

STATE OF MICHIGAN
COURT OF APPEALS

GERTRUDE POWE,

Plaintiff/Counter Defendant-
Appellant,

v

DELORES REED,

Defendant/Counter Plaintiff-
Appellee.

UNPUBLISHED
February 20, 2014

No. 313172
Genesee Circuit Court
LC No. 11-095809-CH

Before: O'CONNELL, P.J., and WILDER and METER, JJ.

PER CURIAM.

Plaintiff brought this action for injunctive relief and to quiet title to a strip of land between her property and property owned by defendant. Defendant filed a counterclaim to quiet title in her favor. Following a bench trial, the trial court determined that defendant adversely possessed the disputed strip of land for the statutory period of 15 years and, accordingly, awarded title to the property to defendant. Plaintiff appeals as of right. We affirm.

Plaintiff and defendant own adjoining parcels of land in Montrose Township in Genesee County. Surveys of their properties established a discrepancy in the deed descriptions, causing an overlap between the southern line of defendant's property and the northern line of plaintiff's property. The error originated in 19th century surveys and subsequent deed and tax roll descriptions that described property boundaries without verification by surveys. Defendant's pole barn and driveway are partially situated in the disputed overlapping strip. Plaintiff brought this action to quiet title, and defendant filed a counterclaim to quiet title in her favor.

Following a bench trial, the trial court found that defendant and her predecessors had possessed the disputed property, as represented by an old fence line at the rear of the property. The court concluded:

The Court finds the disputed property to belong to the defendant. If we assume the lines should have been determined moving from north to south, the defendant was mistaken as to the boundary. However, even in circumstances were [sic] the defendant may have been mistaken as to the true boundary line, if defendant took the disputed land, believing defendant had ownership, and held it adversely for the statutory period, the defendant takes title by adverse possession.

The court commented that defendant had used the disputed strip for more than 15 years, entitling her to ownership of the disputed strip.

In an appeal of a judgment following a bench trial, this Court reviews the trial court's factual findings for clear error and reviews its conclusions of law de novo. *Ligon v City of Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). Under the clear error standard, factual findings are clearly erroneous when “there is no evidentiary support for them or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake.” *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

Plaintiff argues on appeal that defendant failed to establish title to the disputed strip of property by adverse possession. “In order to establish a claim of adverse possession, a plaintiff must provide ‘clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years.’” *Canjar v Cole*, 283 Mich App 723, 731; 770 NW2d 449 (2009), quoting *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993). The claimant must also demonstrate that her actions “were ‘hostile’ and ‘under claim of right,’ meaning that the use is inconsistent with the right of the owner, without permission asked or given, and which use would entitle the owner to a cause of action against the intruder.” *Canjar*, 283 Mich App at 731-732, quoting *Wengel v Wengel*, 270 Mich App 86, 92-93; 714 NW2d 371 (2006). “The term ‘hostile,’ as used in the law of adverse possession, is a term of art and does not imply ill will.” *Mulcahy v Verhines*, 276 Mich App 693, 702; 742 NW2d 393 (2007). “[A]dverse possession requires a showing of a claim of right or color of title.” *DeGroot v Barber*, 198 Mich App 48, 50; 497 NW2d 530 (1993).

Plaintiff argues that defendant failed to establish a “claim of right or color of title” because she failed to establish that her possession of the disputed strip was hostile. Plaintiff relies on the following statement in *DeGroot*, 198 Mich App at 51:

When a landowner takes possession of land of an adjacent owner, with the intent to hold to the true line, the possession is not hostile and adverse possession cannot be established. . . . The corollary to this rule provides that, when the possession manifests an intent to claim title to a visible, recognizable boundary, regardless of the true boundary line, the possession is hostile and adverse possession may be established. [Citations omitted.]

Plaintiff suggests that defendant and her predecessors intended to “hold to the true line,” such that their possession was not hostile as required to prove adverse possession. Although defendant and her predecessors arguably intended to hold to what they believed was the true line, they also intended to hold to the “visible, recognizable boundary,” namely the line of trees and an old fence along the southern portion of the disputed strip.

The peculiar nature of the boundary dispute in this case favors resolving this conundrum in defendant's favor. This case did not involve an ordinary boundary dispute, but rather a discrepancy in property descriptions that caused an overlap between the southern portion of defendant's property and the northern portion of plaintiff's property. The location of the true boundary could not be objectively determined because the respective deeds erroneously

described more land than actually existed. The statement in *DeGroot* regarding a landowner who intends “to hold to the true line” does not contemplate the circumstance here, where there are arguably two true lines. Defendant, not plaintiff, exercised the opportunity to treat the disputed strip as her own by using the land for her driveway, garage, and pole barn. Plaintiff did not attempt to eject defendant from the disputed strip until more than 15 years after these encroachments began. Accordingly, the trial court did not err in finding that defendant’s uninterrupted use of the land for the statutory period constituted hostile possession for the requisite period.

We acknowledge the difficulty of applying the hostile possession element where the location of the boundary is not objectively established, but dependent on the reference point for surveying the land. However, the doctrine of acquiescence also supports the trial court’s decision quieting title to the disputed strip of property in favor of defendant. Although the trial court did not address this theory, this Court may affirm the trial court’s decision if the court reached the right result, but for the wrong reason. *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000). “[W]here the lower court record provides the necessary facts, appellate consideration of an issue raised before, but not decided by, the trial court is not precluded.” *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443-444; 695 NW2d 84 (2005).

There are three theories of acquiescence: “(1) acquiescence for the statutory period, (2) acquiescence following a dispute and agreement, and (3) acquiescence arising from intention to deed to a marked boundary.” *Walters v Snyder*, 239 Mich App 453, 457; 608 NW2d 97 (2000). The statutory period for acquiring property by acquiescence is 15 years. MCL 600.5801(4); *Mason v City of Menominee*, 282 Mich App 525, 529; 766 NW2d 888 (2009). To succeed on a claim of acquiescence, it is “not require[d] that the possession be hostile or without permission as would an adverse possession claim.” *Id.* “[C]aselaw has held that acquiescence is established when a preponderance of the evidence ‘establishes that the parties *treated* a particular boundary line as the property line.’” *Id.* at 529-530, quoting *Walters*, 239 Mich App at 458. “[W]here the line is acquiesced in for the statutory period it is also fixed.” *Weisenburger v Kirkwood*, 7 Mich App 283, 289; 151 NW2d 889 (1967), quoting *Hanlon v Ten Hove*, 235 Mich 227, 232; 209 NW 169 (1926) (quotation marks and citations omitted; emphasis removed).

Defendant and Maryann Reed testified that they always regarded the fence and tree line, i.e., the southern line of the disputed strip, as defendant’s property. Maryann testified that plaintiff tacitly respected this line as the boundary line. Plaintiff did not attempt to remove defendant’s encroachments, nor did she attempt to use the disputed strip for farming or other purposes. Indeed, plaintiff originally believed that any encroachment existed at the southern, not northern, portion of her property. This arrangement dated back to 1974, when plaintiff acquired ownership of her property. Accordingly, the 15-year acquiescence period was satisfied.

Affirmed.

/s/ Peter D. O’Connell
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter