

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MAURICE E. RIEHL, JR. and CAROL ANN  
RIEHL,

UNPUBLISHED  
January 25, 2005

Plaintiffs/Counter-Defendants-  
Appellants,

v

DOUGLAS H. SHERMAN and CAROLYN  
SHERMAN,

No. 251112  
Newaygo Circuit Court  
LC No. 02-018444-CH

Defendants/Counter-Plaintiffs-  
Appellees.

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Before: Smolenski, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order quieting title in defendants to a disputed parcel of land and awarding defendants costs and attorney fees. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

This case concerns the location of the northern boundary of plaintiffs' property, which is also the southern boundary of defendants' property. At one time, the two parcels comprised a parent parcel, which was owned by a common grantor. A survey commissioned in 1948 determined that the eastern boundary of the parent parcel measured 1164 feet from the southeast corner of Section 18, Brooks Township, in Newaygo County.

In 1962, the common grantor deeded the northern section of the parent parcel to defendants' predecessor in interest. The legal description in that deed provided that the eastern boundary of the conveyed land commenced at a point 582 feet north of the southeast corner of Section 18, and continued north 582 feet to the center of Croton Road. The southern section of the parent parcel was subsequently sold as three separate parcels, but those three parcels were eventually united under the common ownership of the Carpenters, plaintiffs' predecessors in interest. The legal descriptions in the three deeds described an eastern boundary commencing at the southeast corner of Section 18, and proceeding north 582 feet. The deeds on their faces therefore entitled both plaintiffs' and defendants' predecessors in interest to 582 feet along their respective eastern boundaries, or exactly half of the originally surveyed 1164-foot eastern boundary of the parent parcel.

In 1974, defendants commissioned another survey, which determined that the true location of the southeast corner of Section 18 was actually 122.38 feet north of the location used as that corner in the 1948 survey. As a consequence, the eastern boundary line of the parent parcel was in fact only 1041.62 feet, and not 1164 feet as previously believed. Defendants' surveyor corrected the legal description of defendants' parcel to read that their eastern boundary commenced 459.62 feet north of the southeast corner of Section 18, and continued north 582 feet. The corrected description corresponded to the size of the parcel defendants believed they owned, as described in the erroneous 1948 survey. The corrected description does not appear to have entered the public records until 1993.

In 2001, plaintiffs sought to purchase the Carpenters' property, and required the Carpenters to commission a survey, because of the discrepancy in the location of the southeast corner of Section 18. Plaintiffs attempted to negotiate a settlement with defendants, wherein they would split the 122.38-foot shortage, but defendants declined. Plaintiffs then purchased the land from the Carpenters, and sued defendants to quiet title to the property.

Following trial, the trial court found that defendants and the Carpenters recognized the boundary between their properties, as determined in the 1974 survey, as the true boundary. The trial court found that the boundary line corresponded with the tree line, and that defendants and the Carpenters occupied and developed their land up to the tree line. Based on these findings, the trial court concluded that there had been acquiescence for the statutory period and acquiescence arising from intention to deed to a marked boundary. See *Pyne v Elliott*, 53 Mich App 419, 426-428; 220 NW2d 54 (1974). As such, the trial court quieted title in defendants to the disputed 122.38 feet.

Quiet title actions are equitable in nature and are reviewed de novo by this Court. *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998). However, this Court gives great weight to findings of fact made by the trial court and will not disturb those findings unless convinced that it would have reached a different result had it been in the lower court's position. *Connelly v Buckingham*, 136 Mich App 462, 467; 357 NW2d 70 (1984).

Plaintiffs first argue that defendants' deed did not provide them with record notice of defendants' claims to the area in dispute, because a prospective purchaser is not required to search the titles of adjoining properties to look for adverse claims. To qualify for the protections of Michigan's recording acts, MCL 565.1 *et seq.*, a person must either have a prior conveyance that is first recorded or be a bona fide purchaser. MCL 565.29. A bona fide purchaser is a "purchaser in good faith and for a valuable consideration," who did not have notice of a prior interest and who duly recorded the conveyance. MCL 565.29. See also *Kastle v Clemons*, 330 Mich 28; 46 NW2d 450 (1951). "A good-faith purchaser is one who purchases without notice of a defect in the vendor's title." *Oakland Hills Dev Corp v Lueders Drainage Dist*, 212 Mich App 284, 297; 537 NW2d 258 (1995), quoting *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

Notice is whatever is sufficient to direct attention of the purchaser of realty to prior rights or equities of a third party and to enable him to ascertain their nature by inquiry. Notice need only be of the *possibility* of the rights of another, *not positive knowledge* of those rights. Notice must be of such facts that would lead any honest man, using ordinary caution, to make further inquiries in the possible

rights of another in the property. [*Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995), quoting *Schepke v Dep't of Natural Resources*, 186 Mich App 532, 535; 464 NW2d 713 (1990) (emphasis added).]

Here, ample evidence supports the trial court's conclusion that before purchasing the Carpenter property, plaintiffs had actual notice of the discrepancy involving the section corner and that defendants claimed the area in dispute. When plaintiffs acquired actual notice of the possibility of the rights of defendants, they ceased to be bona fide purchasers. Therefore, whether plaintiffs also had record notice is irrelevant. Plaintiffs cannot claim the protection of bona fide purchaser status given their actual notice of the dispute.

Plaintiffs next argue that defendants were equitably estopped from asserting ownership of the land in dispute. We disagree. "Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts." *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 527; 644 NW2d 765 (2002), quoting *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). Plaintiffs have failed to show that defendants induced them to believe that defendants did not own the land in question. To the contrary, defendants have always maintained that they owned the disputed land.

Plaintiffs also argue that the trial court's finding of acquiescence was unsupported by the evidence. Again, we disagree. The touchstone of the doctrine of acquiescence is the existence of an agreed line or boundary. *Wood v Denton*, 53 Mich App 435, 439; 219 NW2d 798 (1974). The agreement need not be overt. *Id.* at 439-440.

A claim of acquiescence for the statutory period is based on a statutory period of fifteen years. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Such a claim requires a showing that the parties acquiesced in the line and treated the line as the boundary for the statutory period, regardless of whether there was a bona fide controversy regarding the boundary. *Id.* A claim of acquiescence does not require that the possession be hostile or without permission. *Id.* Instead, the court merely determines whether a preponderance of the evidence demonstrates that the parties treated a particular boundary line as the property line. *Id.* at 458.

Considerable evidence was presented below to support the trial court's finding that the parties acquiesced in the boundary line for the statutory period. All parties agreed that the Carpenters and defendants never had any dispute about the property line in the nearly twenty-five years they were neighbors. Evidence was presented that both Mr. and Mrs. Carpenter publicly acknowledged the southern end of the disputed parcel as their northern boundary. The Carpenters cleared their land up to the tree line and never attempted to cut down trees beyond the tree line. Evidence was also presented that defendants made regular use of the wood available on their property. Because we give great weight to the factual findings of the trial court, and because those factual findings are fully supported by the record, we will not disturb them here. A preponderance of the evidence demonstrates that the parties treated the line in question as their

property line; therefore, we conclude that the trial court did not err in finding acquiescence for the statutory period.<sup>1</sup>

Plaintiffs' final argument is that the trial court erred in awarding costs and attorney fees to defendants. We agree. The decision whether to award attorney fees is within the trial court's discretion and will be reviewed by this Court for an abuse of discretion. *Schoensee v Bennett*, 228 Mich App 305, 314; 577 NW2d 915 (1998). "An abuse of discretion exists where an unprejudiced person, considering the facts on which the trial court made its decision, would conclude that there was no justification for the ruling made." *Szymanski v Brown*, 221 Mich App 423, 431; 562 NW2d 212 (1997).

Attorney fees are generally not recoverable unless provided for by statute, court rule, or common-law. *Dessart v Burak*, 470 Mich 37, 42; 678 NW2d 615 (2004). Additionally, where the party opposing the taxation of costs challenges the reasonableness of the fee requested, as plaintiffs did here, the trial court should inquire into the services actually rendered before approving a bill of costs. *Miller v Meijer, Inc*, 219 Mich App 476, 479; 556 NW2d 890 (1996). An evidentiary hearing regarding the reasonableness of the fee request is necessary, and the trial court is required to make findings of fact regarding attorney fees. *Id.* at 479-480.

Here, the trial court failed to cite a court rule, statute, or common-law exception conferring the authority to award costs and attorney fees under the circumstances. Additionally, despite plaintiffs' objection, the trial court failed to hold an evidentiary hearing and make findings of fact concerning the reasonableness of the attorney fees. The trial court abused its discretion by failing to state the legal authority under which it was making the award and by failing to make factual findings concerning the reasonableness of the award. As a result, we are unable to determine if the award was proper. Accordingly, we reverse the trial court's award of attorney fees and costs, and remand for an articulation of the legal and factual basis for the award.

We affirm in part, reverse in part, and remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski  
/s/ Henry William Saad  
/s/ Richard A. Bandstra

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<sup>1</sup> Having concluded that the trial court correctly determined that acquiescence for the statutory period had been established, we need not consider the trial court's conclusion regarding acquiescence to a fixed boundary.