FILED
MAY 25 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MINBURN COOPERATIVE ELEVATOR,

Plaintiff-Appellee,

vs.

TOWN OF MINBURN, IOWA, LOWELL B. MITCHELL, VIVIAN E. MITCHELL, FORREST HICKMAN, VIOLA HICKMAN, THOMAS JOINER, PAULENE JOINER, ORVILLE W. REED, BEVERLY REED, PHILIP E. BASART, HILDRETH P. BASART, LILBURN W. BINGMAN and ELIZABETH B. BINGMAN,

Defendants-Appellants.

Filed May 25, 1982

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65892

Appeal from Dallas District Court - Van Wifvat, Judge.

Defendants appeal from trial court's decree establishing the boundary lines of an alley, asserting that the evidence shows 1) the boundary lines they claim have been established by acquiescence; and 2) defendant town has acquired an alley, between the boundary lines, by prescriptive easements. AFFIRMED.

James B. Smith of Shirley, Smith, Shirley & Powell, Perry, Iowa, for defendants-appellants.

Thomas D. Hanson and Richard A. Pundt, Des Moines, Iowa, for plaintiff-appellee.

Heard en banc.

PER CURIAM

Defendants, town of Minburn and certain individuals who own homes abutting a town alley, appeal from trial court's decree establishing the boundary lines of that alley. They assert that the evidence shows: 1) the boundary lines they claim have been established by acquiescence; and 2) defendant town has acquired an alley, between the boundary lines, by prescriptive easements. We affirm.

Early in 1978, plaintiff, Minburn Cooperative Elevator, applied to defendant, town of Minburn, for a building permit for two additional grain storage silos. Defendant denied the permit when it determined that one silo would rest partly on what it considered a town alley. On December 28, 1978, plaintiff filed a petition to quiet title to the land it believed it owned in Minburn, including the area claimed by the town as an alley, and to determine the boundaries of an area plaintiff contended was the true alley. Plaintiff claimed the true alley was slightly west of the area claimed by the town. Named as defendants were the town of Minburn and individuals who owned homes on the west side of the disputed area. Defendants filed their answer on February 12, 1979, denying the operative allegations of an amended petition and raising the affirmative defenses of acquiescence and adverse possession. The individuals claimed their properties extended as far east as the area claimed as an alley by the town, notwithstanding any deed or survey to the contrary.

Trial court appointed a commissioner pursuant to chapter 650, The Code, to survey the disputed area. On June 27, 1979, the commissioner filed his report and a plat, which located the alley in the west area as claimed by plaintiff. On February 13, 1980, defendants amended their answer to raise the affirmative defense of easement. Trial to the court commenced that same day.

In a ruling filed on June 18, 1980, trial court found that certain necessary parties (individuals who owned land adjoining plaintiff's various parcels, other than

that which abutted the disputed alley area), had not been joined as parties to the suit. Trial court therefore dismissed the quiet title action for lack of jurisdiction. As to the controversy over the alley, trial court determined that the boundary lines of the alley were located as shown in the commissioner's plat, and that plaintiff, therefore, owned the land which it claimed. Trial court further noted that defendants failed to respond timely to the filing of the commissioner's report and plat as required by section 650.12, The Code. The court stated that there was no merit to defendants' claim of an easement and that "individuals cannot acquire title from the sovereign by adverse possession or acquiescence."

On August 25, 1980, defendants filed a motion to clarify the decree and for new trial. They requested that trial court rule specifically on defendant town's defenses of adverse possession and acquiescence, and further claimed that the decree was not supported by sufficient evidence. Plaintiff resisted the motion, asserting that because defendant town had not elected between adverse possession and acquiescence, it was unnecessary for trial court to rule on them. It further argued there was sufficient evidence to support the decree. On September 24, 1980, trial court denied defendant's motion for the reasons stated in the resistance. Defendant town and individual defendants, except the Basarts, appealed.

I. Scope of Review. An action brought pursuant to chapter 650, The Code, is a special proceeding, not reviewable de novo on appeal. § 650.4, The Code 1981. Trial court's judgment in such a case has the effect of a jury verdict and will not be disturbed on appeal unless it is unsupported by substantial evidence. § 650.15, The Code. On the other hand, an action to establish boundaries not brought under the authority of chapter 650 is reviewable de novo. Thus, to define the appropriate scope of our review of trial court's decision, we must determine the nature of the proceeding that was before trial court.

Plaintiff's petition was captioned in equity, however, their second count prayed for appointment of a commissioner pursuant to chapter 650, The Code. Trial court dismissed plaintiff's first count for lack of jurisdiction, but proceeded on the second count as pleaded. We thus conclude this cause is maintained pursuant to chapter 650, The Code. We are further disposed to review this action as an action at law for the following reasons. Chapter 650, The Code, provides essentially the same remedy as would an equitable proceeding to quiet title. Since equity jurisdiction generally does not attach when remedies at law are adequate, Mosebach v. Blythe, 282 N.W.2d 755, 761 (Iowa App. 1979); Berry Seed Co. v. Hutchings, 247 Iowa 417, 422, 74 N.W.2d 233, 236-37 (Iowa 1956); McDonald v. Johnston, 218 Iowa 1352, 1355, 256 N.W. 676, 677-78 (1934), we are inclined to treat an action as one at law when either the claim or counterclaim asserts a cause of action specifically under chapter 650, as chapter 650 provides an adequate remedy at law to protect the parties' interests. See Brown v. McDaniel, 261 Iowa 730, 732, 156 N.W.2d 349, 350-51 (Iowa 1968).

II. Sufficiency of the Evidence. Defendants argue that trial court's findings are unsupported by substantial evidence. We will first enumerate those general principles important to our review of this issue. Findings of fact in a law action have the effect of a special verdict and are equivalent to a jury verdict; if supported by substantial evidence they are binding upon us and the judgment will not be disturbed on appeal. Iowa R. App. P. 14(f)(1). "A finding of fact is supported by substantial evidence if the finding may reasonably be inferred from the evidence." Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). The record is reviewed in a light most favorable to the judgment. Pillsbury Co. v. Ward, 250 N.W.2d 35, 38 (Iowa 1977). We construe trial court's findings broadly and liberally to support rather than defeat its judgment. Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 298 (Iowa 1974). Ambiguities are construed to uphold rather than defeat the verdict. Pillsbury Co., 250 N.W.2d at 38.

The rules of acquiescence are well settled. The Iowa Supreme Court recently reiterated the meaning of acquiescence in Sille v. Shaffer as follows:

> The meaning of "acquiescence" under section 650.14 is well settled. It is the mutual recognition by two adjoining landowners for ten years or more that a line, definitely marked by a 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.

297 N.W.2d 379, 381 (Iowa 1980). We note, also, that acquiescence sufficient to establish a boundary line may be inferred from silence when there is notice of another party's claim. Olson v. Clark, 252 Iowa 1133, 1138, 109 N.W.2d 441, 444 (1961). Acquiescence "exists when a person who knows that he is entitled to impeach a transaction or enforce a right neglects to do so for such a length of time that under the circumstances the other party may fairly infer that he has waived or abandoned his right." Id. The party seeking to establish a boundary line by acquiescence or adverse possession has the burden of proof on that claim. Dillon v. Chicago & N.W. Ry., 255 Iowa 878, 884, 124 N.W.2d 543, 547 (1963). The quantum of proof required to establish adverse possession or acquiescence is clear and convincing evidence. Trimpl v. Meyer, 246 Iowa 1245, 1248, 71 N.W.2d 437, 439 (1955).

Applying these principles to the instant case, we conclude trial court's findings are supported by substantial evidence. First, the commissioner appointed by trial court specifically found that the original town plat and the commissioner's recent survey concurred and provided a record supporting plaintiff's claim. Further, defendants made no objection to the commissioner's finding in this regard. On the other hand, the record reveals testimony that defendant, Basart, mowed the disputed property, at his family's direction, for many years during the late 1950's and early 1960's. There is evidence that Basart's family fenced off the

disputed area for some time. There, however, is evidence that the Coop used this area during the same period. There is evidence that, despite defendant Basart's family's use of the property, there was a fertilizer building in that area, and that the area was used by the Coop in the early 1970's when it used the anhydrous tanks. In light of plaintiff's record title and intermittent use, we find defendant's evidence wholly insufficient to establish adverse possession or acquiescence of a boundary line. Further, we note that, notwithstanding defendant-town's claim of an easement by prescription east of the easement of record, defendants-individuals may not acquire the area of the record easement by adverse possession or acquiescence, for the doctrines do not apply to governmental bodies. See Johnson v. Shenandoah, 153 Iowa 493, 500, 133 N.W. 761, 763 (1911).

Finally, we address defendant town's claim of an easement over the area it has particularly described and find it without merit. While the town undoubtedly had an easement running across plaintiff's property, that easement was established in the original town plat to be west of the easement defendant town claims by prescription. In light of the close proximity of the easement of record and the claimed area, we do not believe that defendant's evidence of snow removal, improvement, and use, is sufficient to support its claim of prescription by clear and convincing evidence. We thus affirm trial court's judgment.

AFFIRMED.