

IN THE COURT OF APPEALS OF IOWA

No. 19-1022
Filed April 15, 2020

ELDON D. JAEGER and BARBARA ANN JAEGER,
Plaintiff-Appellants,

vs.

GERALD F. MANEMANN and DONNA M. MANEMANN,
Defendant-Appellees.

Appeal from the Iowa District Court for Dubuque County, Michael J. Shubatt, Judge.

Eldon and Barbara Jaeger appeal the district court's order quieting title in Gerald and Donna Manemann to the disputed boundary line between the parties' neighboring properties. **AFFIRMED.**

Douglas M. Henry and Jessica L. McNamara of Fuerste, Carew, Juergens & Sudmeier, P.C., Dubuque, for appellants.

Todd J. Locher of Locher & Davis PLC, Farley, for appellees.

Considered by Vaitheswaran, P.J., and Doyle and May, JJ.

VAITHESWARAN, Presiding Judge.

Eldon and Barbara Jaeger purchased property in Worthington, Iowa, east of property purchased by Gerald and Donna Manemann. For decades before and after the purchases, a barbed wire fence bisected their properties. The fence was not on the survey line.

Around 2000, Eldon Jaeger removed the fence and created a trough by installing concrete half-pipes or culverts parallel to the former north-south fence line but five to six feet east of it. Seventeen years later, the Jaegers filed a petition for declaratory judgment, asking the court to “establish the partition line between the parties’ properties.” The Manemanns filed an answer and counterclaims, seeking to have the boundary established “at the precast concrete culverts.” In their reply, the Jaegers denied “ever treating the row of precast concrete culverts as the partition line between the parties’ respective properties.”

Following trial, the district court concluded “the parties . . . acquiesced in a boundary that begins at the westernmost [of two] post[s] [and] . . . run[s] south along the western edge of the trough to the southern edge of the two properties.”

In a post-trial ruling, the court made the following clarification:

[T]he westernmost post . . . is the starting point of the boundary line. The boundary line continues at an angle to the northernmost edge of the trough, follows the trough southward, and then angles back to a point due south of the westernmost post. . . . This results in a bowed property line. Although this may not be desirable to the parties, it is the line supported by the facts and the law.

On appeal, the Jaegers contend “[t]he boundary line established by the court does not conform to the evidence presented at trial.” Although the lawsuit was assigned an equity number, our review is on error, with the district court’s

findings of fact binding us if supported by substantial evidence. See *Egli v. Troy*, 602 N.W.2d 329, 332 (Iowa 1999) (“An action under Iowa Code chapter 650 to establish a boundary is considered on appeal as an ordinary action. The district court’s judgment has the effect of a jury verdict, and on appeal the only inquiry is whether the findings are supported by substantial evidence.” (citations omitted)); *Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997) (stating our review is for errors of law); cf. *Albert v. Conger*, 886 N.W.2d 877, 880 (Iowa Ct. App. 2016) (reviewing the claim de novo where “the parties appear to be in agreement that the claims were equitable and tried in equity”).

The statutory boundary by acquiescence doctrine states: “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.” Iowa Code § 650.14 (2017). “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.” *Egli*, 602 N.W.2d at 333 (quoting *Ollinger*, 562 N.W.2d at 170). Both parties must have knowledge of the boundary line to establish acquiescence. *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980).

Acquiescence may be inferred by the silence or inaction of one party who knows of the boundary line claimed by the other and fails to dispute it for a ten-year period. Acquiescence is said to be “consent inferred from silence—a tacit encouragement[—and] involves notice or knowledge of the claim of the other party.”

Egli, 602 N.W.2d at 333 (citations omitted).

At trial, the parties disagreed on the starting point of the north-south boundary. The district court made the following pertinent finding:

The north-south line starts at one of . . . two fence posts shown in Exhibit 8. The Jaegers claim it is the westernmost post, shown in the foreground. The Manemanns claim it is the easternmost post, shown in the background. The Court concludes that there is clear evidence that the westernmost post is the starting point of the fence that once ran north-south.

The parties also disagreed on the location of the boundary line as it traveled south from the westernmost post. On this point, the court found as follows:

The most compelling proof before the Court is the evidence that, regardless of what any survey might say, the Manemanns have exerted control of the ground up to the western edge of the trough installed by the Jaegers ever since the Jaegers installed the trough in 2000. They have mowed, they have treated the ground chemically and they have landscaped on it. Not once did the Jaegers complain or point out to the Manemanns that they were exerting control over property that did not belong to them. To the Court, this is clear evidence that all parties acquiesced in the trough as the true boundary between the properties.

As noted, the district court later clarified that the articulated boundary would result in “a bowed property line.”

The Jaegers take issue with this finding. In their view, “[b]oth parties testified that the fence was a relatively straight line down the property.” To the contrary, Eldon Jaeger testified the fence line did not stay in a true north-south line but “angled to the southwest.” Although Gerald Manemann was more equivocal, stating “I never saw [the line] ever veered,” he acknowledged “it may have, I suspect.” Although neither of their statements explains a veering of the boundary five to six feet east of the old fence line to the culvert line, the district court found the Jaegers acquiesced in the concrete culvert as the new boundary.

The court's finding is supported by substantial evidence. True, there was contradictory evidence on who mowed what side of the culvert line. But, to the extent the testimony diverged, it was the district court's prerogative to resolve the inconsistencies. See *Concannon v. Blackman*, 6 N.W.2d 116, 118 (Iowa 1942) (“[S]ince the case is not triable de novo it is not our province to solve disputed fact questions nor pass on the credibility of the witnesses.”).

We affirm the district court's finding of a boundary by acquiescence and its delineation of the boundary.

AFFIRMED.