

**IN THE COURT OF APPEALS OF IOWA**

No. 0-284 / 09-1257  
Filed June 30, 2010

**BRUNO G. LENZINI,**  
Plaintiff-Appellee,

**vs.**

**ALBERT H. GOMEZ and  
ELEANORE M. GOMEZ,**  
Defendants-Appellants.

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Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,  
Judge.

Albert and Eleanore Gomez appeal from the district court's order quieting  
title in land to Bruno Lenzini. **REVERSED.**

Jerrold Wanek and Robert C. Gainer of Garten & Wanek, Des Moines, for  
appellants.

Thomas S. Reavely of Whitfield & Eddy, P.L.C., Des Moines, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

In 1961, Albert and Eleanore Gomez bought property on the north side of Des Moines. On the lot located to the immediate south of the Gomez property was a church. The church's parking lot adjoined the Gomez property to the north. In roughly 1996, Albert built a fence on the southern edge of his property.<sup>1</sup> Reverend Donald E. Bennett and church members agreed that a fence between the two properties was a good idea. The Gomezes maintained the land north of the fence, and the church maintained the land south of the fence.

In November of 2007, Bruno Lenzini purchased the church lot. Lenzini had the property surveyed, and the survey revealed that the fence was not located on the boundary line between his property and the Gomezes' property. Rather, the fence was located to the south of the actual boundary line and encroached on Lenzini's property. Albert offered to purchase the strip of land to the north of the fence that Lenzini claimed was his, but Lenzini requested that Albert move the fence to the legal boundary line between their lots. Albert refused. Lenzini filed a petition to quiet title in the disputed strip of property. The district court ordered that title in the real estate be quieted in Lenzini. The Gomezes appeal, arguing Reverend Bennett had acquiesced to the fence as a boundary line for more than ten years.

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<sup>1</sup> Though there was disagreement as to exactly when the fence was built, both parties agree that the fence was in place for the requisite time period to assert a claim under the doctrine of boundaries by acquiescence.

## II. Standard of Review

Because this matter was tried in equity, our review is de novo.<sup>2</sup> Iowa R. App. P. 6.907. We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.904(3)(g); *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000).

## III. Boundaries by Acquiescence

The doctrine of boundaries by acquiescence 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. Thus, two owners may establish a boundary by mutually acquiescing in a “line definitely marked by a fence or in some other manner as a true boundary, although a survey may show otherwise.” *Mensch v. Netty*, 408 N.W.2d 383, 386 (Iowa 1987). “Acquiescence exists when both parties acknowledge and treat the line as the boundary.” *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). Both parties must have knowledge of the boundary line to establish acquiescence. *Id.* To prove knowledge, it is sufficient to prove that both parties knew of the fence and treated it as a boundary for the required period. *Id.* The burden is upon the

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<sup>2</sup> We recognize that we generally review claims seeking to establish a boundary by acquiescence pursuant to Iowa Code section 650.14 (2007) on assigned errors of law. See *Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997). Because the present action was tried in equity, however, our review on appeal is de novo. See *Sille v. Shaffer*, 297 N.W.2d 379, 380–81 (Iowa 1980) (reviewing de novo a section 650.14 proceeding tried by the court in equity).

Gomezses to establish requisite mutual acquiescence by clear proof. See *Davis v. Hansen*, 224 N.W.2d 4, 6 (Iowa 1974).

The Gomezses assert that Reverend Bennett acquiesced to the fence as the boundary line for a period of ten years. Lenzini asserts the fence was a privacy fence, or barrier, and that the Gomezses and Reverend Bennett never understood the fence to be a boundary.

We give weight to the district court's credibility findings adverse to Albert; however, the record still supports a finding that both Reverend Bennett and the Gomezses knew of the fence and treated it as the boundary for the requisite period of time. Reverend Bennett testified that when he agreed to allow the Gomezses to build the fence, he intended it to be a privacy fence, not a boundary fence. However, Reverend Bennett testified that although it was never "brought up verbally," he and the Gomezses treated the fence as the boundary between their properties. Bennett's testimony establishes that he and Albert each treated the property on his side of the fence as his own and maintained the land on his side of the fence. See *Sille*, 297 N.W.2d at 381 (finding a party's improvements and maintenance of the property on her side of the fence to be evidence that the fence was recognized as a boundary and not merely a barrier). Further, Bennett's testimony establishes that he and Albert treated the fence as the boundary line between their properties. Bennett was asked at trial, "[Y]ou would acknowledge that once the fence was built, both the church and the Gomezses treated it as if it were the boundary?" Bennett responded, "I would agree." Bennett was also asked, "So while it may not have been brought up verbally, did the two neighbors treat the fence as the boundary between the properties?" He

answered, "I would say yes." "[A] fence erected for a purpose other than to mark a boundary may later become a boundary if the adjoining landowners acquiesce in it as such for the statutory period of ten years." *Harvey v. Platter*, 495 N.W.2d 350, 352 (Iowa Ct. App. 1992).

We find that, even if Reverend Bennett initially only agreed to the placement of the fence as a privacy barrier, he acquiesced in it as a boundary by treating it as a boundary for the statutory period. See *Sille*, 297 N.W.2d at 381 (finding knowledge sufficient to constitute acquiescence exists when both parties are aware of the fence and treat it as a boundary for the requisite time period). Because the Gomezes established mutual acquiescence to the fence as a boundary line, the district court erred in quieting title to the disputed property in Lenzini.

**REVERSED.**