

**IN THE COURT OF APPEALS OF IOWA**

No. 8-688 / 97-1299

**R. LEE JACKSON and LINDA L. JACKSON,**

Plaintiffs-Appellees,

vs.

**DON L. MARTI and KAROLYN J. MARTI,**

Defendants-Appellants.

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Appeal from the Iowa District Court for Dickinson County, Joseph J. Straub,  
Judge.

Defendants appeal the district court's ruling, after a bench trial, finding  
defendants acquiesced in the boundary line between their property and plaintiffs'  
property. **AFFIRMED.**

Edward W. Bjornstad of the Bjornstad Law Office, Spirit Lake, for appellants.

Gregg L. Owens of Ladegaard & Maahs, Spirit Lake, for appellees.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

**MAHAN, J.**

Don and Karolyn Marti appeal the district court's ruling, after a bench trial, finding a boundary had been established by acquiescence between their property and Lee and Linda Jackson's property. We affirm.

The Jacksons and the Martis own adjacent cottages which had previously been part of a rental cottage resort. This dispute involves a five or six-foot-wide strip of land between the two cottages. The area between the cottages is level and has bare dirt with some grass or green groundcover growing near the cottages. There are trees along the side of the Marti cottage and a metal shed next to the Jackson cottage set towards the back of the lot. There is a retaining wall curb running in front of the Jackson cottage which stops at the disputed area. The district court found "the disputed strip has all the appearances of a driveway." The photographic exhibits in the record support this finding.

The Jacksons acquired their lot in March 1993. Their predecessors in title were Ila Phillips and her son, Howard. Ila purchased the property in 1983. She had one of her sons install the shed in the Spring of 1984. Some of the neighbors testified Ila and her sons parked cars in the driveway and the previous occupant of the cottage had also parked there. The Jacksons believed their lot included the shed and driveway and made use of both.

The Martis acquired their lot in July 1994. Their predecessors in title were David and Rebecca Johnson, who took possession of the property in December 1980

and received their warranty deed in January 1984. When Johnson showed the property to the Martis, he apparently paced off the lot and indicated the boundary line was located in the middle of the driveway. The Johnsons never used the driveway or the shed; they parked on the other side of their cottage. The Johnsons had a boundary dispute with the neighbor on the other side of their lot and obtained legal assistance to fix the boundary and protect their property rights, but did no such thing with their boundary with the Phillips or the Jacksons.

The Martis had the property surveyed and discovered the shed and the driveway encroached upon the true boundary. The Jacksons filed this lawsuit to establish a boundary by acquiescence. The district court found the Johnsons' testimony, as witnesses for the Martis, was less credible than that of other witnesses and "fraught with inferior recollection and inaccuracies." The district court found the south end of the shed and the grass line form a definite line of demarcation and the ten-year statutory period had been satisfied during the time period the Johnsons owned the Marti cottage. The district court concluded acquiescence had been established by the Jacksons by clear evidence.

**I. STANDARD OF REVIEW.** This is a special action tried at law under Iowa Code chapter 650 (1997). We hear this appeal "as in an action by ordinary proceedings." Iowa Code § 650.15. Accordingly, our review is on errors assigned as in an action at law. *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 804 (Iowa 1994). "Under this limited extent of review, the findings of fact by the trial court

have the effect of a special verdict and are equivalent to a jury verdict." *Id.* (quoting *Davis v. Hansen*, 224 N.W.2d 4, 5 (Iowa 1974)). If supported by substantial evidence, the judgment will not be disturbed on appeal. Iowa R. App. P. 14(f)(1). Evidence is substantial for purposes of sustaining a finding of fact if a reasonable person would accept the evidence as adequate to reach a conclusion. *Frunzar v. Allied Property & Cas. Ins. Co.*, 548 N.W.2d 880, 884-885 (Iowa 1996).

**II. ACQUIESCENCE.** The Martis contend the district court erred as a matter of law in finding the boundary claimed by the Jacksons had been established by acquiescence. We disagree.

Boundary lines contrary to the legal description of the property may be established under Iowa Code chapter 650 if the landowner can show the boundary line has been recognized and acquiesced in for a period of ten years. Iowa Code § 650.14. The acquiescence of predecessors in interest for the statutory period is binding upon subsequent purchasers. *Dart v. Thompson*, 261 Iowa 237, 241, 154 N.W.2d 82, 84 (1967). "Acquiescence" has been defined as:

[T]he 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 v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997) (quoting *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980)).

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. *Tewes*, 522 N.W.2d at 806. Acquiescence is a fact-specific determination and must be proved by clear evidence by the party seeking to establish a boundary line other than the boundary line in accordance with a survey. *See id.* at 806, 808.

After review of the record, we find the district court's findings are supported by substantial evidence. The photographs show a grass line which runs from the south wall of the shed toward the street. *See id.* at 806 (three fence posts and crop residue form a sufficiently definite boundary line although the crop residue line varied somewhat each year). We agree with the district court finding that this disputed area has "all the appearances of a driveway."

The evidence that the Johnsons never used the driveway or the shed, did not complain when the shed was erected, and the testimony of the neighbors that the Phillips always parked their cars in the driveway supports a finding the Johnsons had knowledge of the Phillips' and the Jacksons' use of the driveway and their boundary line claim. *See Tewes*, 522 N.W.2d at 807 (tenant's knowledge of the boundary line claimed is evidence of the predecessor owners' opportunity to know of the boundary line claimed which may properly be considered in determining knowledge of the predecessor owners' knowledge of that fact). Finally, consent to the claimed boundary line can be inferred from the evidence the Johnsons had knowledge of the Phillips' and the Jacksons' use of the driveway and shed but took no action. *See id.*

at 808 (a landowner's inaction is sufficient to meet the consent element of acquiescence). This inference is even stronger in this case since the Johnsons did take legal action in a boundary dispute with their neighbors on the other side.

For these reasons, we affirm the district court's ruling finding a boundary had been established by acquiescence.

**AFFIRMED.**