

IN THE COURT OF APPEALS OF IOWA

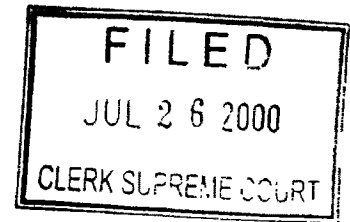
No. 0-264 / 99-1274

Filed July 26, 2000

SUSAN K. JESPERSEN,
Plaintiff-Appellant,

vs.

CARL J. LOCK and DELORES A. LOCK,
Defendants-Appellees.



Appeal from the Iowa District Court for Cerro Gordo County, Bryan H. McKinley, Judge.

The plaintiff appeals from a judgment for defendants in her action for encroachment. **AFFIRMED.**

Gary J. Boveia of Boveia Law Firm, Waverly, for appellant.

Karen R. Kaufman of Oltrogge Law Office, P.C., Clear Lake, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

A jury found a home addition, which encroached upon Susan Jespersen's land, altered the legally-defined boundary lines under the doctrine of mutual acquiescence. She appeals that conclusion, claiming there was insufficient evidence the statutory period for mutual acquiescence—ten years—had elapsed. We affirm the jury's finding as it was supported by substantial evidence.

I. Background Facts & Proceedings.

The Vaughns owned a small summer cabin near Clear Lake. Susan Jespersen owned a summer cabin immediately adjacent to the Vaughns. In mid-August 1987, the Vaughns constructed a garage on what they believed was their property. The following spring, the Cerro Gordo County Planning and Zoning Administrator notified the Vaughns their construction required a permit. The Vaughns applied for a permit but were denied such when the county learned the garage violated a county ordinance requiring all structures be setback from the property line by three feet. The Vaughns appealed the denial of their application; a hearing was set for June 14, 1988; and Jespersen was notified of the hearing as an adjacent property owner. Jespersen appeared at the hearing and objected to the Vaughns receiving any type of variance. The board of adjustment upheld the denial of the permit.

The Vaughns made corrective repairs to the garage—converting it to a small bedroom—so as to comply with the setback requirements and again sought the Board's approval. A hearing was set for August 12, 1988. At the hearing Jespersen again expressed her concern with the structure. The board,

however, noted the garage was moved so as to conform to the setback requirements and granted the variance. In July of 1993 the Vaughns sold the cabin to Carl and Delores Lock. In 1996 the Locks had their parcel of land surveyed and learned the cabin's addition encroached upon Jepserson's land. The Locks notified Jepserson of the encroachment in April of 1997. Six months later Jepserson confirmed the encroachment with her own surveyor and the next month filed this suit seeking removal of the encroachment.

The issue went to trial with a jury finding that the Locks established title to the encroached land by mutual acquiescence. Jepserson moved for judgment notwithstanding the verdict, claiming the evidence did not support the finding of acquiescence because of the requirement the acquiescence must be for ten years. The court denied the motion ruling substantial evidence supported the verdict.

Jepserson appeals, claiming the court erred in denying her motion for judgment notwithstanding the verdict.

II. Standard of Review.

We review the court's denial of a motion for judgment notwithstanding the verdict for correction of errors at law. Iowa R. App. P. 4. We view the evidence in the light most favorable to the party against whom the motion was made and take into consideration every legitimate inference that may fairly and reasonably be made. Iowa R. App. P. 14(f)(2); *Willey v. Riley*, 541 N.W.2d 521, 526 (Iowa 1995). If substantial evidence supports the claim, the motion will be denied. *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). "Evidence is substantial

when a reasonable mind would accept it as adequate to reach a conclusion.” *Id.* In order to avoid a defendant’s motion for judgment notwithstanding the verdict, a plaintiff must present more than a “mere scintilla of evidence.” *Tredrea v. Anesthesia & Analgesia, P.C.*, 584 N.W.2d 276, 280 (Iowa 1998) (citing *Willey*, 541 N.W.2d at 526).

III. Substantial Evidence Supports the Jury’s Verdict.

Under Iowa Code section 650.14 (1999), a landowner may permanently establish a boundary line contrary to the legal descriptions of the property by proving the adjacent landowner mutually acquiesced for a period of ten years to a definitively-marked dividing line. Acquiescence may be inferred from the silence or inaction of one party who knows of the other’s claimed boundary line and fails within the allotted time to dispute its existence. *Ollinger v. Bennett*, 562 N.W.2d 167, 170-71 (Iowa 1997).

Jespersion claims her objections at the board of adjustment hearing sufficiently alerted the Vaughns not only of the existence of the encroachment but that she did not acquiesce to the new boundary. If this is true, the ten-year period prescribed in Iowa Code section 650.14 would begin to run from the day of the final board adjustment hearing, August 12, 1988—a period of nine years and sixty-nine days.

A reasonable mind could readily conclude the Locks obtained the land by way of mutual acquiescence. The board members that participated in the board of adjustment hearing, as well as the transcripts of those meetings, evidence the sole concern of all involved was the proper setback of the addition, not an

encroachment. This is a reasonable and rational interpretation; for if even a hint of encroachment was voiced, the standard practice of the board of adjustments was to order the parties obtain a survey of the lots' respective legal boundaries. Jesperson claims she spoke of an encroachment at the meetings, but the transcript of those meetings and the testimony of the members present do not show this. This fact issue was for the jury to decide. The jury performed that role and was supported by substantial evidence in its conclusions. The trial court properly denied Jesperson's motion for judgment notwithstanding the verdict. The district court is affirmed.

AFFIRMED.