

STATE OF MICHIGAN
COURT OF APPEALS

JOHN A. WILLIAMS and LESLIE A.
WILLIAMS,

UNPUBLISHED
October 18, 2012

Plaintiffs-Appellees,

v

No. 305645
Oakland Circuit Court
LC No. 2009-101267-CH

PAUL A. WILSON and JULIE WILSON,

Defendants/Third-Party Plaintiffs-
Appellants,

and

RUSSELL D. HEBERT and DARLENE C.
HEBERT,

Third-Party Defendants.

Before: O'CONNELL, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

In this property line dispute, defendants appeal by right the trial court's order granting summary disposition in favor of plaintiffs and quieting title to the disputed property in accordance with the doctrine of repose. We affirm.

The dispute stems from conflicting surveys concerning the boundary between defendants' and plaintiffs' parcels. Both parcels are located in the northwest 1/4 of the northwest 1/4 of Section 14 in Groveland Township in Oakland County ("the subject quarter section"). Specifically, the parties disagree regarding whether the border is measured from the technical 1/8 line of the subject quarter section, or from the settled occupational 1/8 line of the subject quarter section.

It is undisputed that Louis Wrenn, who was a professional civil engineer and the original owner of the entire southern half of the quarter section, surveyed the property in 1968 and first defined the northern border of his property following the fence line that meandered north of the true 1/8 line. A 1973 survey by land surveyor Gary Stonerock called out the fence line that meandered north of the true 1/8 line. Stonerock marked the 1/8 corner on that fence line and

used the fence line to establish the northern and southern borders of a parcel in the subject quarter section. The Stonerock survey was duly recorded in 1973. In addition, Stonerock filed a Land Corner Recordation Certificate recording the location of the northwest corner, west corner, and the west 1/8 corner of the subject quarter section fixing the 1/8 corner at the fence line. In 1975, land surveyor Paul Pangus recorded a survey and referenced the same 1/8 fence line used by Stonerock.

In 1980, the prior owner of plaintiffs' property, Robbins, commissioned Pangus to survey his parcel. Pangus called out a "1/8 line fence" south of the Robbins parcel, which was located several feet north of the true 1/8 line and angled northward. Pangus also found irons located at the west corner of the "1/8 line fence." Pangus marked the northern border of the Robbins parcel 601.2 feet north of the "1/8 line fence" and found irons marking the southern border of the parcel 271.2 feet north of the "1/8 line fence." Pangus divided the Robbins parcel in half, creating a northern and a southern parcel each measuring 165 feet, marked the boundary between the parcels with irons, and created a metes and bounds description¹ of the parcels that relied on the distance and direction of the "1/8 line fence" to establish the borders of the parcels.

Robbins conveyed the northern parcel to plaintiffs by warranty deed in 1980, but did not use the metes and bounds description created by Pangus. Instead, the conveyance was in aliquot parts:² "N 165 ft of S 601.2 ft." In 1984, Robbins conveyed the southern parcel to plaintiffs by warranty deed, using Pangus's metes and bounds description that established the boundaries in relation to the "1/8 line fence." It is undisputed that the 1980 Pangus survey was not recorded before this litigation ensued.

In 2001, defendants acquired their parcel by warranty deed from the prior owners, the Heberts. The Heberts had in 1999 commissioned a survey by land surveyor Huston Kennedy to split off the southern portion of their parcel, which they ultimately transferred to defendants. The Kennedy survey did not rely on the existing 1/8 corner or fence line previously called out and used by the Stonerock and Pangus surveys. Instead, Kennedy set the parcel's boundaries to the true 1/8 line, which was located south of the fence line. The Heberts transferred the southern half of their parcel to defendants, using Kennedy's metes and bounds description that relied on the true 1/8 line to define boundaries.

Sometime in 2008, a dispute arose over the location of the boundary between plaintiffs' and defendants' property. Plaintiffs commissioned a boundary survey by land surveyor Donald DeKeyser. DeKeyser "worked the descriptions [of the properties in the subject quarter section] up" and "they came out on that 1/8 line fence." According to DeKeyser, the "1/8 line fence" is what was surveyed to and was used as boundaries for the property south of the disputed property, and the "1/8 fence line" became accepted as the occupation line, survey line, or the 1/8 line.

¹ Metes and bounds is "a surveyor's description of a parcel of real property, using carefully measured distances, angles and directions." See www.dictionary.law.com.

² An aliquot parts description defines a parcel's boundaries by referring to the lines and corners in the quarter section.

According to DeKeyser and Timothy Hart, another land surveyor who reviewed the surveys and deed descriptions, Kennedy's theoretical division of the subject quarter section ignored the previous survey work in the area that called out, used, and recorded the fence line as the occupational 1/8 line and a 1/8 corner on that fence line. Hart opined that using the true 1/8 line to define defendants' parcel as proposed by the Kennedy survey could impact "no less than ten parcels in the area."

In accordance with the DeKeyser survey, which relied on the 1/8 fence line called out by previously recorded surveys to define the borders of the parties' parcels, plaintiffs believed they owned the disputed wedge of property. Plaintiffs maintained that the Kennedy survey erroneously placed the southern border of defendants' property on plaintiffs' property. In contrast, defendants believed they owned the disputed property in accordance with the Kennedy survey, which relied on the true 1/8 line to define the borders. Defendants' experts, including land surveyor Anthony Sycko, maintained that the disputed wedge of property actually occurred in the middle of plaintiffs' northern and southern parcels. Defendants' experts contend that the wedge was created when plaintiffs acquired their northern parcel in aliquot parts, which, according to defendants, relies on the true 1/8 line, and subsequently acquired their southern parcel in metes and bounds in reliance on the fence line that lies north of the true 1/8 line.

Plaintiffs commenced this action to quiet title to the wedge of land in dispute. In their complaint, plaintiffs claimed ownership of the disputed property under the doctrine of repose, or alternatively that they had taken the property by acquiescence. In deciding plaintiffs' motion for summary disposition, the court found that the doctrine of repose applied as a matter of law and quieted title of the disputed wedge of property to plaintiffs in accordance with the DeKeyser survey. This appeal ensued.

On appeal, defendants claim that the trial court erred in applying the doctrine of repose and in granting plaintiffs' motion for summary disposition. "This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id.* at 120. "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id.* at 120. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.* at 120, citing MCR 2.116(C)(10), (G)(4).

"[S]ettled boundaries shall be allowed repose and shall not be disturbed." *Daley v Gruber*, 361 Mich 358, 362; 104 NW2d 807 (1960). Thus, "long established occupational lines are not to be disturbed by recent surveys." *Id.* (approving of trial court's conclusion). "Public policy clearly favors consistency in ascertaining boundary lines, especially where . . . a multitude of boundaries has been established in reliance" upon the location established by prior surveys and monuments. *Adams v Hoover*, 196 Mich App 646, 651; 493 NW2d 280 (1992).

In this case, the fence line meandering north of the true 1/8 line was called out and used by both the 1973 Stonerock survey and the 1975 Pangus survey as the 1/8 line to establish

boundaries. These surveys were duly recorded and subsequently relied upon by surveyors and property owners to establish boundaries south of the disputed property. Further, the 1980 Pangus survey, although unrecorded, relied upon the fence line as called out in the previously recorded surveys to define the boundaries of the parcels currently owned by plaintiffs.

Considering the undisputed recordation of the fence line and extensive reliance on the fence line as the 1/8 line to establish boundaries in the subject quarter section, we conclude that the fence line became the settled occupational 1/8 line as a matter of law. The fence line was recorded, consistently used, and relied upon to define boundaries within the subject quarter section, and thus should not be unsettled by a more recent survey. See *Daley*, 361 Mich at 362; *Adams*, 196 Mich App at 650 (noting the *Daley* Court's holding that "long established occupational lines [like the fence line at issue here] are not to be disturbed by recent surveys" and should be "allowed repose.")

Kennedy's 1999 survey defined defendants' boundaries in reference to the true 1/8 line, which clearly conflicted with the longstanding and prevalent use of the established fence line meandering north of the true 1/8 line to define boundaries of the parcels south of the disputed property. The Kennedy survey, although technically accurate, should not disturb the settled 1/8 occupational fence line that has become the relied-upon 1/8 line in the subject quarter section.³ *Daley*, 361 Mich at 362. Reliance on the true 1/8 line would potentially alter boundary lines after property rights have been acquired in reliance on the fence line meandering north of the true 1/8 line.⁴

³ We disagree with defendants' contention that the doctrine of repose does not apply to the instant case because the 1/8 fence line is not an occupational boundary occurring *between* defendants' and plaintiffs' property. Although the disputed property is located north of and does not directly border the fence line, property owners, including plaintiffs, clearly relied upon it to define the boundaries of all the properties in the subject quarter section south of plaintiffs' property in accordance with the previously recorded surveys, making it a long established occupational line that should not be disturbed by a more recent survey, *Daley*, 361 Mich at 362, regardless of its proximity to the disputed property.

⁴ Defendants contend that the use of the true 1/8 line to define their border would affect only plaintiffs' parcels because plaintiffs' northern parcel, described in aliquot parts, would shift southward in reference to the true 1/8 line into plaintiffs' southern parcel, described in metes and bounds in reliance on the 1/8 fence line, thereby creating an overlap between plaintiffs' parcels. This argument, however, necessarily assumes that the aliquot parts description of plaintiffs' northern parcel references the theoretical true 1/8 line to establish its boundaries. However, because the 1/8 line is the occupational fence line that meandered north of the true 1/8 line, the boundaries of plaintiffs' northern parcel are established in reference to the established 1/8 fence line, not the true 1/8 line. ("[A]fter such a boundary has been so established, it must be presumed that descriptions in later conveyances by one of these parties, necessarily involving such a boundary, are intended to refer to the boundary so located on the ground and not to some other imaginary line or point which might have been taken in the absence of such location.")

Considering this evidence, the doctrine of repose applies in this case and prevents defendants from using a later survey to disrupt the settled 1/8 fence line. Accordingly, the trial court did not err in granting summary disposition in favor of plaintiffs based on the doctrine of repose.

Further, we find no abuse of discretion in the trial court's decision to decline to reconsider the summary disposition motion. See *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000) (this Court reviews decisions on motion for reconsideration for abuse of discretion). Defendants first argue that plaintiffs' counsel misled the court about the validity of Kennedy's surveying methods. This claim did not warrant reconsideration by the trial court. Contrary to defendants' argument, the propriety of the survey methods employed by the competing surveyors was not at issue here. The court properly resolved the case based on the doctrine of repose, recognizing the established occupational fence line as the 1/8 line and concluding that Kennedy's survey should not act to unsettle property boundaries created in reliance on the fence line that was duly recorded in prior surveys. Defendants next argue that the court misapplied the doctrine of repose because the established occupational line is not located between the parties' boundaries, and the evidence did not establish that other parcels would be adversely affected by giving effect to Kennedy's survey. This claim did not warrant the trial court's reconsideration. These issues merely present the same issues ruled on by the court, either expressly or by reasonable implication, and do not rise to the level of a palpable error by which the court and the parties have been misled to warrant reconsideration of plaintiffs' summary disposition motion. MCR 2.119(F)(3). Further, the trial court's decision not to issue a written opinion in this matter does not warrant reconsideration of plaintiffs' summary disposition motion. Although the court did not present elaborate findings in a written opinion, the brief, definite findings in the court's oral opinion were sufficient for this Court's review.

Affirmed.

/s/ Peter D. O'Connell
/s/ Pat M. Donofrio
/s/ Jane M. Beckering

Daley, 361 Mich at 363.) Accordingly, because the established fence line has become the accepted occupational 1/8 line, the overlap of disputed property occurs between plaintiffs' and defendants' boundaries.