

STATE OF MICHIGAN
COURT OF APPEALS

CLAIRE J. RYCKMAN and BLAINE H.
RYCKMAN,

UNPUBLISHED
June 20, 2006

Plaintiffs-Appellants,

v

RONALD T. BARROWS and KIMBERLY
STOVER-BARROWS,

No. 259620
Wayne Circuit Court
LC No. 03-322652-CH

Defendants-Appellees.

Before: Cooper, P.J., and Neff and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order, following a bench trial, quieting title to a parcel of land ("lot 80") in favor of defendants. The court rejected plaintiffs' argument that they should be awarded title to lot 80 under a theory of acquiescence.¹ We affirm.

Defendants are the owners of record to lots 80-84, a contiguous row of lots situated along Kercheval Avenue in Grosse Pointe Park. Defendants and their predecessors used lots 81-84 for commercial purposes, leaving lot 80 as an undeveloped buffer zone between the commercial property and the residential area. Lot 80 borders on the rear boundary of plaintiffs' residential property ("lot 36"). Plaintiffs began using lot 80 as an extension of their backyard after moving into their house in 1962. Plaintiff Claire Ryckman expended considerable sums to landscape and improve the property with a fountain, automatic sprinkler system, gardens, and basketball stand. She and her family used lot 80 for outdoor parties and recreation. Plaintiffs installed fencing to enclose their own property and lot 80. Lot 80 also is separated from lot 81 by a masonry wall running alongside plaintiffs' fencing. Defendants' predecessor, the Bologna Corporation, installed the wall at the direction of the city of Grosse Pointe Park. Peter Bologna, the president of Bologna Corporation, testified that he placed the wall between lots 80 and 81, instead of between plaintiffs' property and his own, so he would not have to landscape lot 80.

¹ Plaintiffs also asserted a claim for adverse possession, which is not at issue on appeal.

Claire Ryckman testified that the Cannons, who owned lot 80 when plaintiffs purchased their house, permitted her to use lot 80. Peter Bologna, the president of the Bologna Corporation, testified that he too permitted plaintiffs to use lot 80, but he did not relinquish ownership. He paid the property taxes on lot 80, except during a period in the 1990s when he did not realize that the city was assessing lot 80 separately from lots 81-84. When he discovered his error, he paid the arrearage to prevent a tax sale.

Defendants bought lots 80-84 from the Bologna Corporation's bankruptcy estate in 1996. Shortly thereafter, defendant Ronald Barrows wrote Claire Ryckman to introduce himself as the new owner. He advised her that he planned to eventually expand the business onto lot 80, but had no immediate plans to do so. He assured her that she could continue using lot 80 until he formed other plans. In 2003, Barrows notified plaintiff that he was revoking his consent to her use of lot 80 because his tenant intended to expand the business. Plaintiffs subsequently brought this action to quiet title.

The trial court held a bench trial, and found that defendants and their predecessors in interest permitted plaintiffs to use lot 80, and that plaintiffs never used it without their consent. The court therefore concluded that plaintiff was not entitled to ownership pursuant to the doctrine of acquiescence, and quieted title in favor of defendants.

On appeal, plaintiffs do not challenge the trial court's factual findings that their use of lot 80 was permissive. Instead, plaintiffs argue that they were not required to prove non-consensual use of lot 80 in order to establish title by acquiescence. Because plaintiffs' action to quiet title is equitable in nature, we review this issue *de novo*. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996).

Michigan law recognizes three theories of the doctrine of acquiescence, namely "(1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from intention to deed to a marked boundary." *Id.* at 681. In the instant case, the second and third theories are clearly not applicable. Thus, plaintiffs seek relief under the theory of acquiescence for the statutory period. This theory holds that "acquiescence to a boundary line may be established where the line is acquiesced in for the statutory period irrespective of whether there has been a bona fide controversy regarding the boundary." *Id.* Under this theory, if the parties acquiesce to the placement of a boundary line for more than the 15-year statutory period, MCL 600.5801(4), the property owner of record can no longer enforce his title, and the other property owner acquires title by virtue of his possession of the land. *Id.* at 681-682. A claim of acquiescence for the statutory period does not require that the possession of the property be hostile or without permission. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001).

The trial court correctly concluded that there was no acquiescence to a boundary line because the owners were aware of the true boundary and permitted plaintiffs to use lot 80 while it was convenient for them to do so. Although it not necessary for a claimant under the doctrine of acquiescence to show that his use of the property in question was hostile or not permitted, in the circumstances of this case, plaintiffs' permissive use of lot 80 precludes the requisite finding that the parties acquiesced to the placement of the boundary lines. Defendants and their predecessors did not allow plaintiffs to use lot 80 because they were treating the western edge of lot 80 as the boundary between plaintiffs' property and their own. Rather, Bologna and

defendants permitted plaintiffs' use of the property because doing so was convenient for them, and defendants revoked their permission when the arrangement ceased to be convenient. Allowing or tolerating plaintiffs' encroachment on the property does not equate to acquiescence to a property line, especially where, as here, the parties shared a mutual understanding that the true owners consented to the encroachment. Accordingly, the trial court did not place improper emphasis on the history of permissive use.

Plaintiffs also argue that the trial court erred in finding that they failed to prove acquiescence by a preponderance of the evidence. In order to establish title by acquiescence, the claimant must show by a preponderance of the evidence that the parties acquiesced in the line and treated it as the boundary for the 15-year statutory period. *Walters v Snyder*, 225 Mich App 219, 223-224; 570 NW2d 301 (1997). Plaintiffs failed to show that the parties treated the western edge of lot 80 as the proper boundary between plaintiffs' and defendants' property. Evidence that plaintiffs maintained and developed the property as though it were their own did not, by itself, establish acquiescence.

Affirmed.

/s/ Jessica R. Cooper
/s/ Janet T. Neff
/s/ Stephen L. Borrello