STATE OF MICHIGAN

COURT OF APPEALS

WESLEY L. NEWENHOUSE and
BARBARA A. NEWENHOUSE,

Plaintiffs–Appellees,

v

DOUGLAS B. GREZESZAK and
LORI L. GREZESZAK,

Defendants–Appellants.

UNPUBLISHED

August 27, 1996

No. 185578
LC No. 94-000507-CH

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Defendants appeal as of right from the grant of plaintiffs' request for injunctive relief and the denial of defendants' motion to quiet title. We affirm.

This case arises out of a boundary dispute regarding a strip of property approximately twenty-eight feet wide and 135 feet long between Lot 13 in Tucker's Woodland Estates in Ogemaw County, owned by defendants, and the Tri-Terrace Motel, owned by plaintiffs. A survey conducted in January 1994 revealed that a play yard built by defendants encroached onto plaintiffs' property. Plaintiffs filed suit seeking an injunction for defendants to remove the play yard and a septic drain. In their counterclaim, defendants claimed titled to the parcel by both adverse possession and acquiescence. The trial court ultimately granted plaintiffs' request for injunctive relief and ordered defendants to remove the playhouse and septic drain.

Defendants first argue that they established ownership of the disputed parcel by adverse possession. To succeed in an action for adverse possession, the defendants must establish by clear and cogent proof that their possession of the disputed property was actual, visible, open, notorious,

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* Circuit judge, sitting on the Court of Appeals by assignment.

exclusive, continuous, and uninterrupted for the statutory period of fifteen years. *Burns v Foster*, 348 Mich 8, 14; 81 NW2d 386 (1957); *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Defendants owned Lot 13 for approximately seven years; therefore, defendants' adverse possession claim is wholly dependent on tacking the possession of Jack Rutherford, their predecessor in interest, to their own. This they cannot do, because Rutherford testified that although he maintained the disputed tract of land, he never intended to possess it as his own. See *Gorte v Dep't of Transportation*, 202 Mich App 161, 170; 507 NW2d 797 (1993); 3 Am Jur 2d, Adverse Possession, § 51, p 145 ("No matter how exclusive and hostile to the true owner the possession may be in appearance, it cannot be adverse unless accompanied by the intent on the part of the occupant to make it so").

Because there was no evidence of hostile possession of the disputed property for the requisite fifteen years, the trial court properly rejected defendants' claim of adverse possession.

Defendants also asserted title in the disputed property under the doctrine of acquiescence, which the trial court rejected. This doctrine provides that, where adjoining property owners acquiesce to a boundary line for a period of at least fifteen years, that line becomes the actual boundary line. *McQueen v Black*, 168 Mich App 641, 644; 425 NW2d 203 (1988). We have recognized three types of acquiescence: acquiescence for the statutory period of fifteen years; acquiescence which follows a dispute and agreement; and acquiescence which arises from an intention to deed to a marked boundary. *Pyne v Elliot*, 53 Mich App 419, 426-428; 220 NW2d 54 (1974). The question presented here is whether, as defendants contend, there was acquiescence in the now-challenged boundary line for the requisite fifteen years.

Plaintiffs' predecessor in interest, Jim Orr, testified that the southern boundaries of Lots 12, 13, and 14 were all even with the south end of the bituminous driveway on Lot 13 and that Rutherford, defendants' predecessor in interest, never mowed Lot 13 as far south as defendants apparently mowed. Moreover, Rutherford never recognized or intended the south tree line on Lot 13 to constitute the southern boundary of his property. This evidence precludes a finding of the "mutual agreement" required to sustain an acquiescence claim. See generally *Keleman v Lane*, 361 Mich 429, 430-432; 105 NW2d 428 (1960); *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974).

Accordingly, the trial court properly determined that defendants could not obtain title to the disputed parcel under the doctrine of acquiescence.

Affirmed.

/s/ Maura D. Corrigan
/s/ Kathleen Jansen
/s/ Meyer Warshawsky