STATE OF MINNESOTA
IN COURT OF APPEALS
A10-696

Michael N. Andersen,
Appellant,

vs.

James Crowson, et al.,
Respondents

Filed January 25, 2011
Affirmed
Wright, Judge

Dodge County District Court
File No. 20-CV-08-239

Robert G. Benner, Hilary R. Stonelake, Dunlap & Seeger, P.A., Rochester, Minnesota (for appellant)

Melanie J. Leth, Weber & Leth, PLC, Dodge Center, Minnesota (for respondents)

Considered and decided by Larkin, Presiding Judge; Wright, Judge; and Huspeni, Judge.*

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

WRIGHT, Judge

In this boundary dispute, appellant challenges the district court's determination that respondents established that they acquired title to a tract of land by adverse

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

possession and that the parties acquiesced in a boundary by practical location. Appellant also challenges the district court's decision granting respondents' motion to amend their pleadings to conform to the evidence at trial as to the amount of land in dispute. We affirm.

FACTS

This appeal arises from a dispute as to the location of the property line between two adjacent parcels of real property located in Dodge County. Appellant Michael N. Andersen owns land to the north and west of the disputed property line. Respondents James Crowson and De Ann Gillard Crowson own land to the south and east of the disputed property line. A tract of 1.65 acres located between the parties' properties is in dispute.

In March 2008, Andersen commenced this action against the Crowsons for ejectment and trespass. The Crowsons answered and counterclaimed to establish their ownership of the disputed tract by adverse possession, boundary by practical location, and mutual mistake. In their answer, the Crowsons provided a legal description of the tract for which they claimed ownership, which described a tract of approximately 1.25 acres. A bench trial followed, during which several witnesses testified.

The parties' properties and the tract in dispute were once held in common ownership by Jay Wheeler. Wheeler built a homestead, which is now owned and occupied by the Crowsons. The house that Wheeler built is just south of a tillable field. A dilapidated fence, which was likely erected by Wheeler, runs west along the southern boundary of the field and into the woods. The fence line then turns southwest to the

Zumbro River. When the homestead and fence were established, the land north of the fence was tillable, and the land south of the fence was wooded.

In 1974, Wheeler sold the tillable land north and west of the fence line to Leonard and Helen Carroll on a contract for deed. The contract for deed reserved for Wheeler approximately seven acres located immediately south and east of the land conveyed to the Carrolls. It was on this seven acres that Wheeler's homestead was located. The legal description of the property that Wheeler reserved was used for all subsequent conveyances. In 1975, the Carrolls assigned their contract for deed to Donovan and Dolores Quimby. In 1987, the Quimbys assigned their contract for deed to Andersen by quit claim deed. Andersen obtained title to the property by warranty deed in 1994.

In 1976, Wheeler sold his seven-acre homestead to Bert and Grace Surprenant on a contract for deed. This contract for deed contains the legal description that originated in the 1974 contract for deed to the Carrolls. In 1996, Bert Surprenant (Surprenant) obtained title to the property by warranty deed. Surprenant subsequently died, and his estate conveyed the property to the Crowsons in 2000.

The Crowsons own the approximately seven acres that Wheeler retained in his 1974 transfer to the Carrolls. Their residence is located in the northeast corner of the property. The property description in the Crowsons' deed is nearly identical to the description of the property that Wheeler reserved in the Carroll contract for deed. It describes the north and west boundaries as "[c]ommencing at the Northeast corner of [section 22], thence West along the North line of said Section a distance of 38 rods 8 feet to a point, thence South to the middle of the North middle fork of the Zumbro River."

The section line is located approximately 75 to 100 feet south of the dilapidated fence line and field's edge. The tract in dispute is the area between the legal description and the fence line and field's edge. The Crowsons maintain that they own all of the land south and east of the dilapidated fence line. Andersen contends that the legal description in the property records governs the boundaries.

When the Crowsons purchased the property, they received a plat drawing that indicated that the northern boundary was approximately 115 feet north of the house, which corresponds with the edge of the field to the north of the home. The grass was mowed from the house to the field's edge. The Crowsons believed that the edge of the field and woods was the northern property line and the dilapidated fence line was the western property line. They maintained existing trails through the woods, planted over a burn pit, and restored overgrown gardens. They maintained the land between their house and the field as their lawn by mowing and landscaping it. They removed several trees, and they planted trees and shrubs on the tract now in dispute. In 2001, the Crowsons moved two sheds onto the tract and used the buildings daily. They also erected a dog kennel, a deer stand, and a corral for a pony.

Corky Buckingham testified that he is familiar with both properties. As the Surprenants' son-in-law and a local mail carrier, Buckingham frequently visited the Surprenants when they lived on what is now the Crowsons' property. Buckingham testified that the Surprenants maintained the property up to the field as a lawn, used portions of the tract as gardens, and created a burn pit on the tract. No one other than the Surprenants attempted to use the tract. Buckingham rented the field from the Quimbys in

1986 and never farmed the land south of the dilapidated fence line. Based on his close relationship with Surprenant, Buckingham testified, Surprenant would have told him if a dispute had arisen about the tract.

Andersen acknowledged that the Surprenants maintained the disputed tract by mowing it and removing trees. But he testified that he gave Surprenant permission to mow the lawn up to the field. He acknowledged that the Crowsons used the disputed tract as if it was their own, erected structures, and placed personal property on the disputed tract. And he testified that he did not believe that his predecessors in title, the Carrolls and the Quimbys, ever used the property south of the dilapidated fence line for farming.

The evidence establishes that Crowson used the tract for hunting. On one occasion, a Department of Natural Resources (DNR) officer assisted Crowson in retrieving a deer that Crowson believed fled to Andersen's property after Crowson shot it. Crowson shot the deer from a deer stand located on the disputed tract. According to the DNR officer, both Crowson and Andersen referred to the dilapidated fence as the property line and agreed that Crowson was on his property when he shot the deer.

Andersen commissioned a survey of the Crowsons' property, which was completed in December 2007. The survey indicated that the northern boundary between the two properties was the line forming the border of section 15 and section 22. A survey commissioned by the Crowsons in January 2008 indicated the same boundary line. The Crowsons commissioned a second survey in September 2009 after the initiation of this action. This survey provided a legal description of the disputed tract and established that

the tract is approximately 1.65 acres. Both surveyors located a marker approximately 75 feet north of the section line embedded in the road bordering the eastern edge of the parties' properties. The marker, which the surveyors testified is a type used in the past as a boundary marker, is roughly aligned with the dilapidated fence line and the edge of the woods. The Crowsons' surveyor testified that a nonsurveyor may have mistaken the marker as an indication of the section corner. He also testified that the fence posts on the property appear to predate the property's legal description and are consistent with the type of fences historically placed to indicate property boundaries.

At the close of the trial, the Crowsons moved to amend their answer and counterclaim to include an additional .40 acres. The district court granted the amendment, thereby increasing the Crowsons' claim from 1.25 acres to 1.65 acres.

The district court found that the Crowsons established the true boundary by practical location or, in the alternative, ownership by adverse possession, and declared the Crowsons to be the owners of the disputed tract. The district court also concluded that the Crowsons' predecessors in title made a mutual mistake in drafting the legal description in the 1974 contract for deed between Wheeler and the Carrolls. This appeal followed.

D E C I S I O N

I.

Andersen argues that the district court erred by relying on Buckingham's testimony because the testimony lacked foundation. We review the district court's findings of fact for clear error and give due regard to the district court's opportunity to

judge witness credibility. Minn. R. Civ. P. 52.01. In doing so, we view the evidence in the light most favorable to the district court's judgment. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

The district court's findings that are expressly based on Buckingham's testimony relate to the Surprenants' activities on the disputed tract, Buckingham's relationship with Surprenant, and Buckingham's familiarity with the properties at issue. Andersen argues that, because Buckingham had no personal knowledge of whether the Surprenants' use of the disputed tract was permissive or hostile, the district court's findings lack evidentiary support.

Andersen raises this evidentiary objection to Buckingham's testimony for the first time on appeal. Generally, we will not consider an issue which was not raised before the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate court ordinarily will not consider matters not argued to and considered by district court). But we do so on this occasion because Buckingham's testimony is an important piece of evidence on which the district court relied. Our review of the record establishes that there is more than ample evidentiary foundation for Buckingham's testimony. Buckingham testified that he has been personally familiar with the disputed tract since the Surprenants obtained it. He delivered mail in the area six days a week for approximately 35 years and lived in close proximity to the property for more than 30 years. He also testified regarding his lengthy and close relationship with the Surprenants. He and his family members personally conducted activities on the disputed tract on behalf of the Surprenants and frequently visited the Surprenants' property over a period

of approximately 20 years. This evidence provides more than sufficient foundation for Buckingham's testimony as to the Surprenants' use of the disputed tract.

Andersen presented no evidence that impeached Buckingham's testimony. Nor did Andersen claim to have personal knowledge of the relationship between the Surprenants and Buckingham. Stating that its conclusions are based largely on credibility assessments of witnesses at trial, the district court found the evidence presented by the Crowsons to be credible, whereas Andersen's testimony and his witnesses "failed to convince [the district court] of facts advanced supporting [Andersen's] version or claims." In light of our deference to the district court's express credibility determinations and the evidentiary foundation that exists in the record, we conclude that the district court did not err by relying on Buckingham's testimony.

II.

Andersen challenges the district court's conclusion that the Crowsons established their ownership of the disputed tract by adverse possession. Whether the elements of adverse possession have been established is a question of fact, *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. App. 2003), which we review for clear error, Minn. R. Civ. P. 52.01. Whether the findings of fact support a district court's conclusions of law presents a question of law, which we review de novo. *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. App. 2002).

To establish ownership by adverse possession, a party must prove by clear and convincing evidence actual, open, hostile, exclusive, and continuous possession for the statutory period of 15 years. Minn. Stat. § 541.02 (2008); *Gandy Co. v. Freuer*, 313

N.W.2d 576, 578 (Minn. 1981); *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972). Because the Crowsons had used the disputed tract for only eight years when the action was filed, they meet the 15-year period only by tacking at least seven years of open, actual, hostile, continuous, and exclusive possession of the tract by their predecessors in title, the Surprenants. *See Ebenhoh*, 642 N.W.2d at 109 ("The possession of successive occupants, if there is privity between them, may be tacked to make adverse possession for the requisite period." (quotation omitted)). The Crowsons thus were required to demonstrate that both their use and the Surprenants' use of the tract met the elements of adverse possession for at least the entire 15-year period preceding the action.

The district court found that the Crowsons and their predecessors in title have had actual, open, continuous, and hostile possession of the disputed tract since approximately 1975, as evinced by their improvements to and use of the disputed tract as their own, in a manner that is open to and exclusive of another property owner's claim of rights, and without another property owner's permission. Andersen argues that the evidence does not support the district court's findings that there was continuous, hostile possession for the entire period and that such possession provided sufficient notice to Andersen that the Crowsons and their predecessors were exercising a claim of right.

A.

A disseizor establishes hostile use when the disseizor takes possession of land as if it were his or her own and excludes all others. *Engquist v. Wirtjes*, 243 Minn. 502, 504, 68 N.W.2d 412, 415 (1955). "[A]n individual can gain title by adverse possession 'even though the disseizor does not intend to take land not belonging to him so long as he does

intend to exclude all others.'" *Ganje*, 659 N.W.2d at 265 (quoting *Ehle*, 293 Minn. at 189, 197 N.W.2d at 462). Hostility does not imply "personal animosity or physical overt acts against the record owner." *Id.* at 268 (quotation omitted). It is sufficient that the disseizor occupies the land merely by a mistake as to a true boundary location. *Ehle*, 293 Minn. at 189-90, 197 N.W.2d at 462.

When use of property is permissive, there can be no prescriptive right, and adverse possession is defeated. *Dozier v. Krmpotich*, 227 Minn. 503, 507, 35 N.W.2d 696, 699 (1949). Andersen argues that the Surprenants' possession was not hostile because he permitted them to use the disputed tract. He also contends that his testimony about his discussions with Surprenant regarding the disputed tract and the lack of evidence establishing any disagreements over the boundary demonstrate that the Surprenants' use was permissive.

Indeed, Andersen testified that he permitted Surprenant to mow the tract between the section line and the field's edge. If found credible by the district court, this testimony would be sufficient evidence to defeat an adverse-possession claim. But when asked, Andersen did not identify a specific occasion or conversation establishing permissive use, and he was unable to recall Surprenant ever asking for permission. No evidence corroborates Andersen's testimony, and the district court expressly found Andersen's version of events lacking credibility. Absent credible evidentiary support, Andersen's claim that the Surprenants' activities on the tract were permissive fails.

The Crowsons were required to establish hostile possession, which requires taking possession so as to exclude others. *See Ganje*, 659 N.W.2d at 268 ("[H]ostility

contemplates the disseizor entering and taking possession of the land as if it were the disseizor's and owning it with the intention of excluding all others."). Crowson testified as to his hostile possession. Both Buckingham and Andersen testified that the Surprenants regularly maintained the disputed tract up to the dilapidated fence line, and Buckingham testified that they made substantial landscaping changes to the disputed tract. This evidence is consistent with hostile possession as found by the district court. The record reflects no evidence that Andersen ever used the disputed tract himself, and Andersen's testimony, which the district court did not find credible, is the only evidence that he asserted an ownership claim to the disputed tract. Our review establishes that the record amply supports the district court's finding that the Surprenants possessed the disputed tract as if it were their own with the intention of excluding others.

B.

Andersen next argues that the Crowsons' period of possession cannot be tacked to the Surprenants' period of possession because neither the Surprenants' nor the Crowsons' use of the disputed tract gave Andersen notice that they claimed exclusive rights to it. Therefore, he argues, the Crowsons failed to establish continuous adverse possession for the statutory period.

The law does not require any particular manner by which an adverse possessor must possess disputed property. *Ganje*, 659 N.W.2d at 266. It is sufficient if "visible and notorious acts of ownership have been continuously exercised over the land for the time limited by the statute." *Id.* at 267 (quotation omitted). The possession must give "unequivocal notice to the true owner" that someone possesses the land in hostility to the

true owner's title. *Id.* at 266 (quoting *Skala v. Lindbeck*, 171 Minn. 410, 413, 214 N.W. 271, 272 (1927)).

Andersen again relies on his contention that the Surprenants' use of the disputed tract was permissive, arguing that, because he did not object to the Crowsons' activities on the disputed tract, their use also was permissive. But the credible evidence establishes neither that Andersen had possession of the property nor that he granted permission to the Crowsons to use the disputed tract.

Relying on *Stanard v. Urban*, 453 N.W.2d 733 (Minn. App. 1990), *review denied* (Minn. June 15, 1990), and *Gifford v. Vore*, 245 Minn. 432, 72 N.W.2d 625 (1955), Andersen also claims that the Surprenants' and the Crowsons' activities on the disputed tract, such as mowing, maintaining trails, planting trees and shrubs, and storing equipment, are "maintenance" activities, which, he asserts, do not constitute sufficient use to establish adverse possession. In *Stanard*, we held that the following activities conducted on disputed lakeshore property constituted "occasional and sporadic" use and, therefore, failed to satisfy adverse possession: (1) mowing and maintaining the property each summer, (2) storing lake equipment on the property each winter, and (3) allowing children and grandchildren to play on the property. 453 N.W.2d at 735-36 (citing *Romans v. Nadler*, 217 Minn. 174, 180-81, 14 N.W.2d 482, 486 (1944) (observing that occasional trespass onto neighboring property to trim hedges and mow lawn is insufficient basis to acquire prescriptive rights in a neighbor's property)). The facts in *Stanard*, however, are distinguishable from those here. The disputed tract that we consider is immediately adjacent to the claimants' and their predecessors' year-round,

permanent residence. We also distinguish *Gifford*, in which the Minnesota Supreme Court rejected an adverse-possession claim to disputed property that had been left in its wild and natural state. 245 Minn. at 436-37, 72 N.W.2d at 628-29. Here, Andersen did not contend, and the evidence does not support, that the disputed tract was left in a wild and natural state. The district court found that the Crowsons' and Surprenants' activities on the disputed tract were continuously and openly exercised in a manner that was sufficient to give notice to Andersen that the Crowsons and the Surprenants claimed ownership rights to the exclusion of others. The evidence supports this factual determination. The Crowsons and the Surprenants cultivated and used the disputed tract on an ongoing basis as typical homeowners would use the property immediately surrounding their dwelling. "[F]act-intensive adverse-possession determinations rely largely on the credibility of witnesses and the weight, if any, to be given to their testimony." *Ganje*, 659 N.W.2d at 269. In light of the substantial record support for the district court's findings and the deference we afford the district court's credibility determinations, the district court did not err by concluding that the Crowsons and their predecessors maintained continuous, open, hostile, and exclusive use of the disputed tract for the statutory period necessary to establish adverse possession.

III.

Andersen also challenges the district court's conclusion that the Crowsons established the true boundary line by practical location. A district court's determination of a boundary, including whether a landowner acquiesced in a boundary by practical location, ordinarily is a question of fact, which we review for clear error. *Wojahn v.*

Johnson, 297 N.W.2d 298, 303 (Minn. 1980); *Theros v. Phillips*, 256 N.W.2d 852, 858-59 (Minn. 1977). To prevail on appeal, Andersen must establish that the record lacks "substantial evidence reasonably tending to sustain the trial court's findings." *Gifford*, 245 Minn. at 434, 72 N.W.2d at 627.

Under the doctrine of boundary by practical location, an adjoining landowner may establish that the parties have mutually relocated the boundary between their properties somewhere other than the deed-based property line. *See Theros*, 256 N.W.2d at 858. A boundary by practical location may be established in three ways: (1) by acquiescence for a sufficient length of time to bar a right of entry under the statute of limitations, (2) by an express agreement of the parties claiming the land on both sides of the line and then by acquiescence, or (3) by estoppel. *Id.*; *Gifford*, 245 Minn. at 436, 72 N.W.2d at 628; *Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 849 (Minn. App. 2001). The evidence establishing a boundary by practical location must be "clear, positive, and unequivocal." *Gifford*, 245 Minn. at 436, 72 N.W.2d at 628.

When adjoining landowners occupy their respective premises up to a certain line that they both recognize and acquiesce in for 15 years, they are precluded from contesting that boundary line. *Amato v. Haraden*, 280 Minn. 399, 403, 159 N.W.2d 907, 910 (1968); *see* Minn. Stat. § 541.02 (establishing 15-year period of limitations for real-estate actions). Acquiescence requires actual or implied consent to some action by the disseizor, such as construction of a boundary or other use of the disputed property, and acknowledgement of that boundary by the disseized party for an extended period of time. *Engquist*, 243 Minn. at 507-08, 68 N.W.2d at 417; *LeeJoice v. Harris*, 404 N.W.2d 4, 7

(Minn. App. 1987). The disseizor must take some action to demarcate an actual boundary by erecting a barrier or making some use of the land; otherwise there is not an identifiable boundary in which the disseized can acquiesce. *Pratt*, 636 N.W.2d at 850; *see also Gifford*, 245 Minn. at 434-36, 72 N.W.2d at 627-28 (holding that when disseizor claimed that she marked boundary with rocks, flowers, and iron monuments but disseized did not recognize these objects as asserting a boundary line, no boundary line was acquiesced in). To demonstrate acquiescence in a boundary location, the line must be "certain, visible, and well-known." *Beardsley v. Crane*, 52 Minn. 537, 546, 54 N.W. 740, 742 (1893). When evidence of the boundary line is unclear or contradictory, acquiescence in that boundary has not been demonstrated. *Theros*, 256 N.W.2d at 859.

The district court found that the parties and their predecessors in title acquiesced in the fence line, the boundary between the tillable and non-tillable land, as the property line since 1975. Andersen contends that the record does not support the district court's finding because his uncontroverted testimony establishes that he permitted the Surprenants and the Crowsons to use the tract, which indicates that he did not acquiesce to a boundary different from that described in the deed. But the district court did not credit, and the record does not support, Andersen's contention that he permitted the Crowsons' and Surprenants' use of the disputed tract. Andersen's argument, therefore, is unavailing.

The Crowsons presented substantial evidence, which the district court found credible, that Andersen acquiesced in the dilapidated fence line and field edge as the certain, visible, and well-known boundary between their properties. Crowson testified

that he planted tree seedlings on the disputed tract near the edge of the field, and Andersen asked him to replant the trees farther away so that they would not encroach on the field. Andersen neither claimed that the trees were actually on his property nor objected when Crowson replanted the trees on the disputed tract, several feet south of the field. Buckingham testified, and Andersen acknowledged, that the Surprenants and the Crowsons were the sole users of the disputed tract during their respective periods of residence. Photographs depict a clear change in the topography at the location of the boundary line asserted by the Crowsons. The Crowsons also presented evidence establishing that, since the Surprenants purchased the property, the dilapidated fence line was treated as the western property line, and the edge of the field and woods was treated as the northern property line.

The district court's finding that the parties acquiesced in the dilapidated fence line and field edge as the boundary between their properties is supported by strong, persuasive evidence. The district court did not commit clear error by concluding that the boundary by practical location was established for the requisite period of time.[1]

IV.

Andersen also argues that the district court erred by granting the Crowsons' motion to amend their answer and counterclaim. Rule 15.02 provides:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such

[1] Andersen also challenges the district court's conclusion that a mutual mistake existed in the 1974 property description. Because we determine that adverse possession and boundary by practical location were properly decided, we need not address this challenge.

> amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time . . . . If evidence is objected to at the trial on the ground that it is not within the issues raised by the pleadings, the court may allow the pleadings to be amended and shall do so freely when . . . the objecting party fails to satisfy the court that admission of such evidence would prejudice maintenance of the action or defense upon the merits.

Minn. R. Civ. P. 15.02. Consent to litigate issues not raised by the pleadings is commonly implied when a party fails to object to evidence outside the scope of the pleadings or introduces evidence relating to such issues. *Roberge v. Cambridge Coop. Creamery Co.*, 243 Minn. 230, 234, 67 N.W.2d 400, 403 (1954). A motion to amend the pleadings should be freely granted unless the amendment would result in prejudice to the other party. *Hughes v. Micka*, 269 Minn. 268, 275, 130 N.W.2d 505, 510 (1964). We will not reverse the district court's decision to grant amendment of the pleadings absent a clear abuse of discretion. *Lake Superior Ctr. Auth. v. Hammel, Green, & Abrahamson, Inc.*, 715 N.W.2d 458, 474 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006).

The legal description of the property the Crowsons claimed in their answer and counterclaim identified approximately 1.25 acres. This area was detailed in a survey conducted in January 2008. The September 2009 survey identified the disputed tract as containing 1.65 acres. The additional .40-acre tract is located along the western property line extending south to the river. The district court permitted the Crowsons to amend their answer and counterclaim to increase the claimed tract by .40 acres, reasoning that neither party was prejudiced by the amendment because both had notice of the dispute and the issues.

Andersen argues that he was surprised to discover at trial that the Crowsons were claiming the additional .40-acre tract; and he contends that he would have presented additional evidence as to the use and maintenance of this tract. But the record belies this argument. At trial, attorneys and witnesses for both Andersen and the Crowsons referred to the disputed tract as the land south and east of the dilapidated fence line, which included the disputed .40-acre tract. Witnesses testified about the location of the western boundary of the Crowsons' property, and evidence was presented as to the Crowsons' activities on the disputed .40-acre tract. The record also establishes that remnants of a barbed-wire fence remain on the disputed .40-acre tract and that Andersen once acknowledged the fence remnants as the property line. Andersen did not object to the admission of the September 2009 survey, which clearly indicates that the area marked as "Parcel B" comprises 1.65 acres and contains the .40-acre tract. And throughout the trial, the attorneys and witnesses referred to "Parcel B" when discussing the disputed tract.

Andersen was fully apprised of the Crowsons' claim to the entire 1.65-acre tract, which included the western .40-acre tract, and he mounted a challenge to the claims made as to the entire 1.65-acre tract. Accordingly, the district court did not abuse its discretion by granting the motion to amend the pleadings to conform to the evidence at trial.

Affirmed.