

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT ELLSWORTH, TAMARA
ELLSWORTH, RICHARD WILT, and CAROL
WILT,

UNPUBLISHED
November 8, 2002

Plaintiffs/Counter-Defendants-
Appellants,

v

GORDON GROW, LAVERNE GROW, JAMES
GROW, and TARA GROW,

No. 235535
Clinton Circuit Court
LC No. 00-009104-CH

Defendants/Counter-Plaintiffs-
Appellees.

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right a judgment entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This is a boundary dispute case. The parties own adjoining property with a disputed north-south boundary. Plaintiffs own the property to the east of the disputed boundary, while defendants own the property to the west of the disputed boundary. Plaintiffs filed suit to resolve the boundary dispute. They claimed that the true north-south boundary line was approximately thirty-three feet west of the boundary line claimed by defendants, and asserted ownership of this disputed area under theories of acquiescence and adverse possession. Plaintiffs asserted that the true property line was demarcated by a line of trees, and that a survey prepared in 1999, commonly referred to as the 1999 Bryan survey, drew a boundary line that best approximated the tree line. Defendants filed a counter-complaint to quiet title. Defendants asserted that another survey, commonly referred to as the Spicer survey, more accurately marked the boundary line.

After a two-day bench trial, the trial court concluded that plaintiffs established their claims of acquiescence and adverse possession by clear and convincing evidence. The trial court found that the parties held to the tree line as the true boundary for the requisite fifteen-year period, and concluded that the 1999 Bryan survey best approximated the tree line.

After trial plaintiffs obtained a new survey, commonly referred to as the 2000 Bryan survey, that placed the north-south boundary slightly further to the west than did the 1999 Bryan

survey. Plaintiffs submitted a proposed judgment that incorporated the 2000 Bryan survey. Defendants objected to entry of the judgment on the ground that the 2000 Bryan survey was not introduced as evidence at trial. Plaintiffs then submitted a proposed judgment that incorporated the 1999 Bryan survey. The trial court entered that judgment.

Plaintiffs moved for a new trial or in the alternative relief from judgment. They argued that they were entitled to a new trial or to have the judgment set aside on the ground that the 1999 Bryan survey did not reflect the actual boundary line acquiesced to by the parties. They requested an opportunity to present additional testimony to establish the true boundary line as reflected in the 2000 Bryan survey. The trial court denied plaintiffs' motion, stating that it based its decision on the evidence presented to it at trial, and concluded that the 1999 Bryan survey best defined the boundary to which the parties acquiesced.

An action to quiet title is equitable in nature. We review a trial court's findings of fact for clear error, and its conclusions of law de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). Clear error exists when the reviewing court is left with a firm and definite conviction that a mistake has been made. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000). We review a trial court's decision to grant or deny a motion for a new trial or a motion for relief from judgment for an abuse of discretion. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997); *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

Plaintiffs argue the trial court clearly erred in incorporating the 1999 Bryan survey in the judgment, and abused its discretion in failing to grant relief from the judgment. We disagree and affirm the judgment. Evidence regarding the actual dimensions of the tree line was not introduced at trial. The parties introduced two surveys, the 1999 Bryan survey and the Spicer survey, that attempted to demarcate the line. Plaintiffs introduced and relied on the 1999 Bryan survey. The trial court was required to determine which survey best resolved the dispute, and found that the 1999 Bryan survey best accomplished that task. A survey, even if inaccurate, will be accepted if it fixes a line that has been acquiesced to by the parties for the requisite period of time. *Pyne v Elliott*, 53 Mich App 419, 426; 220 NW2d 54 (1974). The trial court based its decision on the evidence before it, and concluded that the 1999 Bryan survey most accurately demarcated the boundary to which the parties acquiesced for the requisite period. No clear error occurred. *Massey, supra*.

The trial court's judgment was not against the great weight of the evidence, and was not based on a mistake. The trial court based its decision on evidence, i.e., the 1999 Bryan survey, introduced and relied on by plaintiffs. No evidence shows that plaintiffs could not have obtained the information contained in the 2000 Bryan survey prior to trial and introduced it at trial. Plaintiffs were not entitled to a new trial or to relief from judgment. MCR 2.611(A)(1)(e); MCR 2.612(C)(1)(a). No abuse of discretion occurred. *Phinney, supra; Heugel, supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter