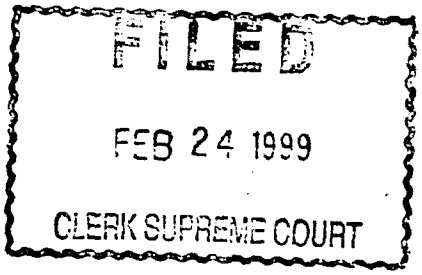
IN THE COURT OF APPEALS OF IOWA

No. 8-523 / 97-1115
Filed February 24, 1999



RALPH SCOTT and LIESEL SCOTT,
Appellants,

vs.

ERVIN DENNIS and LA VADA DENNIS,
Appellees.

Appeal from the Iowa District Court for Black Hawk, Alan L. Pearson, Judge.

Ralph and Liesel Scott appeal from a district court order denying their petition to establish a boundary by acquiescence. **AFFIRMED.**

Jay P. Roberts and Kellyann M. Lekar of Roberts & Stevens, P.L.C., Waterloo, for appellants.

Paul T. Shinkle, Cedar Falls, for appellees.

Considered by Huitink, P.J., and Vogel and Zimmer, JJ.

HUITINK, P.J.

Ralph and Liesel Scott appeal a district court order denying their petition to establish a boundary by acquiescence under Iowa Code chapter 650. They contend the court erred in determining the parties had not acquiesced in the purported boundary. We affirm on appeal.

In 1965, the Scotts purchased property in Cedar Falls. In 1966, the Andersons purchased the vacant lot adjoining the Scotts' property on the north side. The Andersons obtained, with the Scotts' consent, a variance to build their house closer to the lot line between the parties than the zoning ordinance normally allowed. The north end of the Scott property was higher than the south end of the Anderson lot. The Andersons built a long railroad tie wall on the agreed-upon property line to control water runoff from the Scotts' property. The Andersons removed the dirt on their side of the wall to level their lot. The Scotts added fill on their side of the wall to level their lot. The Scotts and Andersons each maintained the ground on their side of the wall, treating it as their own. The Scotts also planted trees and shrubs about three feet on their side of the wall.

In 1973, the Andersons sold their property to the Dennises. No survey was done, and the Dennises never were told the wall was not on the property line. The Scotts continued to maintain the land on their side of the wall. The Dennises maintained the wall itself and clipped the grass at the upper edge of the wall.

By 1994, the wall had deteriorated and needed to be replaced. The Dennises indicated they intended to have a survey done to place the new wall accurately. The Scotts filed a petition to establish a boundary by acquiescence under Iowa Code chapter 650.

Following a hearing, the district court denied the Scotts' petition. The court found the Scotts and the Andersons had agreed the wall would be the boundary between the properties. It found the Scotts cared for the land above the wall and the Andersons took care of the land below the wall. The court determined, however, that although the Scotts acquiesced in the wall as the boundary for the requisite period, the Dennises were not aware the wall was intended to be the boundary. The court concluded the parties merely agreed the wall was a barrier. In addition, the court found the location of the original railroad tie wall never was surveyed and cannot now be determined exactly because it has been removed. The parties agree the new wall is located approximately where the old wall was.

On appeal, the Scotts assert the district court erred in not finding the Dennises acquiesced in the wall as the property line. They argue the court should have found the Dennises had notice they claimed the wall as the property line because they maintained the land on their side of the wall and used it as their own. Both parties agree the Dennises never had formal notice the Scotts and Andersons had agreed the wall was the property line. The Scotts do not claim the new wall or the gravel added for drainage encroach on their side of the surveyed property line.

An action under Iowa Code chapter 650 is a special action and is heard on appeal as an ordinary action. Iowa Code §§ 650.4, 650.15. As in an action at law, review is for errors of law. Iowa R. App. P. 4; *Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997). The district court judgment has the effect of a jury verdict and we are bound by the court's findings of fact if supported by substantial evidence. *Id.*; *Brown v. McDaniel*, 261 Iowa 730, 732, 156 N.W.2d 349, 351 (1968). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. *Waukon Auto Supply v. Farmers & Merchants Sav. Bank*, 440 N.W.2d 844, 846 (Iowa 1989). Evidence is not insubstantial merely because it would have supported contrary inferences. *Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995). We construe the trial court's findings broadly and liberally. *Grinnell Mut. Reinsurance Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the court's findings of fact to uphold, rather than defeat, the judgment. *Id.* In addition, the review standard prohibits us from weighing the evidence or the credibility of witnesses. *Id.*

Acquiescence is defined as follows:

> It is 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.

Ollinger, 562 N.W.2d at 170 (quoting *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980)). Both parties must be aware that the asserted property line is being treated as a boundary. *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 806 (Iowa 1994); *Sille*, 297 N.W.2d at 381. Recognition of a boundary "may be by conduct or claim asserted." *Brown v. McDaniel*, 261 Iowa 730, 735, 156 N.W.2d 349, 352 (1968). However, 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.*

In *Brown v. Bergman*, a fence existed between adjoining parcels of land for more than thirty years. The parties each used the land up to their side of the fence and maintained their side of the fence. The court stated,

> Plaintiff says there is no evidence that defendant ever made any claim to any one that the fence was the true boundary line. Its very existence, defendant's occupation and use of the land up to the fence, his maintenance of the fence, were open and obvious information of his possession and of his claim of ownership.

Brown v. Bergman, 204 Iowa 1006, 1009-10, 216 N.W. 731, 732 (Iowa 1927).

The supreme court in *Ollinger* set forth some factors to consider in determining whether acquiescence is established:

> Determining whether acquiescence has been established requires an inquiry into the factual circumstances of each case. *Tewes*, 522 N.W.2d at 808. Previous Iowa cases have utilized several factors that are helpful in making such a determination. *See, e.g., Sille*, 297 N.W.2d at 381 (stating that one party had exercised dominion over the later-disputed property by maintaining and improving the property); *Novotny v. Robbins*, 492 N.W.2d 216, 219 (Iowa App. 1992) (pointing to the fact that one party had asked the other party for permission to dig a hole on the later-disputed property); *Drake v. Claar*, 339 N.W.2d

> 844, 846 (Iowa App. 1983) (noting that there was evidence one party had told the other party, during the period of alleged acquiescence, that the fence in question was not the true boundary).

Ollinger, 562 N.W.2d at 171. The Scotts argue they maintained and improved the property, which should have put the Dennises on notice of their claim. 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. *Brown v. McDaniel*, 261 Iowa at 733, 156 N.W.2d at 351. No one can be said to have acquiesced in a line until it is shown first he had notice or knowledge of the claimed line. *Griffin v. Brown*, 167 Iowa 599, 612, 149 N.W. 833, 838 (1914). Knowledge on the part of both parties is a condition precedent for the existence of acquiescence. *Petrus v. Chicago R. I. & P. R. Co.*, 245 Iowa 222, 228, 61 N.W.2d 439, 442 (1953). The evidence adduced at trial supports a conclusion the Dennises did not acquiesce in a boundary of which they had no notice. Although a contrary conclusion could be drawn, substantial evidence supports the trial court's ruling. *See Papenheim v. Lovell*, 530 N.W.2d at 671.

AFFIRMED.

Zimmer, J., concurs; Vogel, J., dissents.

VOGEL, J. (dissenting)

I respectfully dissent. Acquiescence requires proof of (1) a definitely marked dividing line (2) which is known to both adjoining landowners *or their predecessors in title* (3) to which both landowners have consented for ten years. *See Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 806 (Iowa 1994) (emphasis added); *see also* Iowa Code § 650.14 (1995).

In this case, we have a definitely marked boundary which was considered by Scotts and the Andersons, predecessors in title to the Dennises, to be the boundary of their respective properties. After the Dennises moved in, the Scotts continued to treat the wall as the boundary of their property. The Dennises likewise treated the wall as a boundary and took no action to survey the land or otherwise assert their ownership of the land on the other side of the wall. Furthermore, the Dennises testified that at the time they purchased the home, the realtor told them that they owned the wall, but made no mention about whether they owned property on the other side. I would find insufficient evidence to support the trial court ruling as there was a clear acquiescence by the Dennises to the wall as their boundary. *See Dart v. Thompson*, 261 Iowa 237, 241, 154 N.W.2d 82, 84-85 (1967) (acquiescence 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). I would reverse.