

STATE OF MICHIGAN
COURT OF APPEALS

ANDREW JACKSON HENSON and ETHELENE
JUNE HENSON,

UNPUBLISHED
July 26, 2012

Plaintiffs/Counter Defendants-
Appellants,

v

No. 304876
Antrim Circuit Court
LC No. 2006-008243-CH

SCOTT BOAL,

Defendant/Counter Plaintiff-
Appellee.

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

In this real property case, plaintiffs appeal the trial court’s ruling denying in part plaintiffs’ motion for settlement of judgment. We affirm.

The entry of a judgment is reviewed for an abuse of discretion. The abuse of discretion standard was articulated in *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). A decision does not constitute an abuse of discretion if it is within the range of reasonable and principled outcomes. *Id.*

Plaintiffs appealed the original trial court decision in favor of defendant. In *Henson v Boal*, unpublished per curiam opinion of the Court of Appeals, issued February 5, 2009 (Docket No 280796), this Court held that plaintiffs had established a claim to the disputed land under both adverse possession and acquiescence. The *Henson* Court found that the “trial court should have quieted title to the disputed land in plaintiffs[,]” and reversed and remanded the trial court’s decision “for entry of judgment consistent with this opinion.” *Id.* at 3-4. Upon plaintiffs’ motion for settlement of judgment, the trial court granted to plaintiffs the land contained within the “fence line,” pursuant to the trial court’s interpretation of this Court’s decision.

First, plaintiffs argue that defendant waived his argument or defense that plaintiffs were entitled only to a portion of the disputed property. We disagree.

“A defense not asserted in the responsive pleading . . . is waived[.]” MCR 2.111(F)(2). Defendant’s answer to plaintiffs’ original complaint directly disputed plaintiffs’ definition of the

disputed property. Further, it was plaintiffs' burden under both adverse possession and acquiescence to demonstrate to the trial court the lands to which plaintiffs were entitled. An entire trial was held on this issue. Defendant properly and timely stated his disagreement with plaintiffs' definition of the disputed property and thus did not waive that argument or defense.

Plaintiffs also assert that the trial court abused its discretion in failing to enter a judgment in their favor for the entire disputed property as defined by plaintiffs' complaint and consistent with this Court's previous opinion in this matter. We disagree.

Plaintiffs assert that this Court's previous decision ordered the trial court to enter a judgment for plaintiffs for the disputed property as defined by plaintiffs' original complaint. The phrase "disputed land" appears only twice in this Court's previous decision. *Henson*, unpub op at 1. The phrase "disputed property" never appears in the decision. There is no indication that this Court intended the phrase "disputed land" to have the exact meaning as did the phrase "disputed property" in plaintiffs' original complaint. The *Henson* Court used the phrase "fence line" on 14 occasions to refer to the disputed boundary. This Court's decision indicates that this Court was speaking of the fence line when the case was remanded "for entry of judgment consistent with this opinion." *Id.* at 4.

The trial court's ruling granted plaintiffs the land contained within the fence line, as prescribed by our earlier opinion. The trial court followed this Court's decision, stating:

[T]his is what I read the Court of Appeals as having provided This is treating the fence line as the obvious border of acquiescence, 26 years seeing the fence line and not complaining. In fairness to the Court of Appeals, this line has disappeared, but apparently that's where it used to be. . . . That's what I believe they intended, was to give plaintiff's [sic] that property that used to be within the fence line.

The trial court's decision was clearly within the range of principled outcomes and thus did not constitute an abuse of discretion.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ David H. Sawyer

/s/ Donald S. Owens