

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA SUGDEN,

Plaintiff-Appellant,

and

JOHN SUGDEN and BETTY MOORE,

Plaintiffs,

v

RAYMOND DULL and CAROL DULL,

Defendant-Appellees.

UNPUBLISHED

July 22, 1997

No. 197907

Ottawa Circuit Court

LC No. 95-023001

Before: Saad, P.J., and Neff and Reilly, JJ.

PER CURIAM.

Plaintiff Patricia Sugden (Sugden) appeals as of right from the decision of the trial court finding no cause of action and granting judgment for defendants. We affirm.

The sole issue for our review is whether plaintiffs established title to a strip of land between the two neighboring lots of the parties, either by adverse possession or acquiescence for the statutory period. Thus, this is an action to quiet title that we review de novo although the factual findings of the trial court are reviewed for clear error. *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

The doctrine of acquiescence operates under the principle that where a boundary line has been accepted by the parties, their resolution should stand. *Johnson v Squires*, 344 Mich 687, 692-693; 75 NW2d 45 (1956). The trial court found that the parties never disagreed about the location of the recorded boundary line. Sugden is apparently arguing that the poured concrete wall on the southern portion of defendants' property is the location of the agreed-to boundary line. Sugden's predecessor-in-interest, Betty Moore, testified at trial that she believed the northern border of her property extended

to sixteen inches south of the cement block wall, the location of the recorded boundary line. Similarly, other testimony at trial revealed that the wall in this case was not built as a boundary line but as a retaining wall because of the physical terrain of defendants' lot. Moreover, defendants' consistent use of the property lying to the south of the wall through gardening and watering showed that defendants did not treat the concrete wall as the boundary line. Therefore, the trial court did not err in its finding of fact and properly found that plaintiffs had no cause of action against defendants based on acquiescence.

Sugden argues in the alternative that Moore acquired title by adverse possession to the property north of the recorded boundary line because she occupied and cared for this property for more than twenty years. The elements of adverse possession are well established. A claim of adverse possession exists where possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim of right, and continuous and uninterrupted for the statutory period of fifteen years. MCL 600.5801; MSA 27A.5801; *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 215 (1995).

The trial court made the following findings of fact regarding these elements. First, the trial court found that plaintiffs mowed the grass in the disputed area from time to time. Also, the court found that plaintiffs had placed a bird bath in the area, although it is no longer there. Lastly, the court found that plaintiffs moved a shed that once encroached on defendants' property. The court concluded that these acts did not put defendants on notice that plaintiffs claimed a portion of defendants' lot, especially where the mowing may have been a "kindly act" by a neighbor with the easiest access to the property.

The trial court's findings of facts were not clearly erroneous, and the court correctly concluded that the facts do not establish adverse possession. Plaintiffs' acts of mowing and placing a birdbath were not open and notorious. See *Bankers Trust Co of Muskegon v Robinson*, 280 Mich 458, 464-465; 273 NW 768 (1937) (holding that the plaintiff's occasional mowing of the defendant's grass did not reasonably apprise the defendant that another was assuming control of the property). Furthermore, plaintiffs' possession of the property was not exclusive. The testimony at trial from both parties revealed that defendants and defendants' predecessors consistently performed a variety of activities associated with the flowers and gardens on the disputed property. The fact that plaintiffs' use of the property was concurrent with defendants' is also fatal to plaintiffs' adverse possession claim. *Aalsburg v Cashion*, 384 Mich 236, 244; 180 NW2d 792 (1970).

In summary, the trial court did not err in its findings of fact and properly found that plaintiffs had no cause of action against defendants based on adverse possession or acquiescence. Consequently, defendants' recorded boundary line remains enforceable.

Affirmed.

/s/ Henry W. Saad
/s/ Janet T. Neff
/s/ Maureen Pulte Reilly