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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EDWARD M. ANSON and LUCY D. ANSON.	)	
	)	November 10, 1977
Appellee.	)	
vs.	)	256
	)	2-58661
JIM McGENNIS, a/k/a JIMMIE McGENNIS.	)	
Appellant.	)	

Appeal from Woodbury District Court - C. F. Stilwill, Judge.

Defendant appeals from decision under Chapter 650 settling boundary between plaintiffs' and defendant's farms. - Affirmed.

Charles L. Corbett, of Corbett. Corbett & Anderson, of Sioux City, for Appellee.

Ronald E. Runge, of Runge & Runge, of Sioux City, for Appellant.

Submitted to Allbee, C.J.. and Donielson, Snell. Oxberger and Carter, JJ.

PER CURIAM

Defendant Jim McGennis appeals judgment setting the boundaries between plaintiffs' and defendant's farms. Defendant raises two issues on appeal: 1) whether the boundaries as found by the trial court are adequately supported by the evidence and 2) whether the order signed by the trial judge was a compromise between the parties and not a true finding of fact. We affirm.

Plaintiffs Edward and Lucy Anson filed their petition asking the trial court to appoint a commission of one or more disinterested surveyors to locate the true boundaries of the farm owned by plaintiffs at the points adjacent to the land owned by defendant. Chapter 650, The Code. The petition alleged that defendant had moved the fences between the farms onto plaintiffs' land and prayed for damages for loss of enjoyment of such property in the sum of $5000. Defendant answered, denying such allegations, and affirmatively pleading that the boundaries were as they existed on November 30, 1967 when the Ansons purchased their property. McGennis further alléged that the boundaries were acquiesced in by plaintiffs and their successors. See § 650.6, The Code. Plaintiffs replied denying such acquiescence.

The trial court found there had been acquiescence on the north-south fence, the east-west dividing line between the Anson and McGennis properties, but that there had been none on the east-west fence, the north-south boundary line. The court ordered an independent surveyor to locate and establish the boundaries according to the specific instructions of the court. The report was filed and approved over the resistance of the defendant. A subsequent hearing was held on the Ansons' claim for damages, but the trial court ruled in McGennis' favor on the ground the Ansons did not produce sufficient evidence. Defendant then appealed.

Defendant's first contention is that the trial court erred in determining there was no acquiescence in the east-west fence which is the north boundary of the Anson's property. An action under chapter 650 is a special proceeding. Section 650.4, The Code. On appeal, it is "heard as in an action by ordinary proceedings." Section 650.15, The Code. Accordingly, our review is not de novo, the judgment of the trial court having the effect of a jury verdict is binding on us if supported by

substantial evidence. Dart v. Thompson, 261 Iowa 237, 240, 154 N.W.2d 82 (1967); Allen v. Melson, 260 Iowa 689, 690, 150 N.W.2d 292 (1967).

The trial court found there was conflicting testimony as to whether the north-south boundary between the property had been moved. Defendant and his witnesses testified it had not. Plaintiff and his witnesses, on the other hand, stated the fence had been moved. Most of these witnesses testified that the fence originally ran through a group of trees north of its present location and that now it was located south of these same trees. Robert Force, a surveyor hired by plaintiff in 1971 to survey their property, testified defendant told him he had pulled up and thrown away markers left by a previous surveyor because they were wrong. Defendant denied removing any corner post stakes but admitted removing wooden pegs along the fence line.

The trial court found that the fence serving as the north boundary had been moved at various times; therefore, there was no acquiescence in this boundary. From a review of the record we find there is substantial evidence to support the trial court's findings and therefore these findings are binding upon us on review. **Allen**, supra.

Defendant's second contention is that the trial court erred in finding acquiescence in the north-south fence, which is the east boundary of Anson's property. He argues a true finding of fact would indicate the boundary was not acquiesced in. Apparently, defendant is claiming either the fence had never been moved and therefore there was no acquiescence or it had been moved but had not been acquiesced in. The evidence established the fence had been moved over a period of years perhaps as much as six inches in different places. Whatever distance the fence had been moved, the trial court found acquiescence. We find there is substantial evidence to support such a conclusion. Further, defendant pled in his answer that either the fence had not been moved or that it had been acquiesced in. The trial court found in his favor and he should not now be allowed to argue against such position.

Defendant's final contention is that the order of November 9, 1973 was not a

finding of fact by the trial court. The decree was prepared according to the findings of the trial court. The trial court found there had been acquiescence in the north-south fence, which is the east-west boundary between the properties. It set the boundary between the parties' property at the location of the north-south fence at the time the decree was entered. This appeal is affirmed.

Affirmed.