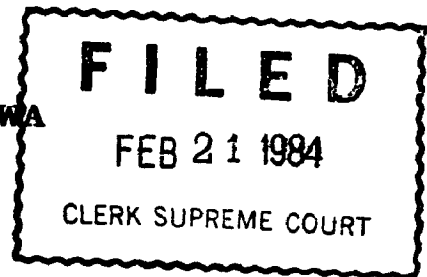


IN THE COURT OF APPEALS OF IOWA



HENRY C. BRYANT and
HELEN J. BRYANT,

Plaintiffs-Appellants,

vs.

LISLE CORPORATION,

Defendant-Appellee.

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Filed February 21, 1984

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Appeal from the Iowa District Court for Page County - Leo F. Connolly,
Judge.

Plaintiffs appeal from the trial court's dismissal of their action seeking to establish the boundaries between their property and the defendant's property by acquiescence and specific agreement. **AFFIRMED.**

Richard G. Davidson, Davidson & Bailey, P.C., Clarinda, Iowa, for plaintiffs-appellants.

Paul W. Jones and Stephen P. O'Meara, Turner, Jones, Bitting & O'Meara, Clarinda, Iowa, for defendants-appellees.

Heard by Donielson, P.J., Hayden and Sackett, JJ.

SACKETT, J.

Plaintiffs appeal from the trial court's dismissal of their action seeking to establish the boundaries between their property and the defendant's property by acquiescence and specific agreement.

The plaintiffs, Henry and Helen Bryant, and the defendant, Lisle Corporation, are owners of adjoining lots in Clarinda. The parties are in dispute concerning a twenty-five-foot strip of defendant's lot which the plaintiffs claim that they own.

In a prior action, the plaintiffs sought to quiet title in themselves in their half lot and the twenty-five-foot strip of the adjoining lot on the basis of a warranty deed, adverse possession, and an agreement between the parties. After a trial of that action combined with another action, the trial court entered a judgment against the plaintiffs. The trial court determined that, under the agreement in question, the owners of the lots agreed not to contest each other's claims to the property. The trial court found that there was insufficient evidence that a white pipe marked the boundary between the lots in question and that there were no landmarks established after 1952. The court also determined that the plaintiffs and their predecessors had no intention to claim beyond the true boundary lines as described in their deeds even though they may have been mistaken as to the exact boundary lines. The trial court concluded that the plaintiffs failed to prove by clear, satisfactory, and convincing evidence the elements of adverse possession. The trial court specifically determined that plaintiffs failed to prove with sufficient clarity the alleged boundary line of the adjoining lot.

The plaintiffs appealed from the trial court's judgment. In an opinion filed on April 27, 1982, this court affirmed the trial court's judgment. We concluded in part that the plaintiffs were precluded from arguing acquiescence as a theory of recovery because the acquiescence issue was neither pled nor argued to the trial

court. We also concluded that the trial court properly found that the plaintiffs had failed to establish their claim of adverse possession.

On July 13, 1982, the plaintiffs filed a petition commencing an action under Iowa Code chapter 650 to establish the boundaries of the same property described in the previous actions with the additional description that it included the monuments "on the East side of the above-described property." The plaintiffs claim that, although the defendant claimed an interest in the real estate, it had no interest because the boundaries of plaintiffs' property had been established by acquiescence and by agreement.

On July 30, 1982, the defendant filed a motion to dismiss, claiming that the issues in this action were identical to those raised and litigated in the previous action and that the plaintiffs were precluded from raising the issues again under the doctrine of res judicata. On August 5, 1982, the plaintiff filed a resistance claiming that the issue of acquiescence had not been pled or argued in the prior action and that the acquiescence issue was preserved by the court of appeals opinion.

On May 2, 1983, the trial court entered an order dismissing the plaintiffs' petition. The court found that the issues of fact raised in the present action were litigated in the prior action. The court concluded that the plaintiffs were precluded from raising these issues and this claim under the doctrine of res judicata. On May 11, 1983, the plaintiffs filed a notice of appeal.

On appeal, the plaintiffs assert that their acquiescence claim was a new cause of action raising different factual issues than the previous action and that the trial court erred in determining that the plaintiffs were precluded from raising their acquiescence claim by the doctrine of res judicata (both issue preclusion and claim preclusion).

The defendants claim that the acquiescence action was an attempt by plaintiffs to relitigate, under a new theory, the same operative facts involved in

the adverse possession action while seeking identical relief; and that the action should be dismissed by defensive application of the doctrine of res judicata. We agree.

Claim preclusion under the doctrine of res judicata is based on the principle that a party may not split or try his claim piecemeal, but must put in issue and try his entire claim or put forth his entire defense in the case on trial. B & B Asphalt Co., Inc. v. T.S. McShane Co., Inc., 242 N.W. 2d 279, 286 (Iowa 1976). An adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination. Id. A party must litigate all matters growing out of his claim at one time and not in separate actions. Id.

In its application to situations where, as here, a defendant pleads a prior judgment in bar of a subsequent action ("defensive use" of the doctrine of claim preclusion), the principle is incorporated in Restatement of Judgments §63 as follows:

Where a judgment on the merits is rendered in favor of the defendant, the plaintiff is precluded from subsequently maintaining an action on the same cause of action although he presents a ground for the relief asked other than those presented in the original action, except where the defendant's fraud or misrepresentation prevented the plaintiff from presenting such other ground in the original action.

Because the plaintiffs in this action allege no fraud or misrepresentation which would preclude our application of the defense of res judicata, we must next determine whether the plaintiffs' first and second actions were the same claim or cause of action within the meaning of this principle.

The supreme court, in B & B Asphalt Co., Inc. v. T.S. McShane Co., Inc., 242 N.W. 2d at 286, found guidance in making such a determination in Williamson v. Columbia Gas & Electric Co., 186 F. 2d 464, 470 (3rd Cir. 1950), cert. denied, 341 U.S. 921, 71 S. Ct. 743, 95 L. Ed. 1355 (1951). The Williamson court noted:

[T]he acts complained of and the demand for recovery are the same. The only thing that is different is the theory of recovery. The same witnesses and documents will be necessary in the trial in both cases.

The Williamson court added an explanation of what constitutes the same "claim" or "cause of action" within the meaning of the res judicata doctrine:

Reference to the basic theory of tort liability substantiates the position taken here. To put it in rather elementary tort language, the basis of the plaintiff's recovery is liability-creating conduct on the part of the defendant, the invasion of a legally protected interest of the plaintiff and the necessary causal connection between defendant's acts and plaintiff's injury. The plaintiff having alleged operative facts which state a cause of action because he tells of defendant's misconduct and his own harm has had his day in court. He does not get another day after the first lawsuit is concluded by giving a different reason than he gave in the first for recovery of damages for the same invasion of his rights. The problem of his rights against the defendant based upon the alleged wrongful acts is fully before the court whether all the reasons for recovery were stated to the court or not.

Id. This explanation was adopted by the Iowa Supreme Court in B & B Asphalt and is controlling here. Here, as in B & B Asphalt, the same evidence would be probative in both actions. Both actions arise from the same transaction and depend on evidence of the same events. The plaintiffs' first action was based on adverse possession, and the second action was based on acquiescence. The same conduct is alleged to have given rise to both actions. The plaintiffs in this action sought a second day in court on the same claim they made in the first action. Only the theories of recovery are different. The plaintiffs could have advanced the acquiescence theory with the adverse possession theory in the first action. They are barred from seeking to do so now. We find no error on the part of the district court in sustaining the defendant's motion to dismiss. Because of our disposition of the claim preclusion issue, we need not address the issue preclusion arguments advanced by the parties.

AFFIRMED.