STATE OF MICHIGAN

COURT OF APPEALS

GEORGE HAEFLER AND HARVEY BOIK, Plaintiffs/Counter-Defendants-Appellants,	UNPUBLISHED June 7, 2007
v	No. 266934 Newaygo Circuit Court
LEE WINNER AND JOYCE WINNER, Defendants/Counter-Plaintiffs-Appellees.	LC No. 04-018772-CH

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

In this action to quiet title, plaintiffs appeal as of right the November 21, 2005, judgment entered in defendants' favor. Because the trial court properly concluded that plaintiffs failed to acquire title to the disputed property through acquiescence or adverse possession, we affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

Plaintiffs filed a complaint to quiet title to a small, triangular piece of land located along the section line common to Section 21 and 22 of Barton Township, Newaygo County, Michigan. Plaintiffs own properties in Section 21, west of the section line, and defendants own adjoining property in Section 22, east of the section line. South of plaintiffs' properties, Cypress Road runs north and south, straddling the section line. But, just south of the southern boundary of George Haefler's property, Cypress Road veers northeast, creating the disputed triangle.

In 1958, Harvey Boik purchased approximately 120 acres of land in Section 21. At that time, there was an existing fence surrounding the property. On the eastern side of the property, the fence ran parallel to Cypress Road. Boik believed that the fence represented the property line and that he owned all of the land up to the road. In the 1960s and 1970s, Boik used the disputed portion of the property for grazing cattle, he constructed a fence on it, and he granted the local power company an easement over it. Although Boik could not remember who owned defendants' land between 1958 and 1975, he and Haefler recalled that Gerald Lutz purchased the property in 1975 and sold it in 1997.

In 1980, Boik sold the northern portion of his 120 acres to Haefler. At that time, Haefler had the property surveyed. The survey disclosed that Lutz owned the disputed property.

However, from 1980 to the late 1990s, Haefler used the disputed property for hunting and camping. He also planted rye and buckwheat and allowed Gerald Suessine's horses to graze there during hunting season. In 1998 or 1999, Haefler took up residence on his land and subsequently constructed a fence on the disputed property.

According to Haefler, Lutz never challenged his use of the disputed property. Haefler spoke with Lutz about the property on one occasion over the telephone. During their conversation, Lutz indicated that he was unconcerned with the land to the west of Cypress Road and that Haefler was free to use it. After Lutz sold his property in 1997, subsequent owners asked Haefler not to cut the grass on the disputed property and to remove his fence. When defendants purchased the property in 2001, they objected to Haefler's occupation. Haefler claims that defendants harassed him and damaged his property.

Plaintiffs first argue on appeal that they obtained title to the disputed property through acquiescence. Actions to quiet title are equitable in nature and are subject to de novo review, but a trial court's factual findings are reviewed for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001); *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993). "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." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

There are three theories of acquiescence: 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. *Walters*, *supra* at 457. In order to support a claim of acquiescence under any of the three theories, the parties must be mutually mistaken about the location of the property line, at least initially. *Id*. at 458. In addition, proof of an agreed-to boundary line is crucial to a claim of acquiescence. *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974). The establishment of ownership through acquiescence must be shown by a preponderance of the evidence. *Killips*, *supra* at 260.

Plaintiffs claim that Boik acquired title to the disputed property through acquiescence for the statutory period. Plaintiffs' claim requires a showing that the opposing parties or their predecessors acquiesced in the line and treated it as the boundary for 15 years. MCL 600.5801(4); *Walters*, *supra* at 456. While the absence of action can indicate acquiescence, *Morrison v Queen City Electric Light & Power Co*, 181 Mich 624, 628-629; 148 NW 354 (1914), as the trial court indicated, "there was never anybody [for Boik] to acquiesce with" in this case. Considering that Boik cannot remember who owned the disputed property before 1975, plaintiffs cannot establish that the preceding landowners were mistaken about the property line or that they treated Cypress Road as the property line. Although Boik mistakenly believed that he owned the land up to the road and he used the land for cattle, under the theory of acquiescence, the focus is on how the parties recognized and treated the boundary line rather than on how the land was used. *Walters*, *supra* at 457-458. In the instant case, the fact that no one interfered with Boik's use of the disputed property is insufficient to establish acquiescence.

Plaintiffs further argue that Haefler acquired title to the disputed property through acquiescence following a dispute and agreement. Specifically, plaintiffs claim that Lutz agreed to adopt Cypress Road as a common boundary. Acquiescence following a dispute occurs when the parties have a bona fide controversy and later reach an agreement concerning the boundary

line. *Rock v Derrick*, 51 Mich App 704, 708; 216 NW2d 496 (1974). First, there is no evidence suggesting that either Haefler or Lutz was mistaken about the property line. *Walters*, *supra* at 458. Moreover, plaintiffs failed to show, by a preponderance of the evidence, that Haefler and Lutz ever disagreed about the property line or that they agreed to treat the road as the true boundary. Lutz indicated that he was unconcerned with the land to the west of the road and that Haefler could use the land. But, this evidence, standing alone, does not establish that they agreed to adopt the road as the new property line. Actually, the fact that Lutz gave Haefler permission to use the disputed property directly refutes the theory that they agreed to treat the road as the boundary line. Therefore, plaintiffs' acquiescence claim fails.

Plaintiffs next argue on appeal that they acquired title to the disputed property through adverse possession. "To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years." *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). There must be clear and cogent proof of adverse possession. *Gorte*, *supra* at 170. Evidence of adverse possession must be strictly construed, and every presumption is in favor of the property's true owner. *Sheldon v Michigan C R Co*, 161 Mich 503, 512; 126 NW 1056 (1910).

Viewing the evidence in the light most favorable to defendants, we conclude that plaintiffs failed to establish that their occupation of the disputed property was so visible, open, and notorious that it demonstrated intent to claim ownership. See *Burns v Foster*, 348 Mich 8, 14-15; 81 NW2d 386 (1957); *Connelly v Buckingham*, 136 Mich App 462, 469; 357 NW2d 70 (1984). Boik only ever used the northern portion of his land for grazing cattle and there is conflicting evidence as to whether he built a cattle fence on the disputed property. From 1980 to the late 1990s, Haefler periodically camped and hunted on the property and with Haefler's permission, Suessine built a fence on the property and allowed his horses to graze there during hunting season. After Haefler moved to his land in 1998 or 1999, he built a fence and cut the grass on the disputed property. Using this wooded land for occasional and seasonal grazing, camping, and hunting is insufficient to demonstrate intent to assert ownership of the land. Furthermore, constructing a fence is insufficient, in and of itself, to establish adverse possession. *Beecher v Ferris*, 117 Mich 108, 110; 75 NW 294 (1898). Moreover, by Haefler's own admission, he had Lutz's consent to use the disputed property. Therefore, while Haefler clearly used the property to a greater extent than Boik, Haefler's occupation of the property was not hostile to the true owner until at least 1997. See *West Michigan Dock*, *supra* at 511. Plaintiffs failed to establish adverse possession by clear and cogent evidence.

Affirmed.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio