

**FILED**

**JAN 26 1989**

**CLERK SUPREME COURT**

**IN THE COURT OF APPEALS OF IOWA**

**RAYMOND J. CULVER and                    )**  
**VIOLETTE CULVER, et al.,                )**

**Plaintiffs-Appellees,                    )**

**vs.                                                )**

**GARY W. KOLEK and MARTHA                )**  
**J. KOLEK, et al.,                         )**

**Defendants-Appellants. )**

**8-583**  
**88-468**

**41**

---

Appeal from the Iowa District Court for Benton County  
(CE 2010-09-86), Larry J. Conmey, Judge.

Defendants appeal from a district court judgment  
establishing the boundary line between the parties.

**AFFIRMED.**

Jeffrey P. Berg, Cedar Rapids, for  
defendants-appellants.

Howard M. Remley, Anamosa, for plaintiffs-appellees.

Considered by Oxberger, C.J., and Donielson and Hayden,

JJ

HAYDEN, J.

The defendants, Gary and Martha Kolek, appeal from a district court judgment which established the boundary line between the parties' adjoining property in plaintiffs' favor. The court based its determination on the doctrine of equitable estoppel and, in addition, awarded the plaintiffs \$1500 in damages for defendants' destruction of three spruce trees. We affirm.

I.

In 1966, plaintiffs, Raymond and Violet Culver, acquired title from Thomas and Mary Maxwell to the eastern half of four lots for the purpose of constructing a home. After the home was built, a propane tank was placed near where the plaintiffs believed to be the west boundary. Three spruce trees were planted near the perceived boundary. Plaintiffs also placed a ten-foot eavespout extension running westward from a downspout on their house. From 1967 until 1983, plaintiffs and their neighbors, the Maxwells, had no dispute over the boundary. In 1986, defendants purchased the Maxwell property. Shortly thereafter, a dispute arose concerning the proper boundary. Defendants hired a surveyor who indicated the proper boundary was two feet west of the foundation of plaintiffs' home. Plaintiffs contend the boundary is eleven feet from their home. Based on the survey, defendants cut down the three spruce trees.

Plaintiffs brought this action seeking to determine the boundary between the parties and to recover treble damages for the willful destruction of the trees. Following trial, the district court established the boundary at eleven feet from the plaintiffs' house by equitable estoppel and awarded plaintiffs \$1,500 in damages for destruction of the trees. However, the district court did not award plaintiffs treble damages for the loss of the trees.

## II.

On appeal, defendants contend the district court erred in establishing the boundary between the parties' property by equitable estoppel; and the district court erred in awarding plaintiffs damages for defendants' destruction of the three trees.

Because this action is in equity, we find the facts de novo. Ivener v. Cowan, 175 N.W.2d 121, 123 (Iowa 1970). As such, while we are not bound by the factual findings of the trial court, we do give them weight, especially when considering the credibility of witnesses. Iowa R. App. P.14(f)(7).

## III.

**A. Equitable Estoppel.** It is well settled in this jurisdiction courts will apply the doctrine of estoppel to interests in real property wherever necessary to prevent injustice. Johnson v. Johnson, 301 N.W.2d 750, 753 (Iowa 1981). The foundations of the doctrine are public policy,

fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon." Id. (quoting Goodwin Tile & Brick Co. v. DeVries, 234 Iowa 566, 568-69, 18 N.W.2d 310, 312 (1944)). Additionally, our courts have applied the doctrine in connection with the interests in real property, when a party has through his acts, words or silence led another to take a position such that the subsequent assertion of the first party's interest would be contrary to equitable principles. Id. at 754.

We determine the traditional elements of equitable estoppel, which must be demonstrated by clear, convincing and satisfactory evidence, have been established here. These elements are generally outlined as (1) a false representation or concealment of material facts; (2) a lack of knowledge of the true facts on the part of the actor; (3) the intention that it be acted upon; and (4) reliance thereon by the party to whom made, to his prejudice and injury. Id.

Defendants contend the doctrine of equitable estoppel is not applicable here because the improvements made by the Culvers in the disputed area were not valuable nor substantial. Further, defendants argue there was no concealment of material facts and the plaintiffs did not

meet their burden of proof by clear and convincing evidence.

We determine Culvers made valuable and substantial improvements to the land in question. After the house was built in 1967, the Culvers converted what was then pasture land into a residential yard. In addition, the plaintiffs landscaped the area through excavation and the planting of spruce trees, as well as permanently installing an LP home-supply gas tank on the disputed property. In addition, evidence indicated and the trial court concluded the original property owners, Maxwells, must have observed and were fully aware of the exercise of exclusive control, use, and improvement of the area. Maxwells were Culvers next-door neighbors for almost twenty years. In addition to being neighbors, the families had become friends. In fact, evidence indicated Maxwells had complimented the Culvers concerning landscaping and decorating of the spruce trees in the winter for Christmas. Although the court found the Maxwell family had voiced concern regarding the property line among themselves, they apparently never discussed the problem with Culvers at any time. Nor is there any evidence the problem was ever discussed with defendants at the time the property was sold. It was after some not-so-neighborly altercations between plaintiffs and defendants that the defendants hired a surveyor to determine the correct boundary line. Following the survey,

Koleks attempted to reclaim the disputed property, despite no evidence indicating Koleks believed they had purchased disputed property during the original transaction.

We determine the improvements made by the Culvers during the nineteen years in which they exercised exclusive control were substantial. We concur with the trial court the doctrine of equitable estoppel is applicable in this matter.

**B. Damages.** Defendants contend the trial court erred in assessing damages against them for destruction of the three spruce trees which the defendant chopped down after a survey indicated they were growing on the defendant's property. Thus, defendants apparently argue their good-faith belief the trees were on their property should alleviate any liability for their destruction.

Iowa Code section 658.4 is entitled "Treble Damages for Injury to Trees," stating:

For willfully injuring any timber, trees, or shrubs on the land of another, or in the street or highway in front of another's cultivated ground, yard, or city lot, or on the public grounds of any city, on any land held by the state for any purpose whatever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property.

The district court would have been well within its discretion to assess treble damages against the Koleks for the destruction of the trees. It is not readily apparent from the record why the trial court did not do so. However, because no cross-appeal was taken from this

judgment, we affirm the trial court's determination of damages. In addition, we levy all costs of this appeal to the appellants.

**AFFIRMED.**