STATE OF MICHIGAN

COURT OF APPEALS

CHRIS CROSBY, Plaintiff/Counter Defendant-Appellee,	UNPUBLISHED November 19, 2009
v	No. 285764 Oceana Circuit Court
SHARON POST, J. DOUGLAS PARK and JAMES C. SHULL LIVING TRUST, by its Trustee JAMES C. SHULL, Defendants/Counter Plaintiffs-Appellants.	LC No. 07-006455-CH

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Defendants appeal as of right from the entry of a judgment in favor of plaintiff based on acquiescence and dismissal of defendants' counterclaims of trespass and nuisance in this boundary dispute. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendants contend on appeal that the trial court committed clear error in determining that a fence line was originally intended as a boundary line, that plaintiff farmed the disputed area, and that the court improperly relied on public policy considerations in rendering its decision. Defendants also argue that the facts and evidence do not support a finding of acquiescence to the boundary.

Actions to quiet title are equitable in nature, and reviewed by this Court de novo. *Wengel v Wengel*, 270 Mich App 86, 91; 714 NW2d 371 (2006). A trial court's findings of fact will be reversed only if they are clearly erroneous. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008).

Plaintiff owns the property on the west side of the disputed boundary and defendants own property to the east. Plaintiff acquired his property in 1991 from his parents who had sole possession of the property since 1954. Defendant James C. Shull Living Trust owns the northern half of the property to the east of the disputed boundary. James Shull is the trustee of defendant James C. Shull Living Trust, which owns the northern half (20 acres) of the property to the east of the disputed boundary. Shull purchased the property from his uncle and has owned the

property from 1979 until it became trust property in 1990. Shull's uncle also sold the southern 20 acres that borders the disputed boundary to Harold Yanz in the early 1970s. Yanz deeded this property to defendant Sharon Post in 1992, who in turn deeded the property to herself and defendant J. Douglass Park as tenants in common in 2002. The boundary is a quarter mile in length and begins at a road on the north perimeter of the property and terminates at the southern end of a 40-acre section of land. The boundary area is wooded on defendants' side. On plaintiff's side, the boundary area is wooded in the northern section and contains an asparagus field flanked by a small dirt service road and a grassy area near the trees to the east in the southern section.

A 2005 land survey produced this boundary dispute. The survey established a boundary that did not change at the northern end of the property, but was nearly 30 feet to the west of where plaintiff believed the boundary was at the southern end by the asparagus field. Plaintiff asserted that a line of large maple trees and the remnants of an old fence located next to the line of trees have always marked the boundary between the parcels.[1] Defendants assert that the fence does not establish the boundary because it was built over 100 years ago as a corral, is not visible, and the trees are not in a line, but rather are among many trees in a forest. Defendants contend that the actual boundary line is consistent with the survey results.

A claim of acquiescence to a boundary line merely requires a showing that the parties acquiesced to the line and treated the line as the boundary for the requisite 15-year statutory period. *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996); MCL 600.5801(4). If the owner of property that is contained within the recorded boundary does not take action against the possession of this property by another within the statutory period, the owner is barred from disputing the new property line because of acquiescence to its establishment. *Sackett*, *supra* at 681-682; see also *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993). A claim of acquiescence to a boundary line may be established irrespective of whether there has been a bona fide controversy regarding the boundary. *Sackett*, *supra* at 681. Both parties must merely believe that the boundary is the property line and treat it as such. *Kipka*, *supra* at 439. The relevant inquiry is whether the evidence presented demonstrates that the parties treated a particular boundary line as the property line. *Walters v Snyder (After Remand)*, 239 Mich App 453, 458; 608 NW2d 97 (2000) (*Walters II)*. At trial, this view of the boundary is established based on a preponderance of the evidence. *Walters v Snyder*, 225 Mich App 219, 223; 570 NW2d 301 (1997) (*Walters I*).

Defendants contend that the circuit court clearly erred in finding that the fence line was originally constructed as a boundary fence. Defendants assert there is no evidence to support that the fence was erected as a boundary fence and they demonstrated that the fence was erected for animal containment purposes. However, as the circuit court noted, even accepting that the fence was erected for animal containment does not preclude the possibility that it was also erected to serve the simultaneous purpose of a boundary fence. In support of this finding is

[1] The lines disappear about 200 feet from the road to the north because the area becomes swampy.

testimony by the surveyor who opined that it was not unusual for old line fences to be correctly anchored at the road, but deviate from the surveyed line as the fence gets further from the road. The surveyor indicated that this fence looked like a line fence because it was anchored in the correct position at the road and continued in a straight line as evidenced by old fence posts and the large trees contained in the line. There was also testimony that the old fence line was consistent with the eastern boundaries of the properties to the north and south of plaintiff's property. Based on the evidentiary support, the trial court's ruling was not clearly erroneous.

Next, defendants argue that the circuit court erred in finding that plaintiff farmed the disputed area. The surveyor testified that the land west of the fence and tree line was cleared for a farm field. Plaintiff stated that he and his family have been farming asparagus in this field since 1957 but acknowledged that the proximity of planting to the fence and tree line has varied. Plaintiff said he planted closer to the trees when he planted other crops from 1991 through 1994. Plaintiff and his brother testified that room for farm equipment to move was always left around the edge of the field. Although plaintiff did not demonstrate the continuous existence of crops up to the tree and fence line, the circuit court did not clearly err in finding that plaintiff routinely farmed the area.

Defendants also argued it was clear error for the circuit court to rule against them because adjusting this boundary would affect other property owners. The purpose of the rule of acquiescence is to promote the peaceful resolution of boundary disputes. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). While the court did discuss this policy as support for its decision, it also indicated the existence of "a wealth of information to support the finding that [the boundary line] existed for almost a 100—a 100 years." Although the circuit court's declaration was consistent with these policy statements it did not constitute the basis for the court's ruling and was not clear error.

To satisfy the requirements of acquiescence, the boundary must have been treated as such for the statutory period of 15 years. *Sackett, supra* at 681; MCL 600.5801(4). A party may satisfy the requirement that the acquiescence has existed for 15 years by accumulating the acquiescence of predecessors in interest. *Killips*, *supra* at 260. Plaintiff testified regarding his personal knowledge pertaining to the boundary beginning in 1954 and continuing through his control of farming on the property since 1980. Shull's personal knowledge of the property dated back to 1949, and Yanz participated in the tree and fence line as the boundary since the early 1970s. Thus, the activities relied on to establish the 15-year statutory period required for acquiescence continued for over 35 years, until the 2005 survey caused this dispute to arise.

Evidence is to be viewed in total to determine whether the conduct of the parties established that they understood where the boundary ran, and treated it as the boundary, even though a precise line was never acknowledged. *Walters II*, *supra* at 458. Plaintiff's farming within the disputed area clearly demonstrated that he treated the tree and fence line as the eastern boundary line of his property. Plaintiff testified that he removed fence posts on the surveyed line to pick his crops and defendant Park testified that stakes in the grassy area were mowed over. Plaintiff and Shull testified that they, and their families, gathered rocks from their property and deposited them at the tree and fence line. Further, in the northern area of the property, plaintiff and his family built a tree stand, a hunting shanty, hunted the land, cut down trees in the disputed area, and authorized others to tap trees in the tree line for maple syrup at various times throughout their ownership. Conversely, even though Shull testified that his predecessor showed

him the boundary line as where the land slopes away from the trees, or near the edge of plaintiff's current service drive in the south, there was no testimony to show that defendants or any predecessor ever used or claimed land to the west of the fence and tree line. Shull also said he was never shown where the boundary was on the wooded northern portion of the disputed lands and that his uncle hunted east of the maple tree line. Plaintiff testified that Yanz, who purchased the southern portion of the disputed land from Shull's uncle in the early 1970s, always recognized the fence line as the boundary.

Several witnesses testified that during the entire time that plaintiff and his predecessors conducted various activities on the disputed area there was never an objection or dispute. Plaintiff and his predecessors believed they owned the property up to the tree and fence line. Defendants' and their predecessors' actions conformed to this belief. If defendants believed that plaintiff and his predecessors were encroaching on their lands, the period for bringing an action to recover the land had long since expired. See *Kipka*, *supra* at 438-439. As such, based on the conduct of the parties and their predecessors, the fence and tree line was understood to be and acquiesced to as the property boundary.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis