FILED
FEB 26 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ALDEN F. WILEY,	)	
Plaintiff-Appellee,	)	Filed February 26, 1986 383
vs.	)	
DELORES FEE,	)	5-608 85-572
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Allamakee County (No. 20932) - *Dennis D. Damsgaard, Judge.*

Defendant landowner appeals judgment quieting title to disputed real property in plaintiff adjacent landowner. **REVERSED AND REMANDED.**

Marc W. Casey of Moss & Heims Law Office, Dyersville, for defendant-appellant.

John J. Bauercamper of Jacobson, Bristol, Thompson, Bauercamper & Garrett, Waukon, for plaintiff-appellee.

Heard by Oxberger, C.J., and Snell and Hayden, JJ.

The parties are adjacent landowners in Allamakee County. Plaintiff Alden Wiley purchased his property in 1981 and shortly thereafter a dispute arose as to whether a creek or a fence is the boundary between his property and that belonging to defendant, Delores Fee.

In 1914, Village Creek lay some distance north of the southern boundary of Lot 7, the property which Wiley now owns. About 1926 a drainage improvement and flood control project straightened the creek's channel and erected levies. One levy was placed within Lot 7. This moved the creek south from its original position to a point on the southern border of Lot 7. The project, then, left 1.56 acres of Lot 7 on the south side of a levee, and north of Lot 7's southern border. That 1.56 acres is the subject of the present dispute.

Sometime later, a fence was constructed on Lot 7's levee. It is not known who originally built the fence. The part of Lot 7 north of the levee was flat, tillable land, while the area of Lot 7 south of the levee running to the creek was pastureland.

The boundary line dispute between the parties began in the spring of 1981 after Wiley took possession of Lot 7. He removed the fence on the levee, and Fee objected and rebuilt the fence. Wiley then filed a petition to quiet title pursuant to Iowa Code chapter 649 claiming to be the absolute owner in fee simple of the real estate according to his warranty deed, claiming defendant Delores Fee trespassed thereon. Fee filed a counterclaim asserting that she owned part of the land claimed by Wiley by virtue of adverse possession or by a boundary line acquired by acquiescence.

At trial, Wiley claimed that the boundary line is Village Creek while Fee contended that the boundary line is the fence positioned on the levy north of Village Creek. Wiley based his contention on a plat of the two properties dated

May 10, 1977, which shows the boundary line to be Village Creek. He also relies on Fee's Warranty Deed dated February 28, 1977, which uses Village Creek as the boundary line. However, Fee and her predecessors in title testified that they recognized the fence as the boundary line. Two of Wiley's predecessors in title also testified that they recognized the fence as the boundary line.

The trial court quieted title in Wiley according to the descriptions in the parties' respective warranty deeds and, therefore, held that the boundary between the adjoining properties is Village Creek.

On appeal, Fee contends that the trial court erred in determining that the fence was not a boundary line mutually acquiesced to by adjacent landowners. Fee argues that the boundary line was established by acquiescence for a period of more than ten years on the part of her predecessors in title and those of Wiley.

The parties concede that our scope of review is de novo. Sille v. Shaffer, 297 N.W.2d 379, 380 (Iowa 1980). As in all cases tried in equity, we are not bound by the findings of the trial court, but we afford them deference. Iowa R. App. P. 14(f)(7).

The following is a summary of the ownership of Fee's property:

Instrument	Date Recorded	Grantor	Grantee
Warranty Deed	3-3-82	Dale & Janice Osterhaus	Delores Fee
Warranty Deed	3-2-77	James & Catherine Gruber	Dale & Janice Osterhaus
Court Officer Deed	2-28-77	Kerndt Brothers Savings Bank, as Conservator for Harold Doehler	James & Catherine Gruber
Real Estate Contract	3-7-68	Harold Doehler	James & Catherine Gruber

Previously title held in the Doehler family for over twenty years.

The pertinent portion of the chain of title of Wiley's property follows:

Instrument	Date Recorded	Grantor	Grantee
Warranty Deed	4-21-81	National Acceptance	Alden F. Wiley
Warranty Deed	11-10-80	Village Creek Ranch, Inc.	National Acceptance Corporation of America
Warranty Deed	4-28-78	Boris Christoff	Village Creek Ranch, Inc.
Warranty Deed	3-15-76	Richard & Iva Gaunitz	Boris Christoff
Court Officer Deed	3-15-76	Executors of Estate of H. E. Taylor	Richard & Iva Gaunitz
Real Estate Contract	9-5-67	Executors of Estate of H. E. Taylor	Richard & Iva Gaunitz
Death Certificate	3-14-42	H. E. Taylor	

A suit to establish title by acquiescence is contemplated by Iowa Code section 650.14 (1985), which provides:

> If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established.

The meaning of "acquiescence" under this section is well settled. In Sille v. Shaffer, 297 N.W.2d 379, 381 (Iowa 1980), the Iowa Supreme Court stated that acquiescence 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 a 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." (emphasis added). One condition precedent for the existence of acquiescence is knowledge on the part of both parties. Petrus v. Chicago

R.I. & P.R. Co., 245 Iowa 222, 228, 61 N.W.2d 439, 442 (1953). However, "[i]t is sufficient knowledge if both parties are aware of the fence or other line and of the fact that both adjoining landowners are, for the required period, treating it as a boundary. Knowledge, in the sense required for acquiescence, does not encompass record ownership." Sille, 297 N.W.2d at 381.

"Mere acquiescence in the existence of a fence as a barrier and not as a boundary is not such recognition and acquiescence as will amount to an agreement as to the boundary or establish it as the true line." Petrus, 245 Iowa at 228, 61 N.W.2d at 442. "Acquiescence is usually proven by inference or presumption from the conduct of the parties." Id. "Acquiescence may be inferred from the silence or inactions of one party who knows of the boundary line claimed by the other and fails to take steps to dispute it for the ten year period." Drake v. Claar, 339 N.W.2d 844 (Iowa Ct. App. 1983). A party seeking to establish a boundary by other than the legal description as disclosed by a survey has the burden of proving it by clear evidence. Id.

It is also well settled that the present owners of property are bound by the acquiescence of their predecessors in title. "[P]urchasers of property cannot question a boundary line acquiesced in by predecessors in title for more than ten years." Dart v. Thompson, 261 Iowa 237, 154 N.W.2d 82, 84 (1967) (quoting Boyle v. D-X Sunray Oil Co., 191 F. Supp. 263, 271-72 (N.D. Iowa, E.D. 1961).

Wiley asserts that the facts support the reasonable inference that the fence was erected as a barrier to keep cattle out of cropland rather than as a boundary. This contention is wholly unsupported given the testimony of the various owners of the respective properties regarding their view of the significance of the fence as a boundary line. "Failure to show that establishment of a boundary was the original purpose for erecting a fence is not dispositive of the issue here." Sorenson v. Knott, 320 N.W.2d 645, 647 (Iowa Ct. App. 1982).

Wiley also contends that the 1977 survey shows that the alleged acquiescence line is not the survey line and, therefore, Fee could not claim more land than was called for by her 1977 deed. Wiley appears to be arguing that because Fee has no legal right to the disputed parcel pursuant to her deed, she cannot assert the existence of a boundary line by acquiescence. Wiley cites no authority for the proposition that a good faith claim of right is required to establish acquiescence of boundary lines and we find none. Our review of Iowa case law pertaining to acquiescence of boundary lines reveals no requirement of a claim of right. "That concept appears to be confined to the law pertaining to adverse possession." Sorenson, 320 N.W.2d at 647; see Carpenter v. Ruperto, 315 N.W.2d 782, 784 (Iowa 1982) (adverse possession requires proof of hostile, actual, open exclusive and continuous possession under claim or right or color of title for at least ten years).

Furthermore, the record shows that sometime before 1968 the various owners of the property in question accepted the fence line as the true boundary line. Fee's immediate predecessor in title, Dale Osterhaus, testified that the fence was the boundary line and he used the disputed parcel for pasturing livestock. His vendor, Catherine Gruber, also testified that the fence was treated as the boundary line throughout her period of ownership. Additionally, Boris Christoff, one of Wiley's predecessors in title, testified that he considered the fence to be the boundary line and never used the disputed strip of land between the fence and Village Creek. Richard Gaunitz also testified that he treated the fence as the boundary between the properties and never used the disputed parcel. He observed the Doehlers and then the Grubers use the disputed parcel as pasture throughout his period of ownership. A neighbor who rented Lot 7 for farming from H. E. Taylor for twenty years testified that he never farmed

south of the fence and throughout that period the Doehlers used the disputed parcel south of the fence for pasturing cattle.

This evidence indicates that both parties' predecessors in title at all times accepted the fence as the true boundary between their respective properties and maintained their lands accordingly. We conclude that a boundary line between Wiley's and Fee's respective properties, other than the survey or plat line, was established by mutual acquiescence for more than a ten-year period. Thus, the present owners and parties to this action are accordingly bound. We hold that Fee has established the boundary between the two adjoining tracts by acquiescence as provided by section 650.14. The judgment of the trial court is reversed and the case remanded for entry of a judgment quieting title to the disputed tract in Fee.

REVERSED AND REMANDED.