FILED
AUG 04 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-216 / 93-1238

SUSAN WELCH,

Appellee,

vs.

HARRY L. ANDREWS,

Appellant.

Appeal from the Iowa District Court for Boone County, Carl E. Peterson, Judge.

Harry L. Andrews appeals a district court judgment in an action to establish boundaries pursuant to Iowa Code chapter 650 (1993). **AFFIRMED**

John L. McKinney, Ames, for appellant.

L. W. Courter and Bruce L. Anderson of Courter, Quinn, Doran and Anderson, Boone, for appellee.

Heard by Donielson, C.J., and Sackett and Huitink, JJ.

DONIELSON, C.J.

Harry Andrews and Susan Welch own adjoining parcels of land in Boone County. Welch's parcel abuts the northern and some of the eastern boundaries of Andrews' property. In the late 1980's, the parties had disputes regarding the use and ownership of an access road which straddles the boundaries between the parcels. Welch obtained a survey in 1989 showing a joint ownership of the access road. Andrews insisted the road was entirely on his property.

The instant action began as an appeal by Welch from a fence viewer's determination pursuant to Iowa Code section 359A.1 (1993). The action was converted to an action at law under Iowa Code chapter 650 to determine the boundaries. Andrews raised an affirmative defense of boundaries by acquiescence.

Considerable testimony was presented at trial concerning the actions and beliefs of the parties and their predecessors in interest concerning perceived boundaries and ownership and use of the access road. Andrews tried to prove the landowners had acquiesced in a previously existing fence as the north boundary of his land and a clearly demarcated north/south line at his east boundary over the requisite term of years.

The district court ruled there was no "clear proof" of any acquiescence in the boundaries. The court found Welch and her predecessors considered the fence to the north of the access road to be a barrier fence for livestock rather

than a boundary. The court found Andrews' proposed boundary to the east of his property to be indiscernible. The court therefore determined Andrews failed to establish his defense of acquiescence and ruled the surveyed boundaries were correct.

Andrews now appeals.

An action brought under Iowa Code Chapter 650 is reviewed on assigned errors of law. Davis v. Hansen, 224 N.W.2d 4, 5 (Iowa 1974). The issue of acquiescence presents mostly fact questions, and the judgment in such a case has the effect of a jury verdict. Brown v. McDaniel, 261 Iowa 730, 732, 156 N.W.2d 349, 351 (1968). The trial court's findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

Adjoining landowners may by proper plea put in issue that certain alleged boundaries or corners are the true ones or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years. Iowa Code § 650.6 (1993). When raising an acquiescence claim to establish a boundary line, other than the legal description as disclosed by a survey, the claiming party must establish mutual acquiescence by clear proof. Ashton v. Burken, 403 N.W.2d 52, 55 (Iowa App. 1987). The evidence must show both parties recognized the boundary line that is definitely marked by a fence, wall, or other markers as the true boundary, without the intent to claim more than the property described in their

respective deeds. Brown, 261 Iowa at 732-33, 156 N.W.2d at 351. 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. Id. at 735, 156 N.W.2d at 352.

The appellant, Andrews, asserts the trial court erred when it found that substantial evidence did not show appellee, Welch, and her predecessors in interest acquiesced to the disputed boundary lines. The appellant asserts that both the fence line running north of the east-west portion of the access road from points A to B (see diagram) and also remnants of a north-south fence line that was set by fence viewers from points B to C are the boundaries that should be legally established because of the recognition of them as the true boundaries by adjoining land owners since the purchase of the land by his parents in 1963. We disagree.

The testimony of Welch indicated the fence line Andrews alleges is his northern property line was placed where it was in order to keep her horses confined from the access road. Also, the testimony of Douglas Bullard, who sold the property to Andrews' parents, indicated that the previous owners had used the land for livestock and the fence was indeed a barrier to escape. The mere existence of a fence is insufficient to prove acquiescence; a fence can be construed for purposes other than a boundary. Ashton, 403 N.W.2d at 56. Here the evidence substantiates this fence

line was indeed intended as a barrier and not recognized as a boundary line.

Andrews further alleges that remnants of a fence line that lies east of the north-south portion of the access road is where adjoining land owners have recognized the property line. Andrews recalls the existence of a corner post lying on the ground surrounded by white rock that follows along a general line established by fence viewers that intersects with the northern boundary. The trial court found the lack of physical evidence of any claimed boundary to be detrimental to any conclusion that there was a mutual acquiescence to an indiscernible boundary line. To establish a boundary by mutual acquiescence, there must be a clear line to which the parties could acquiesce. In this case there does not appear to be a clearly marked eastern boundary line to Andrews' property, to which Welch or her predecessors in interest could have acquiesced.

Further it is not so clear the parties manifested their acquiescence in the disputed boundaries. Acquiescence may be inferred from 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. Ashton, 403 N.W.2d at 55. The trial court found the parties and their predecessors have had disputes over the integrity of the other party's right to use the lane throughout the years. If the boundaries were as Andrews contends, the access road would be totally within his property. Gates

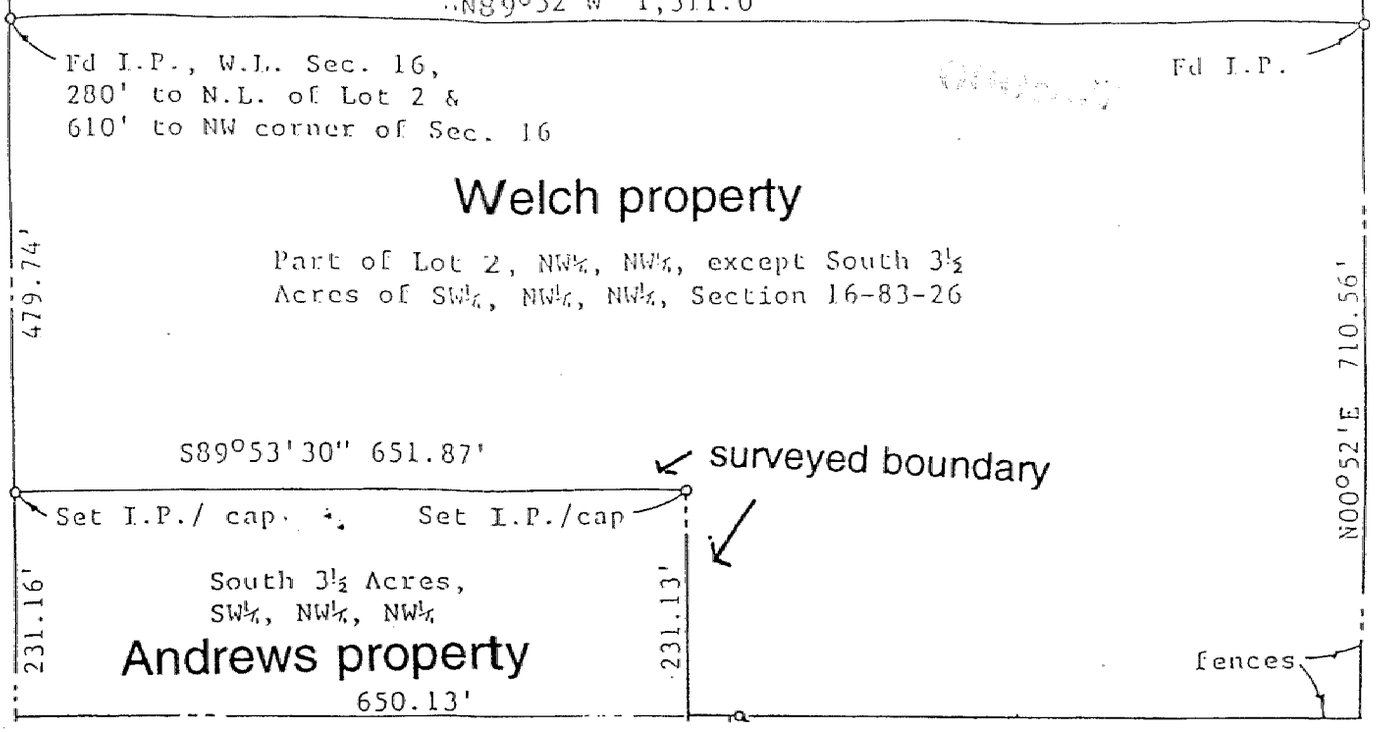
or chains restricting access have been put across the road by both parties at one time or another. The previous owner of Welch's property installed speed bumps on the road. Maintenance of the road is also handled primarily by a third party that benefits from the access road.

There must be something in the record to show the party charged with acquiescence consented to the act of the other in establishing the line and assuming possession. Id. Appellant here has failed to show acquiescence to the alleged boundaries. In fact, it appears more likely prior to the survey initiated for this lawsuit ownership of the access road was very unclear.

Based on these facts, we cannot say the trial court erred in finding substantial evidence showing Welch did not acquiesce to the alleged boundaries.

AFFIRMED.

Boundaries as established by survey



Disputed boundaries

