

STATE OF MICHIGAN
COURT OF APPEALS

NORMAN E. WALTER, MARY JO WALTER,
and WALTER REAL ESTATE, L.L.C.,

UNPUBLISHED
January 28, 2010

Plaintiff/Counter-Defendants-
Appellees,

v

No. 287101
Shiawassee Circuit Court
LC No. 05-002900-CH

DOROTHY KEITH,

Defendant/Counter-Plaintiff-
Appellant,

and

RON KEITH,

Defendant.

Before: Cavanagh, P.J., and Fitzgerald and Shapiro, JJ.

PER CURIAM.

Defendant Dorothy Keith appeals as of right from a judgment entered in favor of plaintiffs in this property dispute. We reverse.

This case involves a boundary line dispute between plaintiffs, Norman E. Walter, Mary Jo Walter, and Walter Real Estate, L.L.C. (the Walters), owners of an approximately 80.14 acre parcel of land, and defendants, Dorothy Keith and Ron Keith¹ (the Keiths), owners of an adjacent approximately 60 acre parcel of land.

In 1965, Dorothy and her late husband, Leo Keith (Leo), purchased their fenced-in parcel of land. They farmed the land “fence-to-fence” since that time. McNally owned the adjacent property at that time. In the late 1970s or early 1980’s, the Keiths allowed McNally to remove the southwest corner of the fence so that McNally could access a landlocked parcel of his land.

¹ Ron Keith, the son of Dorothy Keith, is not a party to the instant appeal.

McInally subsequently sold his property to the Walters. The southwest corner of the fence was not replaced until 2004, following a dispute between the Keiths and the Walters. When the Keiths replaced the fence, it blocked the Walters' access to the southern parcel of their land. The Walters filed an action against the Keiths alleging that the fence was erected on their land. The Keiths filed a counterclaim, claiming entitlement to the disputed parcel of land under either adverse possession or the doctrine of acquiescence.

The evidence revealed that none of the parties had commissioned a survey of their land upon purchase, but, rather, each assumed that the fence line was the property line. Unbeknownst to any of the parties, the fence had originally been erected on McInally's land. The trial court concluded that the statutory period for the Keiths to bring an action to recover the disputed parcel of land had expired before 2004 because the corner section of the fence had been missing for more than 15 years. The trial court further dismissed the Keiths' cause of action under the doctrine of acquiescence because McInally and his successors in interest had traversed the disputed parcel periodically for more than 15 years with their farm equipment without complaint by the Keiths.

On appeal, Dorothy argues that the trial court erred in its dismissal of her claim to the disputed property under the doctrine of acquiescence. We agree.

This Court reviews the findings of fact by a trial court sitting without a jury under the clearly erroneous standard. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed. In contrast, we review a trial court's conclusions of law *de novo*. Furthermore, where the trial court's factual findings may have been influenced by an incorrect view of the law, an appellate court's review of those findings is not limited to clear error. [*Walters v Snyder*, 239 Mich App 453; 608 NW2d 97 (2000) (citations omitted).]

In *Mason v City of Menominee*, 282 Mich App 525, 529-530; 766 NW2d 888 (2009), this Court discussed acquiescence as follows:

A claim of acquiescence to a boundary line based upon the statutory period of fifteen years 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. This theory of acquiescence does not require that the possession be hostile or without permission as would an adverse possession claim. Further, the acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years. Although Michigan precedent has not defined an explicit set of elements necessary to satisfy the doctrine of acquiescence, caselaw 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. [Citations and quotations omitted.]

Here, the record reveals that the parties did not discover until the present dispute arose in 2004 that the fence believed to be on the Keiths' property was actually on the McInally/Walters property. However, this fact is of little consequence under the doctrine of acquiescence because

a controversy regarding a boundary need not exist. Evidence was presented that the Keiths, McNally, and McNally's tenants had always regarded the fence line as the boundary line, and that the Keiths and McNally never intended to alter the boundary line when the Keiths agreed to remove a portion of the fence to allow McNally access to a landlocked portion of his land. Because a preponderance of the evidence showed that the parties acquiesced in the boundary line even after the corner of the fence had been removed, and that the parties treated the line as the boundary for the statutory period,² the trial court erred by dismissing defendant's claim of acquiescence to the boundary line. The fact that new surveys revealed that the original fence was erected on the McNally/Walters land is also of no consequence because "where a boundary line has been recognized and acquiesced in for [15] years it would not be disturbed by reason of new surveys." *Corrigan v Miller*, 96 Mich App 205, 209; 292 NW2d 181 (1980). Further, the fact that the Keith's accommodated McNally's request to remove the corner section of the fence so that McNally could get equipment to his landlocked parcel of land does not destroy the parties' acquiescence to the established boundary line. There is no evidence that the Keiths and McNally intended to alter the established boundary line by removing only the corner portion of the fence solely for the purpose of accommodating McNally's access to his landlocked parcel.³

Reversed and remanded. Jurisdiction is not retained.

/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald
/s/ Douglas B. Shapiro

² The period of acquiescence began in 1965, and ran until the present dispute arose in 2004.

³ The inability to locate remnants of the corner section of fence is of no import because the logical conclusion is that the two fence lines clearly would have intersected at the corner where the fence had been removed.