

IN THE COURT OF APPEALS OF IOWA

No. 8-469 / 97-1364

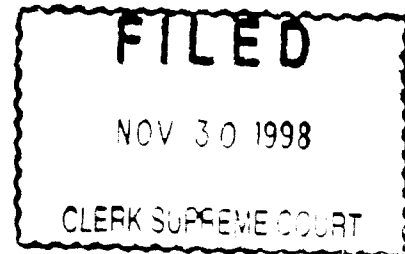
**STANLEY J. FAIRBANKS, MARGARET
F. FAIRBANKS, WILLIAM G. HALL,
DEBRA J. HALL, MICHAEL E. McMANIGAL,
and SANDRA J. McMANIGAL,**

Plaintiffs-Appellees,

vs.

KENNETH J. LEHMAN,

Defendant-Appellant.



Appeal from the Iowa District Court for Pottawattamie County, Gordon C.
Abel, Judge.

Defendant appeals from a district court order establishing a boundary by
acquiescence based upon an old fence line. **AFFIRMED.**

Scott J. Coziahr, Council Bluffs, for appellant.

Matthew G. Woods of Peters Law Firm, P.C., Glenwood, for appellees.

Heard by Sackett, P.J., and Huitink and Vogel, JJ.

PER CURIAM

Defendant-appellant Kenneth J. Lehman appeals from a district court decision in a lawsuit filed by plaintiffs-appellants Stanley J. Fairbanks, Margaret F. Fairbanks, William G. Hall, Debra J. Hall, Michael E. McManigal, and Sandra J. McManigal, seeking to have the district court establish a boundary line by acquiescence between the east half and the west half of the northeast quarter of section 31, township 76, range 43 in Pottawattamie County, Iowa. Defendant, the owner of the east tract, contends (1) the district court's findings as to the location of an old fence separating the properties is not supported by substantial evidence; (2) the district court erred in establishing a boundary by acquiescence along a fence line where there is no longer such fence; (3) the district court erred in establishing a boundary by acquiescence along a fence line plaintiffs had not recognized as a boundary for at least ten years; and (4) the district court erred in establishing a boundary by acquiescence north of property owned by two people not parties to the litigation. We affirm.

This is a special action tried at law under Iowa Code chapter 650, and our review is on errors assigned. *Davis v. Hansen*, 224 N.W.2d 4, 5 (Iowa 1974). The factual findings of the trial court have the effect of a special verdict and if supported by substantial evidence will not be disturbed on appeal. *See* Iowa R. App. P. 14(f)(1); *see also Davis*, 224 N.W.2d at 5.

According to the theory of acquiescence set forth in the Iowa Code, a boundary line may be established by showing that adjoining landowners or their predecessors in title have recognized and acquiesced in a boundary line for a period of ten years.

Tewes v. Pine Lane Farms, Inc., 522 N.W.2d 801, 806 (Iowa 1994); *see also* Iowa Code § 650.6 (1995). Each of the adjoining landowners or their grantors must have had knowledge of and consented to the asserted property line as the boundary line. *Tewes*, 522 N.W.2d at 806; *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). When the acquiescence persists for ten years, the line becomes the true boundary line even though a survey may show otherwise and even though neither party intended to claim more than called for by his or her deed. *Tewes*, 522 N.W.2d at 806; *Davis*, 224 N.W.2d at 6. Acquiescence does not need to be specifically proven but may be inferred by the silence or inaction of a party who knows of the boundary line claimed by the other and fails to take steps in the ten-year period to dispute it. *See Dart v. Thompson*, 261 Iowa 237, 241, 154 N.W.2d 82, 84-85 (1967).

Plaintiffs, as the parties seeking to establish the boundary line as other than the boundary line in accordance with the survey, had the burden of proving the acquiescence by clear evidence. *See Brown v. McDaniel*, 261 Iowa 730, 733-34, 156 N.W.2d 349, 351 (1968). The question is whether there is such evidence to support the findings of the district court. These findings are equivalent to a jury verdict and will not be disturbed on appeal if supported by substantial evidence. *Tewes*, 522 N.W.2d at 804.

It is conceded there was a fence between the two tracts that at some point was an established boundary. There is evidence the fence consisted of multiple strands of barbed wire attached to trees and fence posts. The trial court found the fence line was established in about 1934 based on the testimony of Howard Angeroth.

Angeroth, who owned the east eighty acres now owned by defendant, had lived on that tract since 1920. He took title to the real estate from his mother in 1963 and had possession of the property until he sold it on contract to defendant in 1988. Angeroth further testified and the district court found Angeroth had maintained the fence until about 1954.

The trial court additionally went on to find this and other evidence supported a finding the fence line became recognized as the boundary line between the two eighty-acre tracts in at least 1934 and was then recognized and acquiesced by the parties or their grantors for a period of ten consecutive years as required for acquiescence under Iowa Code section 650.6. Defendant does not dispute these findings; rather his claimed error centers on facts concerning the location and destruction of the fence since 1957.

The trial court further found once acquiescence in a boundary is shown, the court must establish the boundary as the true boundary, relying on Iowa Code section 650.14.

Defendant first contends the trial court's findings as to the location of the old fence line were not sufficiently definite to establish a boundary. A judgment establishing a boundary must be sufficiently definite to run a line in accordance therewith. *See DeViney v. Hughes*, 243 Iowa 1388, 1394, 55 N.W.2d 478, 481 (1952). Defendant asserts there no longer existed enough of the original fence to establish an accurate boundary line. The district court disagreed, finding instead substantial evidence by which the location of the established fence line could be

permanently established. The district court specifically found there were trees that were adequate to establish the limit of the old fence line and sufficient to establish references from which a surveyed boundary could be established. The district court went forward to find the recognized boundary line should be established by a survey using certain designated reference points. The district court assessed the costs of the survey against plaintiffs.

A review of the evidence convinces us there is substantial evidence to support the district court's factual findings. We affirm on this issue.

Defendant next contends the district court erred in establishing a boundary line where the fence was burned and bulldozed without an effort to preserve the fence line. Trees that had barbed wire contained within them were used as monuments or surveying marks by plaintiffs' expert witness, Michael Sizer of Northstar Land Surveying, a registered Iowa land surveyor. The district court ordered the boundary line be established with reference to these monuments.

In *Tewes*, the court found three posts and a line from crop residue, though not forming a perfectly straight line with the posts, was substantial evidence to support the district court's finding it was the boundary. *Tewes*, 522 N.W.2d at 806. We affirm on this issue.

Defendant further contends the trial court erred because plaintiffs had not recognized the fence line as a boundary in the ten years prior to their bringing this action.

Plaintiffs Stanley and Margaret Fairbanks testified they always knew and still know the location of the fence line. The west eighty acres was purchased in its entirety by the Fairbanks in 1956. They have had their homestead on the property since that time. At the time the Fairbanks purchased the property, there was a fence between the disputed tracts. In 1975, the Fairbanks began selling tracts from the eighty acres. In September of 1975, they began conveying tracts that ultimately became the property of the other plaintiffs.

Defendant purchased his property in 1988 and there was testimony supporting a finding defendant understood at that time the western boundary of his property was an old fence. We affirm on this issue.

Defendant further contends the district court erred in establishing a boundary by acquiescence north of property owned by two people not parties to the litigation. The finding as to the boundary of defendant's land was consistent with the other findings made by the district court and against defendant, who was a party to this suit. The issue of whether these findings would be binding on the owners, who were not parties to the suit, is not an issue before us and is not addressed.

AFFIRMED.