# IN THE COURT OF APPEALS OF IOWA

No. 5-421 / 94-0765

**LAWSON L. WATERMAN** and **ANNIE K. WATERMAN,**

Appellees,

**vs.**

**PROPERTY MANAGEMENT CORPORATION,**

Appellant.

FILED
NOV 27 1995
CLERK SUPREME COURT

---

Appeal from the Iowa District Court for Clayton County, Margaret L. Lingreen, Judge.

Appeal from district court ruling rejecting claim of acquiesced boundary line.

**AFFIRMED.**

Kermit L. Dunahoo of Dunahoo Law Firm, Des Moines, for appellant.

Kevin H. Clefisch of Clefisch & Saunders, Garnavillo, for appellees.

Heard by Sackett, P.J., Cady, J., and Perkins, S.J.*

*Senior judge from the Fifth Judicial District serving on this court by order of the Iowa Supreme Court.

**PERKINS, S.J.**

The defendant/appellant, Property Management Corporation ("PMC") appeals from the district court's resolution of a boundary dispute. PMC claims the trial court erred in not admitting an affidavit into evidence under an exception to the hearsay rule and in rejecting its argument that the parties' boundary had been established by acquiescence. We affirm.

## I. WAHLER AFFIDAVIT.

The plaintiffs/appellees, *Lawson and Anni Waterman* ("*Watermans*") and the defendant own adjacent properties in Guttenberg, Iowa. PMC acquired its property in 1973. The Watermans obtained their property in 1988. A dispute arose in 1989 as to the location of the boundary line between the properties, and the Watermans filed an action pursuant to chapter 650 of the Iowa Code to have the boundary line established.

In its answer PMC claimed the boundary had been established under the doctrine of acquiescence. In support of this claim, PMC wanted to introduce the affidavit of Emerson Wahler into evidence. From 1946 until 1982 Wahler had owned the property now owned by the Watermans. In the affidavit Wahler expressed his opinion that during his ownership of the Waterman property the boundary had been established by acquiescence. The affidavit was signed by Wahler on March 2,

1990. Due to Wahler's unavailability to testify during the March 1993 trial, (Wahler had died on July 16, 1991), PMC offered Wahler's affidavit as evidence at trial.

The district court refused to admit the affidavit as an exception to the hearsay rule. It concluded the affidavit was hearsay and it could not find the circumstantial guarantees of trustworthiness necessary for its admission into evidence. PMC argues the affidavit was admissible under the residual exception provisions of Iowa Rules of Evidence 803(24)[1] and 804(b)(5)[2]. With the exception of the fact Rule 804 requires a declarant be unavailable, these rules are identical.

---

[1] The following are not excluded by the hearsay rule, even though the declarant is available as a witness: . (24) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. . . .
Iowa R. Evid. 803(24).

[2] The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: . . . . (5) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. . . .
Iowa R. Evid. 804(b)(5).

"The requirements for admissibility under the residual exception are five-fold: trustworthiness, materiality, necessity, service of the interests of justice, and notice." *State v. Rojas*, 524 N.W.2d 659, 662-63 (Iowa 1994), *cert. denied*, ___ U.S. ___, 115 S.Ct. 1981 (1995). Our supreme court has held "[t]hese catch-all hearsay exception provisions should apply only when there is significant indicia of reliability." *State v. Nance*, 533 N.W.2d 557, 559 (Iowa 1995). In declining to admit the Wahler affidavit, the district court noted it had been created after the boundary dispute arose and was drafted by PMC's agent. The district court was concerned with the lack of evidence regarding the circumstances surrounding the execution of the affidavit by Wahler in California and the repeated use of the legal term "acquiescence" throughout the affidavit.

Our review of a district court's ruling on the admissibility of evidence pursuant to the residual hearsay exception is for abuse of discretion. *See Rojas*, 524 N.W.2d at 662. We find no abuse of discretion in this case. The affidavit was drafted by PMC's agent (an individual with an extensive legal background) after the boundary dispute arose. The affidavit contained "legalese" and no less than ten references to variations of the word "acquiescence." Neither the past use of the property nor prior affidavits executed in conjunction with the transfer of the property corroborate the Wahler affidavit and lend it any significant indicia of reliability. We affirm the district court's exclusion of the affidavit as inadmissible hearsay.

## II. ACQUIESCENCE.

PMC argues the district court erred in finding it did not carry its burden of proving a boundary by acquiescence. Our review of an action to determine a boundary line "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.* If supported by substantial evidence, the judgment will not be disturbed on appeal. *Id.*

A boundary line may be established by a showing that two adjoining landowners or their predecessors in title have recognized and acquiesced in a boundary line for a period of ten years. *Id.* at 806. Each of the adjoining landowners or their grantors must have knowledge of and consented to the asserted property line as the boundary line. *Id.* When such 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. *Id.* The party seeking to establish a boundary line other than the boundary line in accordance with a survey must prove acquiescence by clear evidence. *Id.*

We find no error in the trial court's finding that PMC failed to prove by clear evidence the existence of a boundary by acquiescence. There were no physical markers, fences, or monuments indicating the presence of a boundary by

acquiescence. While prior owners of the adjacent property may have had no property disputes with PMC, there was no clear evidence indicating they actually knew of, and consented to, the alleged acquiesced boundary. The district court's ruling is supported by substantial evidence and is affirmed.

**AFFIRMED.**