STATE OF MICHIGAN

COURT OF APPEALS

RHONDA L. SANWALD,

Plaintiff-Appellee,

v

HAZEL MUSCHELL,

Defendant-Appellant.

UNPUBLISHED
October 3, 1997

No. 196973
Cheboygan Circuit Court
LC No. 95-5243 CH

Before: O'Connell, P.J., and MacKenzie and Gage, JJ.

PER CURIAM.

In this action to quiet title, defendant appeals as of right the order of the circuit court adjudging plaintiff to be the owner of a disputed strip of property. We reverse.

Plaintiff and defendant owned what would have been adjoining residential lots but for the existence of a forty-foot-wide strip of land owned by a railroad company that separated the respective lots. Railroad tracks ran through the center of the strip of land, but the tracks themselves had been unused for a number of years prior to the institution of this action.

Plaintiff and the prior owners of the lot she now owns were under the impression that the parameters of their lot extended to the edge of the gravel underlying the support beams of the tracks. They had mowed the lawn up to the tracks, had erected a shed that encroached to some extent on the railroad's property (though the shed was torn down in 1981), and had used a gravel driveway that ran on the railroad company's property. However, plaintiff learned in 1989 that the railroad company owned land beyond the confines of the tracks themselves, land that plaintiff had previously believed was her property and that she had treated as her property. In light of the fact that the tracks had fallen into desuetude, she offered to lease or purchase that portion of the railroad company's property that she had mistakenly believed to be her own. The railroad company, however, declined.

While plaintiff may have believed until 1989 that the lot she owned extended to the tracks themselves, testimony at trial established that the railroad company itself was under no such impression. An employee of the railroad testified that as part of his responsibilities he had been required to inspect the railroad company's properties weekly or monthly at all times relevant to the present dispute. He

stated that the railroad company had been fully aware that property owners whose land abutted railroad tracks often mowed the railroad company's property, and that the railroad company tolerated this. Only when the actions of an abutting property owner could interfere with the clearance of trains did the railroad company become concerned and take action.

In 1995, defendant, who owned the lot on the opposite side of the railroad tracks, purchased the entire strip of land from the railroad company. Obviously, defendant thereby came into possession of the portion of property plaintiff had formerly believed to be her own and, upon learning that it was the railroad company's property, had attempted to lease or purchase.

Plaintiff then brought suit, claiming ownership of that portion of the strip on her side of the railroad tracks. A bench trial was held, and the court determined that under the doctrine of acquiescence, plaintiff had acquired title to the property she claimed. Defendant now appeals as of right. The present action being equitable in nature, we review the trial court's findings of fact for clear error and its ultimate ruling de novo. *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

While we find no clear error with respect to the circuit court's evaluation of the facts underlying the instant dispute, we believe that the court misapplied the doctrine of acquiescence. Though several distinct species of the genus *acquiescence* exist, at issue in the present case is acquiescence for the statutory period. As explained in *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993) (emphasis supplied),

> The law of acquiescence is concerned with a specific application of the statute of limitations to cases of *adjoining property owners who are mistaken about where the line between their property is*. Adjoining property owners may treat a boundary line, typically a fence, as the property line. If the boundary line is not the recorded property line, this results in one property owner possessing what is actually the other property owner's land. Regardless of the innocent nature of this mistake, the property owner whose land is being possessed by another would have a cause of action against the other property owner to recover possession of the land. After fifteen years, the period for bringing an action would expire. The result is that the property owner of record would no longer be able to enforce his title, and the other property owner would have title by virtue of his possession of the land.

As indicated by the language we have italicized in the quoted paragraph, *all* property owners involved must have been mistaken concerning the boundary line for the doctrine of acquiescence to obtain. Accord *Johnson v Squires*, 344 Mich 687, 692; 75 NW2d 45 (1956), quoting *Dupont v Starring*, 42 Mich 492, 494; 4 NW 190 (1880); *Pyne v Elliott*, 53 Mich App 419, 426-427; 220 NW2d 54 (1974). There must exist, as it were, a "doubt composed by agreement." *George v Daniels*, 253 Mich 293, 295; 235 NW 161 (1931).

Here, the evidence produced below clearly establishes that plaintiff and her predecessors were mistaken concerning the boundary line of her property, at least until 1989. However, the evidence is

equally clear that the railroad company, the other affected property owner, was under no such misconception. The railroad employee testified that the railroad company knowingly tolerated encroachments such as those of plaintiff. Thus, because the railroad company did not acquiesce to a mistaken property line, the doctrine of acquiescence has no application.[1]

Rather, the present dispute sounds more clearly in adverse possession, and plaintiff, aware of this Court's practice of affirming the trial court where the right result was reached though for the wrong reason, *Cox v Dearborn Heights*, 210 Mich App 389, 391; 534 NW2d 135 (1995), has advanced such an argument in her brief on appeal. Plaintiff submits that even if the circuit court erred with respect to its resolution of the acquiescence issue, she has still gained title to the disputed property via adverse possession. We disagree.

To gain title to property through adverse possession, one must, among other things, *adversely* possess the land of another, which is to say, one's possession must be hostile to the title of the true owner. *Fractional School District No 4 of Golden Twp, Oceana Co v Hedlund*, 330 Mich 73, 76; 47 NW2d 19 (1951). As explained in 1 Michigan Civil Jurisprudence, *Adverse Possession*, § 43, p 144, citing *DeGroot v Barber*, 198 Mich App 48; 497 NW2d 530 (1993), *et al.*, "[w]here possession is up to a fixed boundary under mistake as to true line, and the intent of the parties is to hold only to true line, the possession is not hostile and will not ripen into title, and because no element of hostility is present, there can be no adverse title acquired." Here, plaintiff has argued strenuously in the context of acquiescence that she believed the disputed strip of land to be her own. Thus, she may not now claim persuasively that she possessed this land in a fashion hostile to the ownership of the railroad company and, accordingly, her claim that she acquired title through adverse possession necessarily fails.[2]

Reversed.

/s/ Peter D. O'Connell
/s/ Barbara B. MacKenzie
/s/ Hilda R. Gage

[1] The evidence also establishes that defendant did not acquiesce to plaintiff's mistaken notion of the property bounds. However, given that defendant did not own the disputed property for the requisite statutory period and that tacking is not an issue in light of the fact that the railroad company, the prior owner, also did not acquiesce to the mistaken property line, this is immaterial to the present cause.

[2] We would note that plaintiff's claim of adverse possession would likely also fail in that her use of the railroad company's property was permissive. See *Whitehall Leather Co v Capek*, 4 Mich App 52, 55-56; 143 NW2d 779 (1966).