IN THE COURT OF APPEALS OF IOWA

No. 2-378 / 90-1671

FILED
FEB 23 1993
CLERK SUPREME COURT

DAVID G. SANGER and **CONNIE K. SANGER,**

Appellees,

vs.

LESLIE L. PRITCHARD,

Appellant.

Appeal from the Iowa District Court for Allamakee County, Robert E. Mahan, Judge.

Defendant appeals the district court's order granting plaintiffs' petition to establish a boundary by mutual acquiescence. **AFFIRMED.**

Philip N. Reser, West Des Moines, for appellant.

Richard G. Pattison, Monona, for appellees.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

DONIELSON, P.J.

Plaintiffs David and Connie Sanger and defendant Leslie Pritchard own adjoining farms in Allamakee County. The Sangers brought this suit pursuant to Iowa Code chapter 650 to establish a fence line as the actual boundary line between the two farms. The district court determined the fence line should be recognized as the boundary line due to the acquiescence of Leslie's predecessors in title. Leslie appealed. We affirm.

The Pritchard farm is to the west of the Sanger farm. The fence in question is to the west of the actual boundary line. The fence was present when David's father, Franklin Sanger, purchased the farm in 1946. At that time Ed McAndrews owned the land presently owned by Pritchard. The Sangers and McAndrews considered the fence to be the boundary line. McAndrews did not object when Franklin sold timber from the disputed area.

McAndrews sold his land to Walter Pritchard in 1958. Walter also treated the fence line as the actual boundary between the farms. David and Connie purchased the Sanger farm from Franklin in 1970. Leslie purchased the Pritchard farm from Walter in 1972.

Leslie testified he never intended to recognize the fence line as the true boundary. He had a survey conducted in 1988 and first informed the Sangers that year he was claiming the land in question. In 1989 he sued the Sangers

in small claims court for cutting certain timber in the disputed area.

As noted above, the district court concluded the fence line should be recognized as the boundary line. Leslie has appealed the court's ruling. He claims there was insufficient proof to show acquiescence in the fence as the boundary line. He states that his father, Walter, knew the fence was not the boundary line, but did nothing about it.

An action under Iowa Code chapter 650 is a special proceeding and is reviewed by us on assigned errors as in a law action. Sille v. Shaffer, 297 N.W.2d 379, 380 (Iowa 1980). The judgment in such a case has the effect of a jury verdict which will be affirmed if supported by substantial evidence. Mahrenholz v. Alff, 253 Iowa 446, 450, 112 N.W.2d 847, 849 (1962).

A boundary by acquiescence may be established where the two adjoining landowners have mutually acquiesced for a period of ten years in a line definitely marked by a fence or in some other manner as the true boundary, although a survey may show otherwise. Mensch v. Netty, 408 N.W.2d 383, 386 (Iowa 1987). Acquiescence may be inferred from the silence or inactions of one party who knows of the boundary line claimed by the other and fails to take steps to dispute it for the ten-year period. Drake v. Claar, 339 N.W.2d 844, 847 (Iowa App. 1983).

Recognition as the boundary of the line contended for must be by both parties or their predecessors in title.

Cozad v. Strack, 254 Iowa 734, 736, 119 N.W.2d 266, 269 (1963). The burden is upon the party claiming a boundary line, other than the legal description as disclosed by a survey, to establish the mutual acquiescence by clear proof. Ashton v. Burken, 403 N.W.2d 52, 55 (Iowa App. 1987).

We conclude the district court's findings in the present case are supported by substantial evidence. The evidence shows Leslie's predecessors in title acquiesced in the fence line as the boundary line from 1946 until 1972, a period of twenty-six years. McAndrews and Walter Pritchard knew the Sangers claimed the land to the east of the fence, and took no steps to dispute their claim. The Sangers met their burden to show that the fence line was acquiesced in as the boundary between the Pritchard farm and the Sanger farm for a period of at least ten years.

We affirm the district court. Costs of this appeal are assessed to Leslie Pritchard.

AFFIRMED.