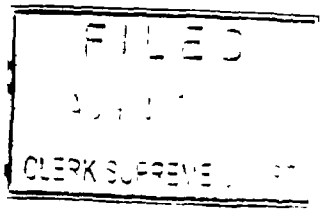
IN THE COURT OF APPEALS OF IOWA

No. 9-232 / 96-1206
Filed August 27, 1999

ROSE ANN MANGUNO,
Plaintiff-Appellant,

vs.

ESTHER BETTS and CARL BETTS,
Defendants-Appellees.



Appeal from the Iowa District Court for Fayette County, James L. Beeghly, Judge.

The plaintiff appeals a district court ruling granting the defendant's partial summary judgment on plaintiff's law action regarding a boundary dispute between the parties' respective real estate. **AFFIRMED.**

Rose Ann Manguno, Oelwein, pro se, appellant.

W. Wayne Saur of Saur & Saur, Oelwein, for appellees.

Considered by Sackett, C.J., and Huitink and Vogel, JJ.

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PER CURIAM.

Plaintiff-appellant Rose Ann Manguno and defendants-appellees Esther Betts and Carl Betts own adjoining lots in Irvine's Addition to Oelwein, Iowa. Plaintiff sued seeking (1) to establish a boundary line by acquiescence under Iowa Code section 650.14 (1995), and (2) to establish an easement for ingress and egress. The district court, in ruling on a motion for summary judgment filed by defendants, dismissed plaintiff's claim to establish a boundary by acquiescence finding the record void of evidence necessary to prove the parties mutually acquiesced in a line definitely marked by a fence or in some other manner. The district court did not dismiss plaintiff's claim of an easement concluding there was a factual dispute as to whether the evidence supported a finding there was an easement. Plaintiff appealed challenging the grant of summary judgment. The supreme court determined the appeal was interlocutory but granted plaintiff the right to proceed. We affirm.

In reviewing the grant or denial of a summary judgment motion, we view the underlying facts contained in the pleadings and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, and give to that party the benefit of any doubt as to the propriety of granting summary judgment. *D.R.R. v. English Enters., CATV, Div. of Gator Transp., Inc.*, 356 N.W.2d 580, 582 (Iowa App. 1984). Our task is to determine only whether a genuine issue of material fact exists, and whether the law was correctly applied, and to reverse the grant of summary

judgment if it appears from the record there is an unresolved issue of material fact. *Meylor v. Brown*, 281 N.W.2d 632, 634 (Iowa 1979).

Summary judgment is proper when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). The burden of showing the nonexistence of a material fact is upon the moving party. *Northrup v. Farmland Indus., Inc.*, 372 N.W.2d 193, 195 (Iowa 1985). Every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved. *Williams v. Davenport Communications Ltd. Partnership*, 438 N.W.2d 855, 856 (Iowa App. 1989).

With these principles in mind, we address plaintiff's claims that (1) the district court erred in deciding summary judgment only on affidavits and not allowing oral testimony; (2) there were more issues to be litigated than just those advanced in plaintiff's petition; (3) the district court erred in determining no genuine issues of material fact existed; and (4) there was a disputed material fact as to who owned the land.

There is no basis to plaintiff's first and second contention. The procedure on summary judgment is well defined. *See* Iowa R. Civ. P. 237. Issues to be considered in the appellate court must be raised in the district court. *See Connor v. State*, 362 N.W.2d 449, 457 (Iowa 1985); *State v. Lyon*, 223 N.W.2d 193, 194 (Iowa 1974). Plaintiff elected to represent herself and, while we recognize she does not understand

the procedures required in resisting a motion for summary judgment, we do not have the liberty of considering her pro se status in addressing her claims for reversal. The Iowa Supreme Court has clearly directed us otherwise and has held a lay person who fails to utilize professional assistance should be ready to take the consequences. *State v. Walker,* 236 N.W.2d 292, 295 (Iowa 1975). The brief of one not an Iowa lawyer is judged by the same standard as a brief filed by an Iowa lawyer. *See Metropolitan Jacobson Dev. Venture v. Board of Review,* 476 N.W.2d 726, 729 (Iowa App. 1991). The law does not judge by two standards, one for lawyers and another for non-lawyers. *See id.* All are expected to act with equal competence. *Id.* If a non-lawyer chooses to represent herself, she does so at her own risk. *Kubik v. Burk,* 540 N.W.2d 60, 63 (Iowa App. 1995). To consider a claim of a pro se litigant that does not comply with proper procedures would result in chaotic breakdown in our judicial system. *See State v. Dunham,* 232 N.W.2d 475, 477 (Iowa 1975); *see also Simmons v. Brenton Nat'l Bank,* 390 N.W.2d 143, 145 (Iowa App. 1986).

The question we need resolve is whether the trial court correctly found on summary judgment there was no evidence of acquiesce in a defined line or fence.

According to the theory of acquiescence set forth in the Iowa Code, a boundary line may be established by a showing the two adjoining landowners or their predecessors in title have recognized and acquiesced in a boundary line for a period of ten years. Iowa Code §§ 650.6 and 650.14; *see Davis v. Hansen,* 224 N.W.2d 4,6

(Iowa 1974). Iowa Code chapter 650 codified the doctrine of acquiescence by which a boundary line contrary to a property's legal description may be established.

Iowa Code section 650.14 provides:

> If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established.

Iowa Code § 650.14.

To have acquiescence, each of the adjoining landowners or their grantors must have knowledge of and consent to the asserted property line as the boundary line. *Sille v. Shaffer,* 297 N.W.2d 379, 381 (Iowa 1980). If the acquiescence persists for ten years, the line becomes the true boundary even though a survey may show otherwise and even though neither party intended to claim more than called for by his deed. *Id.*; *Davis,* 224 N.W.2d at 6.

Acquiescence need not be specifically proven; it may be inferred by the silence or inaction of one party who knows of the boundary line claimed by the other and fails to take steps to dispute it for a ten-year period. *Dart v. Thompson,* 261 Iowa 237, 241, 154 N.W.2d 82, 84-85 (1967). However, the party seeking to establish a boundary line other than the boundary line in accordance with a survey must prove acquiescence by clear evidence. *Tewes v. Pine Lane Farms, Inc.,* 522 N.W.2d 801, 806 (Iowa 1994); *Brown v. McDaniel,* 261 Iowa 730, 733, 156 N.W.2d 349, 351 (1968).

The opportunity to know is properly considered in determining knowledge of a fact. *Loghry v. Capel,* 257 Iowa 285, 291, 132 N.W.2d 417; 420 (1965). The mere denial of knowledge of the existence of a fence or some other marker demarcating a boundary or of a claim thereto will not defeat a claim if the circumstances are such that (the landowner) should be required to take notice thereof. *Olson v. Clark,* 252 Iowa 1133, 1138, 109 N.W.2d 441, 444 (1961).

Acquiescence must, in large part, be determined in light of the factual situation presented. *Mahrenholz v. Alff,* 253 Iowa 446, 451-53, 112 N.W.2d 847, 849-51 (1962). Acquiescence has been defined as the mutual recognition by two adjoining landowners for ten years or more that a line, definitely marked by fence or in some manner, is the dividing line between them. Acquiescence exists when both parties acknowledge and treat the line as the boundary. When the acquiescence persists for ten years, the line becomes the true boundary even though a survey may show otherwise and even though neither party intended to claim more than called for by his deed. *Sille,* 297 N.W.2d at 381. Both parties must be aware the asserted property line is being treated as a boundary. *Tewes,* 522 N.W.2d at 806; *Sille,* 297 N.W.2d at 381; *see also Brown,* 261 Iowa at 735, 156 N.W.2d at 352. Acquiescence in the existence of a fence as a barrier, not as a boundary, is not such recognition as will establish it as the true line. *Brown,* 261 Iowa at 735, 156 N.W.2d at 352. Recognition of a boundary may be by conduct or claim asserted. *Id.* A boundary may be inferred by the silence or inaction of one

party who knows of the boundary line claimed by the other and fails to take steps to dispute it for a ten-year period. *Tewes,* 522 N.W.2d at 806.

Determining whether acquiescence has been established requires an inquiry into the factual circumstances of each case. *Id.* at 808. There is no requirement of some overt act in order to establish acquiescence. Rather, acquiescence may be inferred from silence when there is notice of another party's claim. *Sorenson v. Knott,* 320 N.W.2d 645, 647 (Iowa App. 1982). A landowner's inaction is sufficient to meet the consent element of acquiescence. *Tewes,* 522 N.W.2d at 808.

We agree with the district court, while the facts advanced by plaintiff in resistance to summary judgment could support the finding of an easement, they are not sufficient to support a finding by clear evidence of acquiescence in a boundary for ten years.

AFFIRMED.