

IN THE COURT OF APPEALS OF IOWA

No. 7-011 / 95-1925

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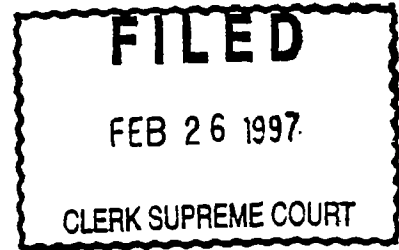
**BERT DOUGLAS KOLLARS, DARYL C. RIFE,
and MICHELLE R. RIFE,**

Plaintiffs-Appellees,

vs.

JAMES B. BROWN and DAYLA R. W. BROWN,

Defendants-Appellants.



Appeal from the Iowa District Court for Plymouth County, John P. Duffy,
Judge.

Defendants appeal from a district court judgment in plaintiffs' favor in
plaintiffs' action to establish a boundary by acquiescence. **AFFIRMED.**

Jeffrey T. Myers, Sioux City, for appellants.

Dawn Mastalir and Richard H. Moeller of Berenstein, Moore, Moser,
Berenstein & Heffernan, Sioux City, for appellees.

Heard by Sackett, P.J., and Cady and Streit, JJ.

SACKETT, P.J.

This case challenges a trial court ruling establishing a boundary by acquiescence. Defendants-appellants James B. Brown and Dayla R. Brown and plaintiffs-appellees Bert Douglas Kollars, Daryl C. Fiefe and Michelle R. Rife own adjoining tracts of real estate in Plymouth County. Plaintiffs brought an action against defendants to establish the boundary line. The district court found the boundary to have been established by a fence in place some forty years. Defendants appeal contending the district court erred in establishing the boundary because (1) the parties did not have knowledge of the actual boundary line for the requisite period (2) plaintiffs did not establish an intent to occupy the disputed property; and (3) the case was brought under the wrong statute. We affirm.

Plaintiffs purchased their tract of land from Arthur Clemensen in April 1993. Defendant James Brown acquired his tract from his parents in 1965. The two properties were separated on plaintiffs' north border and defendants' south border by a fence that had been in place for over forty years.

In May 1993, there was a survey performed. The survey found the fence that ran east and west between the two tracts did not establish the actual boundary between the properties. The fence ran generally north of the boundary and in two spots it ran south. None of the parties nor their predecessors in title were aware where the actual boundary lay until the survey. In August 1994, defendants removed the existing fence and built a new one on the actual boundary line.

Plaintiffs filed a petition termed in equity to establish the boundary line under Iowa Code chapter 650. Plaintiffs also sought an injunction. A hearing was held and the district court concluded plaintiffs established the prior fence line as the boundary by acquiescence. The court ruled the parties or their predecessors mutually recognized the fence line as the boundary for over ten years. The court rejected defendants' claim the parties had to know where the actual boundary line lay to establish acquiescence. The court directed defendants to remove any portions of the new fence that encroached on plaintiffs' property. The court denied injunctive relief but retained jurisdiction to enter further orders if the parties could not agree on the location of the prior fence.

Defendants contend the court erred in finding acquiescence because neither party knew the original fence was not on the actual boundary. Defendants argue the court erred in finding acquiescence absent an intent to occupy the land by plaintiffs. They maintain the acquiescence was not for the appropriate number of years given and they immediately corrected the error when the true boundary was discovered. Finally, they assert the case should have been resolved under Iowa Code section 359A.3 rather than under section 650.14.

We first look to our scope of review. Generally, a chapter 650 action is tried as an ordinary proceeding and review is for correction of errors at law. Iowa Code § 650.15; *Davis v. Hansen*, 224 N.W.2d 4, 5 (Iowa 1974). The action was filed in equity because there was a request for injunctive relief.

In their brief, plaintiffs contend we review for correction of errors at law. Defendants do not address our scope of review in their written brief, but at oral argument suggested it was de novo. The pertinent facts are not in dispute. It is agreed the fence the trial court found established the boundary line had been in place over forty years and was treated as the boundary for that time, and none of the owners of the two properties during that period knew the fence did not lie on the actual boundary line. Because the facts are not in dispute, we need only to decide if the trial court applied the correct law.

A boundary line may be established by showing two adjoining property owners or their predecessors in title have recognized and acquiesced in a boundary line for ten years. Iowa Code § 650.6 and 650.14; *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 806 (Iowa 1994). Acquiescence exists when both land owners acknowledge and treat the line marked by a fence or in some other manner as the boundary. *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). Acquiescence sufficient to establish a boundary line may be inferred from silence when there is notice of another party's claim. *Sorenson v. Knott*, 320 N.W.2d 645, 647 (Iowa App. 1982). Evidence that a party knows of a fence line for the required period without complaining to the other property owner is sufficient evidence to establish acquiescence. See *Drake v. Claar*, 339 N.W.2d 844, 847 (Iowa App. 1983). One seeking to establish the boundary at other than the survey line must prove acquiescence by clear evidence. *Brown v. McDaniel*, 261 Iowa 730, 733, 156

N.W.2d 349, 351 (1968). Acquiescence need not be specifically proven but may be inferred by silence or inaction by a party aware of the established boundary who does not take steps to correct it in a ten-year period. *Dart v. Thompson*, 261 Iowa 237, 241, 154 N.W.2d 82, 84-85 (1967).

This case was properly filed under Iowa Code chapter 650.1. Iowa Code section 650.6 states in a boundary dispute case either plaintiff or defendant may put in issue a certain boundary has been recognized and acquiesced in by the parties for ten consecutive years. The facts support a finding of acquiescence. The trial court correctly applied the law.

AFFIRMED.