IN THE COURT OF APPEALS OF IOWA

No. 0-638 / 10-0090
Filed November 24, 2010

BRIAN L. WATTERS and
KAREN R. WATTERS,
Plaintiffs-Appellants,

vs.

JEFFREY V. MEDINGER,
Defendant-Appellee.

Appeal from the Iowa District Court for Jackson County, Marlita A. Greve, Judge.

Appeal from an adverse judgment in a quiet-title action. **AFFIRMED.**

David Pillers of Pillers & Richmond, DeWitt, for appellants.

Mark Lawson of Mark R. Lawson, P.C., Maquoketa, for appellee.

Considered by Sackett, C.J., and Potterfield and Doyle, JJ.

DOYLE, J.

Plaintiffs Brian and Karen Watters sought, among other things, to quiet title to a 1.31 acre triangular piece of farmland conveyed to them by warranty deed on March 15, 2002. The district court, in ruling on the counterclaim of the adjoining property owner Jeffery Medinger, quieted title in the property to Medinger, finding Medinger proved ownership through both acquiescence and adverse possession. Because we find Medinger proved ownership through acquiescence, we affirm.

***I. Background Facts and Proceedings*.**

At issue here is approximately 1.31 acres of land located in Jackson County, Iowa, referred to as Parcel A. Parcel A is legally described as

> being a part of the Northwest Quarter of the Northwest Quarter of Section 5, as shown on Plat of Survey filed February 20, 2002, File No. 02-0907, Book 1-M, Page 90, Office of the Recorder of Jackson County, Iowa, containing 1.31 acres, more or less.

From its western terminus at Caves Road, 93rd Street (the road) runs east-northeasterly through the Southwest quarter of the Northwest quarter (SWNW) and the Northwest quarter of the Northwest quarter (NWNW) of Section 5 in Jackson County, thus bisecting the common boundary between these quarter sections. As a result, a small triangular piece of the northwest corner of the SWNW quarter is separated from the rest of the quarter section by the road. This piece lies directly north of the road. Additionally, a small triangular piece of the southeast corner of the NWNW quarter is separated from the rest of the quarter section by the road. This piece, Parcel A, lies directly south of the road.

Parcel A is bounded to the north by the road. Its southern boundary runs east from the road to the southeast corner of the NWNW quarter section. The southern boundary of the parcel is the common boundary between the NWNW and SWNW quarter sections. The eastern boundary of Parcel A runs south from the road to the southeast corner of the NWNW quarter section. The eastern boundary of the parcel is the common boundary between the NWNW and Northeast quarter of the Northwest (NENW) quarter sections.

On November 20, 2001, the Watterses contracted to purchase from Penrose Family Farms 365 acres of land in Jackson County, Iowa, in three or four parcels. The legal description of the land to be sold was somewhat vague in the contract but referenced, among various descriptions, the "NWNW S of Road." The contract further provided "[t]he exact legal [description] to come from survey ([paid] by buyer) . . . ." A survey was completed in February of 2002. In March 2002, the Watterses received a warranty deed[1] from Penrose Farms in fulfillment of the contract, conveying certain land, including Parcel A.

On June 1, 2001, Jeffrey Medinger bought and took possession of 28.85 acres of land located in the "Southwest Quarter of the Northwest Quarter of Section 5, Township 84 North, Range 2 East of the 5th Principal Meridian, Jackson County, Iowa . . . ."[2] Medinger received a warranty deed conveying the property from the seller, Mary Ronek, dated February 21, 2002. Parcel A was not in the description of the property conveyed by this deed.

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[1] The deed was recorded on May 15, 2002.

[2] The deed and contract specifically excepted property from the southwest quarter of the northwest quarter. The excepted property is described by a lengthy metes and bounds description, as well as a reference to a pole line and highway easement.

Parcel A adjoins Medinger's SWNW land to the south, and the Watterses' NENW land to the east.[3] Stated another way, Parcel A lies north of Medinger's land and west of the Watterses' land, and catty-corner (northwest) from Watterses' Southeast quarter of the Northwest (SENW) quarter section of land. A north-south line fence on the eastern boundary of Parcel A separates the parcel from the Watterses' land. This line fence extends further to the south, separating Medinger's SWNW land from Watterses' SENW land. No fence separates the southern boundary of Parcel A from Medinger's SWNW land. Until Medinger removed it, a road fence with an entrance gate existed along the road on the north side of the parcel.

On September 9, 2008, the Watterses filed a petition in equity against Medinger seeking damages for trespass and nuisance and to quiet title in themselves to Parcel A. The Watterses asserted they were and had been for several years owners, record title holders, and possessors of Parcel A. They asked that the district court determine the boundaries of the property, pursuant to Iowa Code section 650.5 (2007).

In answer to the petition, Medinger denied the claims for trespass and nuisance, admitted the Watterses were "record title holder[s]" of the described premises, but denied they were the only record title holders and further denied that the Watterses were or ever had been in possession of the property in dispute. Medinger also filed a counterclaim asserting ownership of the property

[3] Medinger's home is located on a piece of land he owns in NENW situated south of the road and north of Watterses' NENW land. A short length of the western boundary of this piece of land abuts the eastern boundary of Parcel A. The piece of land is bounded to the north by the road, and the remaining boundary abuts the Watterses' NENW land.

in dispute because the Watterses or their grantors had for a period of ten consecutive years acquiesced in and recognized a boundary line between these parcels, the location of which renders the disputed property as belonging to Medinger. In the alternative, Medinger claimed title and possession by adverse possession.

A trial in the matter was held, and evidence and testimony concerning the history of Parcel A was given. Kenneth Morehead testified that in 1966 he and his wife purchased certain land in Jackson County, including land that would later be designated Parcel A, from Lulu Sagers. The property was conveyed to the Moreheads by warranty deed in 1976 or 1977. During this same period, the Kellys and the Tubbses jointly owned property in Jackson County, including (with some exceptions) the SWNW quarter of Section 5.

Morehead testified that in 1966, he and Kelly[4] had a conversation about two triangular pieces of land—one north of 93rd Street, and Parcel A, which is south of 93rd Street. Kelly told him that the previous owner's husband, Howard Sagers, agreed to a trade of those slivers of ground. In this "swap," the Sagers' Parcel A south of the road was to become the Kellys', and the Kellys' triangular portion of land north of the road was to become the Sagers'. Sagers and Kelly never exchanged a legal deed for transfer of the land, nor filed or recorded anything concerning the swap. Morehead testified he did not farm or cultivate any property south of 93rd Street. The Moreheads later sold certain land to Penrose Farms, and the legal description conveying the property to Penrose Farms included Parcel A.

[4] Leroy Kelly was deceased at the time of trial.

Harold Penrose, of Penrose Family Farms, testified his family farm corporation never farmed Parcel A, never had a tractor on it, and never considered they owned it. He always believed it was owned by someone else. He did testify he crossed Parcel A a couple of times to access his land when another access road was under repair.

Brian Watters testified he worked for Harold Penrose and Penrose Family Farms in the 1980's as a hired hand. He also worked for them as a hired hand from 1990 to 1995. When Brian worked as a hired hand for Penrose Family Farms he did not work on Parcel A, nor did Penrose Family Farms farm it. Brian testified the land was idle and overgrown with weeds. He believed no one farmed it.

Jeffrey Medinger testified his parents owned property both north and south of 93rd Street. He testified they used the property south of 93rd Street for pasture land, and cattle lot and buildings. This piece of property abuts the east boundary of Parcel A and the north boundary of the Watterses' property. In 1999, Medinger began renting land south of 93rd from Mary Ronek, which included Parcel A. Before Medinger rented Parcel A from Ronek, it was in the CRP program from 1989 to 1998. The first year it became available for planting was in 1999 when Medinger rented it. He planted organic beans on the field that year which included Parcel A. The second year he rented it he planted organic corn. He had a verbal lease to rent this land from Ronek.

Medinger testified he wanted the use of Ronek's land because it joined his parents' land to the east, which was land he was buying from his parents.

Leasing Ronek's land gave him access for livestock on both properties. In 2001, Medinger bought 28.85 acres of land on contract from Ronek, which Ronek and Medinger both believed included Parcel A. Medinger paid the contract off in February 2002 and received a warranty deed from Ronek at that time, which did not include Parcel A. This occurred about a month before the Watterses received a warranty deed from Penrose Family Farms, which included Parcel A.

Medinger testified that during the time Medinger leased from Ronek the field that included Parcel A, and after his purchase of the property, he made several improvements to the land, including to Parcel A. He removed the road fence and cleared brush along the entire length of 93rd Street. He leveled off some dirt in the field and took out a driveway on the northwest end of Parcel A because it did not have a culvert. Eliminating the driveway allowed water to drain better. Brian Watters admitted at the time he and his wife closed on their land, Parcel A was a hay field and there had been bulldozing done on it a year or two prior. Parcel A appeared to be a part of a much larger field to the south, because the only fence separating Parcel A from the surrounding farmland was the north-south fence dividing Parcel A from the Watterses' land. Karen Watters admitted at trial that at the time of closing of their purchase of property, they were aware Medinger was farming and doing bulldozing on Parcel A.

Ronek's deposition was admitted into evidence. Ronek testified that she believed she had owned Parcel A. She also testified that Parcel A was never separately fenced from the rest of her land, but was always part of a bigger field. Ronek testified that in 1981 when she purchased her property, a line fence

existed on the eastern boundary of Parcel A, separating it from the Penrose property to its east, the land ultimately purchased by the Watterses, stating "[t]here has always been a line fence between the two." She kept the fence in repair while she owned the property. The fence was still in existence when she sold the property to Medinger on contract in 2001. She further testified that she and Penrose recognized the fence as the boundary between their two farms. Ronek's tenants never farmed east of the line fence, and Penrose and his tenants never farmed west of the fence. There was no type of gate or entrance of any kind in the line fence. Brian Watters acknowledged there was a fence on the eastern boundary of the parcel.

After hearing evidence, the district court determined that the Watterses and their predecessor in interest had acquiesced in the boundary line and that Medinger had proved his adverse possession claim. The court found Morehead to be credible and found that Parcel A was considered by the Moreheads and the Kellys, and all subsequent purchasers of the property, to be a part of a larger field to its south, namely, the SWNW field ultimately purchased by Medinger. The court found that Medinger was therefore entitled to ownership of Parcel A, and it dismissed the Watterses' trespass claim. The court also found the Watterses had not proved their claim for private nuisance.

The Watterses appeal, challenging only the district court's findings concerning acquiescence and adverse possession.[5] The Watterses claim title by

[5] We note noncompliance with the rules of appellate procedure requiring the name of each witness whose testimony is included in the appendix to be inserted on the top of each appendix page where the witness's testimony appears. *See* Iowa R. App. P. 6.905(7)(*c*) (2010).

conveyance. Medinger asserts title based on his actions and those of predecessors in interest, as he had not held the property for ten years at the time of the filing of the petition and the trial.

***II. Scope and Standards of Review*.**

The parties disagree on our standard of review on this issue. The Watterses claim it is in equity because the action was filed in equity. Medinger argues it is on assigned errors of law, citing *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 804 (Iowa 1994). In *Tewes*, the Iowa Supreme court stated that claims brought under Iowa Code chapter 650 are a special action and are heard on appeal as an ordinary action. *Tewes*, 522 N.W.2d at 804. As in an action at law, appellate review is on assigned errors of law, meaning the district court's judgment has the effect of a jury verdict; thus, the appellate courts would be bound by the district court's findings of fact if supported by substantial evidence. *See id*.; *see also Brown v. McDaniel*, 261 Iowa 730, 732, 156 N.W.2d 349, 351 (1968). We therefore review this issue at law and find there is substantial evidence to support the district court's finding of acquiescence. Nevertheless, our conclusion would be the same under a de novo review.

***III. Discussion*.**

Determining whether acquiescence has been established requires an inquiry into the factual circumstances of each case. *Ollinger v. Bennett*, 562 N.W.2d 167, 171 (Iowa 1997). "'Acquiescence' is defined as '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. . . .'" *Egli v. Troy*, 602 N.W.2d 329, 333 (Iowa 1999) (emphasis added). Each of the adjoining landowners or their grantors must have knowledge of and consent to the asserted property line as the boundary line. *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980).

> 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."
>
> Acquiescence need not be specifically proven; it may be inferred by the silence or inaction of one party who knows of the boundary line claimed by the other and fails to take steps to dispute it for a ten-year period. However, the party seeking to establish a boundary line other than the boundary line in accordance with a survey must prove acquiescence by clear evidence.

Tewes, 522 N.W.2d at 806 (addition in original) (internal citations omitted). "[T]he establishment of title by acquiescence is effective only on a finding by the court that the requirements for acquiescence have been met." *Heer v. Thola*, 613 N.W.2d 658, 662 (Iowa 2000). This finding must also establish a definite line. *Id.*; *see also De Viney v. Hughes*, 243 Iowa 1388, 1394, 55 N.W.2d 478, 481 (1952). This is so even if the prerequisites for title by acquiescence have been in existence for some time. *See Sille*, 297 N.W.2d at 381. Recognition of a boundary "may be by conduct or claim asserted, but it must be by both parties." *Brown*, 261 Iowa at 735, 156 N.W.2d at 352.

Upon our thorough review of the record, we find there is substantial and clear evidence to support the district court's finding of acquiescence. The evidence demonstrated that the north-south line fence established a definite line between the properties. The record shows that the previous owners of these two tracts of land had acknowledged the fence as the boundary line for well over ten

years. Accordingly, we affirm the district court's finding that Medinger proved he is entitled to ownership of Parcel A by the doctrine of acquiescence. Having affirmed the district court on the issue of acquiescence, we need not consider the issue of adverse possession.

AFFIRMED.

Potterfield, J., concurs; Sackett, C.J., dissents.

SACKETT, C.J. (dissenting)

I respectfully dissent. There is not substantial evidence to support the district court's finding of acquiescence.

"Acquiescence" is defined as "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." *Egli v. Troy*, 602 N.W.2d 329, 333 (Iowa 1999) (emphasis supplied). Each of the adjoining landowners or their grantors must have knowledge of and consent to the asserted property line as the boundary line. *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). "When 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." *Tewes*, 522 N.W.2d at 806. Acquiescence need not be specifically proved; it may be inferred by the silence or inaction of one party who knows of the boundary line claimed by the other and fails to take steps to dispute it for a ten-year period. *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.*; *Brown*, 261 Iowa at 733, 156 N.W.2d at 351. The establishment of title by acquiescence is effective only on a finding by the court that the requirements for acquiescence have been met. *Heer v. Thola*, 613 N.W.2d 658, 662 (Iowa 2000). This finding must also establish a definite line. *Id.*; *see also De Viney v. Hughes*, 243 Iowa 1388, 1394, 55 N.W.2d 478, 481 (1952). This is so even if the prerequisites for title by

acquiescence have been in existence for some time. *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980).

There is no evidence there was a defined fence or some other marking that marked the property Medinger seeks to take by acquiesce. There was testimony that at one time there was in the area a partial electric fence, a partial fence, a broken-down fence, and a fence on the side of the property adjoining 93rd Street. The district court made a specific finding that the property was not fenced and was used as a part of a larger field. There being no evidence that the property was marked by a fence or in some other matter for ten years, I would reverse on this issue.

Nor did the Medingers show they were entitled to the property by adverse possession.

"A party claiming title by adverse possession must establish hostile, actual, open, exclusive, and continuous possession, under claim of right or color of title for at least ten years." *C.H. Moore Trust Estate v. City of Storm Lake*, 423 N.W.2d 13, 15 (Iowa 1988); *Marksbury v. State*, 322 N.W.2d 281, 287 (Iowa 1982). "A possession that is in law rightful and not an invasion of the rights of others is not adverse." *Garrett v. Huster*, 684 N.W.2d 250, 253-54 (Iowa 2004). "Possession, to be adverse, must be hostile." *Id.* Adverse possession "is not based on, but is hostile to, the true title." *Id.* Proof of these elements must be "clear and positive." *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982). Since the law presumes possession is under a regular title, the doctrine of adverse possession is strictly construed. *Id.*

The district court made the following findings:

> [Medinger] and his predecessors Mary Ronek and Leroy Kelly, have had hostile, actual, open, exclusive, and continuous possession of Parcel A since at least 1996, which is far more than ten years. All landowners involved through those years until Brian and Karen in 2002 all agreed Parcel A belonged with the land legally titled in Leroy Kelly and then in Mary Ronek's name and then in [Medinger]'s name. Although the land was dormant from 1989 to 1998 when it was in the CRP program, it was still being used like other ground during that time by Ms. Ronek. In 1999, [Medinger] began leasing it and made several improvements on it including bulldozing it, removing a driveway, and making it more useful for farming. His specific acts and use of this property as well as [Ronek]'s same acts and use of this property before him were hostile, actual, open, and exclusive, which is the type of conduct associated with a claim of right. At no time did the predecessors in legal title to this parcel—Kenneth Morehead and Penrose Family Farms—farm this land or object to Kelly's, Ronek's, or [Medinger]'s farming this land. Thus, this parcel has always been part of a larger field and treated and farmed that way.
>
> It is irrelevant that Penrose Family Farms and [the Watterses] are the ones who paid taxes on this property. Harold Penrose was unaware he was paying taxes on this property and never believed he had any ownership interest in it. [Medinger] has proven by clear and positive evidence he has a good faith claim of right. He had no knowledge that he did not have an interest in Parcel A until after he purchased the property from Mary Ronek and until Brian and Karen approached him. Before this he and his predecessors always behaved as if and believed Parcel A was included with the 28.85 acre piece of ground Jeff purchased from Mary Ronek.

The Watterses correctly argue that parcel A was not conveyed to Medinger by Ronek. Parcel A is in the northwest quarter of the northwest quarter of section five. The property Medinger purchased from Ronek is in the southwest quarter of the northwest quarter of section five. If Ronek did have an interest in parcel A through adverse possession, there is no evidence that interest was transferred to Medinger. The time period of any claim of adverse possession for Medinger would not begin to run until at least 1999 when he began renting the

land or when he purchased it in 2001. Therefore, he cannot establish the minimum ten-year term for adverse possession. In addition, the "use" of the land prior to the time Medinger rented it and began making improvements, was to be unused as CRP[6] land; therefore, its use was not "actual" or "open." There also is evidence the prior owner, Penrose Family Farms, used the parcel and the driveway on it to access an adjoining parcel it owned, so Medinger's use was not "exclusive." Although not dispositive of the issue, I note that Penrose Family Farms and the Watterses during their terms of ownership have paid the property taxes on the parcel A.

I conclude Medinger has not established the elements of adverse possession by clear and positive evidence. Accordingly, I would reverse the district court decision to the contrary.

[6] It is doubtful that the government would pay a party to set property aside if the party did not show actual title to the property.