

STATE OF MICHIGAN
COURT OF APPEALS

KEITH INGRAHAM and SUSAN INGRAHAM,

Plaintiffs-Appellants,

v

RILEY PERRONE and SHAWN PERRONE,

Defendants-Appellees.

UNPUBLISHED

April 19, 2011

No. 296224

Ionia Circuit Court

LC No. 08-026579-CH

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Plaintiffs filed a complaint against defendants alleging that defendants trespassed on plaintiff's property by constructing buildings, storing materials, and installing a septic system. After a bench trial, the court quieted title to the disputed strip of land in favor of defendants under the doctrine of adverse possession. We reverse that part of the judgment quieting title in favor of defendants and remand.¹

The parties are the owners of adjoining parcels of land in Saranac. Plaintiffs have owned their property since 1988; defendants came into possession of their parcel in 1995. A fence runs the length of the properties, but according to a survey commissioned by the prior owners of plaintiffs' parcel, the fence does not mark the true property line. The disputed property lies between the fence line and the survey line.

On appeal, plaintiffs first argue that reversal is required because defendants did not satisfy the requirement of possession for the requisite statutory period of 15 years.

This Court reviews de novo actions that are equitable in nature, such as quiet title actions, but the trial court's factual findings are reviewed for clear error. *Canjar v Cole*, 283 Mich App 723, 727; 770 NW2d 449 (2009). The trial court's conclusions of law are also reviewed de novo. *Id.*

¹ Plaintiffs' complaint also included a claim alleging that defendants' use of a wood burner on their property constituted a private nuisance. The court found in favor of plaintiffs on this claim, and they do not appeal its decision on this issue.

To establish a valid claim of adverse possession, the person claiming title must show that that person's possession was actual, visible, open, notorious, exclusive, continuous, hostile, uninterrupted, and under cover of a claim of right for the statutory period of 15 years. *Canjar*, 283 Mich App at 731. Plaintiffs argue that defendants cannot satisfy the requirement of possession for the statutory period because defendants did not begin living on the property until 1995, which was 13 years before plaintiffs filed their complaint in 2008. Defendants contend that they may "tack" their time of possession onto that of the previous owners of the property.

"An adverse claimant is permitted to add his predecessor's period of possession [to his own period of possession] if he can establish privity of estate by mention of the disputed lands in the instrument of conveyance or parol references at the time of the conveyance." *Connelly v Vuckingham*, 136 Mich App 462, 474; 357 NW2d 70 (1984). Here, defendants did not offer a deed at trial purporting to convey the disputed land by their predecessor in interest. They read into the record the deposition of Ward Lavean, a predecessor in title to defendants, who testified that he had considered the fence to be the property line. Defendants did not establish, however, that their immediate predecessors in title told them of Lavean's understanding of the property line at the time of conveyance or that the fence was the property line.

Moreover, a land surveyor marked the true boundary approximately seven years before defendants came into possession of the property, and defendant Riley Perrone testified that he was aware of the survey stakes on the north and south of the survey line. As for a septic system replaced by defendants, Mr. Perrone testified that he had it replaced and that "[m]aybe a foot" of it crossed the survey line. We do not consider a subsurface and localized septic system that barely encroaches upon plaintiff's property to constitute the type open, notorious, and visible use that would put plaintiffs on notice that defendants were asserting a right to the disputed property.

Additionally, it is clear from the record that defendants moved structures off of the disputed property at various times when asked. For example, a building inspector asked defendants to change the dimension of a garage that was being constructed due to its proximity to the property line, as marked by the existing survey stakes. The inspector verified that the garage was brought into compliance. Additionally, the inspector testified that defendants removed a shed at his request. This pattern of using the disputed property until asked not to undermines any claim that the adverse possession was uninterrupted, open, and notorious, hostile, or continuous. It also constitutes a pattern of abandonment of any claim to the property, which in turn terminates the running of the statutory 15 years. Consequently, defendants failed to establish possession for the requisite statutory time period under the doctrine of adverse possession. The trial court therefore erred by quieting title to the disputed strip of property in favor of defendants.

In the alternative, defendants invoked the doctrine of acquiescence in support of their position that the fence constituted the boundary line between the parties' parcels. The doctrine of acquiescence intends to promote peaceful resolution of boundary disputes. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). Unlike an adverse possession claim of title to property, "a claim of acquiescence does not require that the possession be hostile or without permission." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Three theories of acquiescence exist: (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). Defendants here rely on the first theory.

A claim of acquiescence to a boundary line based upon the statutory period of fifteen years, MCL 600.5801(4) ..., 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 case law 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. [*Mason v City of Menominee*, 282 Mich App 525, 529-530; 766 NW2d 888 (2009) (citations and internal quotation omitted; emphasis in original).]

The evidence presented does not reasonably tend to establish that plaintiffs and defendants ever treated the fence as a common boundary line. Indeed, the identified pattern of abandonment of use by defendants undermines any assertion of acquiescence to the fence line.

Reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello