip C. Juntti and Victoria L. Juntti)

Virginia J. Knudson, Borden, Steinbauer, Krueger & Knudson, P.A., Brainerd, Minnesota (for appellant)

Andrew M. Shaw, Law Office of Shaw & Shaw, P.A., Deer River, Minnesota (for respondents Craig D. Anderson and Laurel J. Anderson)

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant James L. Bedore challenges the entry of judgment in favor of respondents Phillip C. and Victoria L. Juntti and Craig D. and Laurel J. Anderson in this boundary-line dispute concerning lakeshore property. The district court found that the Andersons obtained 88 feet of lakeshore from the Junttis through adverse possession and that the Junttis established the eastern border of their property by practical location. Because the district court did not abuse its discretion by denying Bedore's request to amend his answer to assert an arbitration defense and because the district court's findings of fact are not clearly erroneous, we affirm.

FACTS

The Junttis purchased 200 feet of property located on Little Bear Lake in Itasca County from Bedore in 1994. Bedore originally owned 800 feet of lakeshore property and decided to sell both the eastern and western 200 feet. The Junttis visited the property prior to the sale, but the property was too overgrown for them to get a clear indication of its boundaries. It was important to the Junttis that they obtain 200 feet of lakeshore

because they intended to build a cabin on the property, and Itasca County required that minimum footage.

Bedore and the Junttis orally agreed that the Junttis would purchase the 200 feet of lakeshore property on a contract for deed. Bedore sent the Junttis a proposed purchase agreement and a separate agreement that required all disputes to be resolved through arbitration. He also told the Junttis that he would eventually have the property surveyed.

On July 29, 1994, Bedore and the Junttis finalized the sale. After the papers were signed, Bedore and the Junttis went to the property together. The Junttis testified that Bedore directed them to a cedar stake located near the lakeshore along the western end of the property and advised them to measure 200 feet to the east of that stake to fix the eastern boundary of the property. The Junttis found the cedar stake, measured 200 feet to the east, and tied flagging ribbons to trees and bushes to mark what they believed to be the property line. The ribbons remained there for a couple of years.

In reliance on the estimated boundaries, the Junttis began improving their property. In October 1994, they constructed a driveway and later installed a dock. They also began storing a trailer and other personal property on the eastern side of the property. The next summer, the Junttis placed an outhouse along the eastern border of the property. The Junttis made the final payment on their contract for deed, and Bedore delivered a warranty deed on August 9, 1999.

In 2003, Bedore began a preliminary survey of his original lot. The survey revealed that the actual western border of the Junttis' property was likely to be significantly west of the cedar stake. In 2004, a formal survey confirmed that the Junttis'

western property line was 88 feet to the west of the cedar stake. Bedore provided a copy of the survey to the Junttis and asked them to remove their personal property from the eastern portion of their property (the eastern disputed area). In 2007, Bedore hired someone to remove the Junttis' personal property from the eastern disputed area.

The property to the west of the Junttis, including the area 88 feet west of the cedar stake (the western disputed area) has been occupied by the Andersons and their predecessors-in-title since 1960. The Andersons used and improved the western disputed area at all times, believing that the cedar stake marked the border of the Juntti property.

On January 25, 2008, the Junttis sued Bedore, seeking equitable relief based on Bedore's misrepresentation of the boundary lines. Bedore counterclaimed for trespass and ejectment. Later that year, the Andersons sued the Junttis, alleging possession of the western disputed area under theories of adverse possession and boundary by practical location. The Junttis brought Bedore into the Anderson lawsuit, alleging that Bedore breached the warranty of title and seeking to modify the property descriptions so that the Junttis maintained 200 feet of lakeshore. The two actions were consolidated for trial.

A week before trial, Bedore sought leave to amend his answer to assert the defense that his dispute with the Junttis was subject to arbitration. The district court provisionally allowed Bedore to introduce evidence of the arbitration agreement.

The parties presented their evidence to the district court in a two-day trial. The district court found that the Andersons own the western disputed area by adverse possession, that the eastern disputed area belongs to the Junttis under the theory of boundary by practical location, and that the arbitration agreement does not bar the Junttis'

claims against Bedore. Bedore moved for a new trial and amended findings. The district court denied Bedore's motion for a new trial and entered judgment against Bedore and the Junttis. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by denying Bedore's request to amend his answer to assert an arbitration defense.

Under Minn. R. Civ. P. 8.03, an affirmative defense such as an arbitration agreement must be set out in the first set of responsive pleadings. Failure to plead an affirmative defense, without later amendment of the pleadings, waives the defense. *Rehberger v. Project Plumbing Co.*, 295 Minn. 577, 578, 205 N.W.2d 126, 127 (1973). The district court has the discretion to permit amendment of a pleading and "leave shall be freely given when justice so requires." Minn. R. Civ. P. 15.01. But "[t]he [district] court has wide discretion to grant or deny an amendment, and its action will not be reversed absent a clear abuse of discretion." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Bedore argues that the district court abused its discretion by denying him leave to amend his answer. But district courts are not required to grant late amendment of pleadings to assert an arbitration defense when doing so "would give unfair opportunity to select a different forum and could further delay these proceedings." *Bros. Jurewicz v. Atari, Inc.*, 296 N.W.2d 422, 429 (Minn. 1980). The party requesting arbitration in *Bros. Jurewicz* answered, counterclaimed, and allowed the case to proceed for nearly a year before seeking leave to amend its answer. The supreme court affirmed the district court's

denial of the motion, citing the fact that the moving party “allowed this dispute to proceed through the judicial system to the point at which the issues raised were ripe for decision in [the district court]” rather than through arbitration. *Id.*

Bros. Jurewicz is substantially on point with the facts here: Bedore sought to amend his pleadings to include the jurisdictional defense of the arbitration agreement one week prior to trial, after litigating the case for over a year. As in *Bros. Jurewicz*, Bedore could have raised the defense much earlier in the proceedings and his decision not to do so compromises the integrity of the proceeding. Allowing a case to proceed to the eve of trial before asserting the defense of an arbitration agreement “would give unfair opportunity to select a different forum and could further prolong [the] proceedings.” *Id.* On this record, we conclude that the district court did not abuse its discretion in denying Bedore’s motion to amend his answer.¹

II. The district court did not clearly err by designating the Junttis’ eastern border by practical location.

The determination of a boundary by a district court is a factual determination that we review for clear error. *Wojahn v. Johnson*, 297 N.W.2d 298, 303 (Minn. 1980). “Upon appeal the burden is on the appellant to show that there is no substantial evidence reasonably tending to sustain the [district] court’s findings.” *Gifford v. Vore*, 245 Minn. 432, 434, 72 N.W.2d 625, 627 (1955).

The practical location of a boundary line can be established in three ways:

¹ The district court also considered the merits of Bedore’s argument concerning the arbitration agreement. Because we conclude that the district court did not abuse its discretion in denying the motion to amend, we decline to review the merits of the defense.

(1) Acquiescence: The location relied upon must have been acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations.

(2) Agreement: The line must have been expressly agreed upon by the interested parties and afterwards acquiesced in.

(3) Estoppel: The 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.

Theros v. Phillips, 256 N.W.2d 852, 858 (Minn. 1977). A boundary by practical location based on express agreement requires two elements: that there be an agreement setting an “exact, precise line” and that the agreement be acquiesced to “for a considerable time.” *Slindee v. Fritch Inv., LLC.*, 760 N.W.2d 903, 907 (Minn. App. 2009).

The district court found that Bedore expressly agreed that the eastern border of the Junttis’ property lies 200 feet to the east of a cedar stake located on what was thought to have been the Anderson/Juntti boundary line. Substantial evidence supports this finding. The Junttis traveled to the property with Bedore on the day of the sale, and Bedore told them that the western boundary of their property was marked by a cedar stake and that the eastern boundary was exactly 200 feet from that stake. While Bedore denies mentioning a stake, the district court specifically found that his denial was not credible. This court will defer to the district court’s credibility determinations. Minn. R. Civ. P. 52.01. The parties agree that the northeast corner of the Anderson property is marked by a survey pin. The boundary established by measuring 200 feet east of both the cedar

stake and the survey pin is an “exact, precise line” for purposes of establishing a boundary by agreement. *See Slindee*, 760 N.W.2d at 907 (setting forth the first element of practical location of boundary by acquiescence).

With respect to the second element, that the boundary must have been acquiesced to “for a considerable time,” the district court found that Bedore and the Junttis respected the eastern border of the Junttis’ property for a period of nine years, from the sale of the property in 1994 to the time the informal survey was conducted in 2003. The district court cited to *Nadeau v. Johnson*, 125 Minn. 365, 367, 147 N.W.2d 241, 242 (1914), a case involving ten years of acquiescence to a boundary, in concluding that nine years is a “considerable time.” Bedore argues that *Nadeau* is distinguishable because the objecting property owner had himself used the line as a reference when conveying some of his property. *Nadeau*, 125 Minn. at 367, 147 N.W. at 242. But the Junttis placed a dock in the eastern disputed area, built a swimming beach there, and made other improvements to the property (including placing an outhouse close to the eastern border) in reliance on Bedore’s representation about the location of the eastern property line. It was not until the informal survey that Bedore challenged the location of the Junttis’ eastern boundary. We conclude that this nine-year period of acquiescence was sufficiently long to establish a boundary by practical location.

Alternatively, Bedore argues that even if the findings that support establishment of a boundary by practical location are not clearly erroneous, the district court erred in granting such relief sua sponte. We disagree. The Junttis’ complaint clearly sought equitable relief granting the Junttis’ possession of the eastern disputed area and the focus

of the trial was on Bedore's representations to the Junttis about the property lines and the Junttis' use of the eastern disputed area over the years. Bedore was able to, and did, fully present evidence relevant to the defense of a boundary-by-practical-location claim. The pleadings and course of the proceedings provided Bedore with sufficient notice that relief could be afforded under the theory of boundary by practical location and sufficient opportunity to respond prior to judgment. *See Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983) (noting that "a party must have notice of a claim against him and an opportunity to oppose it before a binding adverse judgment may be rendered"). On this record, we conclude that Bedore was not prejudiced by the district court granting relief on this theory.

The district court has broad discretion to fashion equitable remedies. *See Pooley v. Mankato Iron & Metal, Inc.*, 513 N.W.2d 834, 837 (Minn. App. 1994) ("A court may fashion equitable remedies based on the exigencies and facts of each case so as to accomplish justice."), *review denied* (Minn. May 17, 1994). Actions to determine adverse claims to real property are equitable actions. *Miller v. Hennen*, 438 N.W.2d 366, 371 (Minn. 1989). Once the factual basis for an adjusted boundary has been established, a district court is required to render a judgment acknowledging the new boundary. *Gabler v. Fedoruk*, 756 N.W.2d 725, 731 (Minn. App. 2008). Here, the district court had sufficient factual basis to determine that the boundary for the eastern disputed area was where the Junttis had assumed it to be. At that point, the district court did not have the discretion to decline entry of judgment based on establishment of a boundary by practical location. *Id.* at 734 (holding that "the district court erred as a matter of law by failing to

enter judgment recognizing the boundary by practical location after it determined that [the disseizors] had established the boundary by clear and convincing evidence”).

III. The district court did not clearly err by determining that the Andersons acquired the western disputed area by adverse possession.

To establish ownership by adverse possession, a party must show actual, open, hostile, exclusive, and continuous possession for the statutory period of 15 years. Minn. Stat. § 541.02 (2008); *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972). The disseizor must prove the elements of adverse possession by clear and convincing evidence. *Ehle*, 293 Minn. at 189, 197 N.W.2d at 462.

Bedore argues that the evidence was not sufficient to support the district court’s conclusion that the Andersons adversely possessed the western disputed area. Whether the elements of adverse possession have been met is a question of fact. *Wortman v. Siedow*, 173 Minn. 145, 148, 216 N.W. 782, 783 (1927); *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. App. 2003). A district court’s findings of fact will not be reversed unless they are clearly erroneous, giving deference to the district court’s credibility determinations. *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. App. 2002). “But whether the findings of fact support a district court’s conclusions of law and judgment is a question of law,” which is subject to de novo review. *Id.*

Bedore challenges only the element of actual possession. Bedore contends that because the Andersons left the shoreline portion of the western disputed area in its natural state, the actual possession requirement is not met. *See Gifford*, 245 Minn. at 437, 72 N.W.2d at 629 (stating that district court did not err in finding that disseizor did not use

land in its “wild and natural state”); *Nash v. Mahan*, 377 N.W.2d 56, 58 (Minn. App. 1985) (stating that disseizor who leaves land in “wild and natural” state cannot acquire title by adverse possession). We disagree.

The requirement of actual possession is based on the actions an actual owner would take under the circumstances. *See Skala v. Lindbeck*, 171 Minn. 410, 413, 214 N.W. 271, 272 (Minn. 1927) (“The law prescribes no particular manner in which possession shall be maintained or made manifest.”). The only requirement is that the possession give “unequivocal notice to the true owner that someone is in possession in hostility to his title.” *Id.* The evidence shows that the western disputed area was used in a way that is consistent with the normal usage of lakeshore property in the area. The Andersons kept a row of trees along the border to act as a privacy and noise barrier. They installed a dock in the western disputed area. They cleared some trees and planted new ones in the area and mowed along the property line. The district court’s findings were based on substantial record evidence and support the determination that the Andersons adversely possessed the western disputed area.

Affirmed.