

STATE OF MICHIGAN
COURT OF APPEALS

TERIN SALO, SHERI SALO, EUGENE
WESTBROOK, and KAREN WESTBROOK,

UNPUBLISHED
May 31, 2005

Plaintiffs/Counter-Defendants-
Appellees,

v

No. 253082
Chippewa Circuit Court
LC No. 01-005513-CH

BRADFORD BOHRN, WILLIAM BOHRN, and
MARY BOHRN,

Defendants,

and

MARION JENKINS TRUST,

Defendant/Counter-Plaintiff-
Appellant.

Before: Murray, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

In this case involving a property dispute over a twenty-two foot strip of land, defendant Marion Jenkins Trust appeals as of right from a judgment concluding that plaintiffs were owners of the property by acquiescence. We affirm.

In December 1957, Elsie and Gordon Smith conveyed by warranty deed certain property to Aileen and Gerald Jenkins. Aileen preceded Gerald in death and, in 1982, Gerald married Marion Jenkins. After Gerald died in 1984, the property came under the ownership of the Estate of Gerald Jenkins. In July 1997, Marion Jenkins, as the independent personal representative of the estate, conveyed the property by quitclaim deed to the Marion Jenkins Trust. Plaintiffs Eugene and Karen Westbrook obtained their property through two separate warranty deeds, one from Citizens State Bank in February 1983, and one from Priscilla Law in July 1990. On September 24, 1999, the Westbrooks conveyed by warranty deed part of this property to plaintiffs Sheri and Terin Salo, the Westbrooks' daughter and son-in-law.

Following a dispute regarding the location of the property line between plaintiffs' and defendants' properties, a survey was performed. The survey revealed that the twenty-two foot strip of land running between the parties' properties was, in fact, located on the Marion Jenkins Trust property. Plaintiffs thereafter brought a quiet title action against defendants on the theory that plaintiffs had title to the twenty-two foot strip of property by acquiescence. The trial court held that plaintiffs met their burden of proving that defendants, for a period of at least fifteen years, acquiesced to plaintiffs' use of the property.

On appeal, defendant trust asserts that the trial court erred in finding that plaintiffs had title by acquiescence because plaintiffs failed to prove by a preponderance of the evidence that there was any agreement regarding the location of the property line. We disagree. A suit to quiet title is equitable in nature and, therefore, is reviewed de novo. *Geneja v Ritter*, 132 Mich App 206, 209; 347 NW2d 207 (1984). We will not modify or overturn a trial court's findings of fact unless they are clearly erroneous or we are convinced that we would have reached a different result had we occupied the position of the trial court. *Caywood v Dep't of Natural Resources*, 71 Mich App 322, 332; 248 NW2d 253 (1976). A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Markillie v Livingston Co Rd Comm*, 210 Mich App 16, 22; 532 NW2d 878 (1995).

The doctrine of acquiescence usually arises in the context of border disputes. *Geneja, supra* at 210. The doctrine is comprised of three distinct theories: (1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from an intention to deed to a marked boundary. *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). Only the first of these theories is at issue in this case.

A plaintiff is required to prove a claim of acquiescence by a preponderance of the evidence. *Walters v Snyder*, 239 Mich App 453, 455; 608 NW2d 97 (2000). Under the acquiescence for the statutory period theory of acquiescence, a boundary line becomes fixed when it is acquiesced to by abutting landowners for the statutory period of fifteen years. *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964); MCL 600.5801(4). As our Supreme Court stated in *Walters v Bank of Marquette*, 314 Mich 699; 23 NW2d 184 (1946), "[a] boundary line, long treated and acquiesced to as the true line, ought not to be disturbed on new surveys, 15 years' recognition and acquiescence being ample for purpose of establishing the boundary." *Id.* at 706, quoting *Gregory v Thorrez*, 277 Mich 197, 201; 269 NW 142 (1936). A claim of acquiescence to a boundary line based on the statutory period requires merely a showing that the parties acquiesced in the line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary. *Walters, supra* at 456.

The son of one of the Westbrooks' predecessors in title (the Fagans)¹ testified that his family, who owned plaintiffs' property from 1945 to 1981, believed that they owned the lane in

¹ Merlin Fagan testified that his parents sold the property to Priscilla and Robert Sipes.

question when they lived on the property. He also testified that his family observed the fence line along the west side of the lane as the boundary. Plaintiffs further introduced evidence that from 1936 to 1957, the Jenkins' predecessors in title (the Smiths) also believed that the lane belonged to the Fagans and treated the fence line along the west side of the lane as the boundary line. This included evidence that throughout this period the Smiths had their own lane west of the fence line. Plaintiffs also presented evidence that the Fagans' predecessors in title (the Laitinens) used the disputed lane as their own in the period from 1936 to 1945, when the Laitinens sold the property to the Fagans. Plaintiffs additionally presented evidence that Uuno and Elmi Hietikko, who owned the land now owned by William and Mary Bohrns, the Westbrooks, and the Salos, referred to the lane in controversy as Fagan's Lane. Thus, plaintiffs introduced evidence that the parties' predecessors in title observed the fence line to the west of the lane as the boundary line and considered the lane to belong to the Westbrooks' and Salos' predecessors in title for at least the period of 1936 to 1957, with the Fagans continuing in this belief through 1981.

Conversely, defendant trust introduced evidence that when the Bohrns moved onto the land south of the trust's property in 1960, they learned that the lane in controversy was referred to as Jenkins' Lane. Defendant trust further introduced evidence that the community reputation was that the lane belonged to the Jenkins, and before them to the Smiths, and that the property line was the eastern edge of the lane rather than the fence line on the west side of the lane.

Looking at this evidence as a whole, we conclude that the trial court did not err in concluding that plaintiffs proved by a preponderance of the evidence that they had title to the lane under the doctrine of acquiescence. The evidence indicates that from at least 1936 to 1957, a period of twenty-one years, the parties' predecessors in title viewed the lane as belonging to the Westbrooks' and Salos' predecessors. Accordingly, pursuant to MCL 600.5801(4), *Jackson*, and *Walters*, the boundary line was established in law in 1951. Defendant trust has failed to establish that the parties or their predecessors in title subsequently acquiesced to a change in the boundary line that was established in 1951. While defendant trust introduced evidence regarding a mortgage survey done for the Westbrooks as well as certain statements allegedly made by Eugene Westbrook regarding the trust's ownership of the lane that tends to support its position, plaintiffs presented evidence that they had made improvements to the lane, beginning in 1999 and continuing up until the time the lawsuit in this case arose. Plaintiffs also presented evidence that the extent of their use of the lane increased from 1990 on, including bringing construction machines and materials up and down the lane and parking a tractor-trailer in the lane for a year. There is no evidence that Marion Jenkins ever objected to this use or asserted ownership of the lane in response. Indeed, plaintiffs presented evidence that Marion Jenkins blocked access from her property to the lane for six months in response to an incident involving her grandchildren. Additionally, plaintiffs presented evidence that when Bradley Bohrn, William and Mary's son, was logging on the Westbrooks' property, he asked the Westbrooks for permission to use the lane. Further, the surveyors who prepared the 2001 survey that identified the disputed property as lying within defendant trust's property also found evidence of use and occupation of the lane only by the Salos and Westbrooks, not by the Jenkins family.

Looking at this evidence as a whole, we conclude that defendant trust failed to show by a preponderance of the evidence that subsequent to 1951 the parties or their predecessors in interest acquiesced to any boundary line other than that established by acquiescence in that year.

As a result, the trial court did not err when it concluded that title to the lane belonged to plaintiffs.

Affirmed.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Pat M. Donofrio