

**IN THE COURT OF APPEALS OF IOWA**

No. 2-062 / 11-0888  
Filed February 29, 2012

**JOHN E. KINNEL and MARLYS J. KINNEL,**  
**Trustees of the Kinnel Family Trust,**  
Plaintiffs-Appellees,

**vs.**

**CHARLES R. GARDNER,**  
Defendant-Appellant.

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**CHARLES R. GARDNER,**  
Counterclaimant,

**vs.**

**JOHN E. KINNEL and MARLYS J. KINNEL,**  
**Trustees of the Kinnel Family Trust,**  
Defendants in Counterclaim.

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Appeal from the Iowa District Court for Emmet County, Don E. Courtney,  
Judge.

Charles Gardner appeals from the district court's finding of a boundary by  
acquiescence. **AFFIRMED.**

David J. Stein, Jr. of Stein Law Office, Milford, for appellant.

Monty L. Fisher of Monty L. Fisher, P.L.L.C., Fort Dodge, for appellees.

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

**POTTERFIELD, J.**

Charles Gardner appeals from the district court's ruling that John and Marlys Kinnel, as trustees of the Kinnel Family Trust, had established a boundary by acquiescence. Because substantial evidence supports the court's ruling, the judgment will not be disturbed.

The Kinnels brought this action to establish a boundary by acquiescence along a former fence line between two farms. Trial was held December 2 and 3, 2009. On December 30, 2010, the district court entered its findings of fact and conclusions of law, which reads in part:

The court finds that the area in dispute has been marked by a recognized boundary line between the two farms since at least 1939 and probably for many years prior to that. Until the early 1970s, there was a fence marking the boundary line. The Kinnels and their predecessors and Mr. Gardner's predecessors mutually recognized the old fence and the old fence line after it was taken out as a boundary. Although Defendant [Gardner] argues that the steel posts were moved when the parties would plant and cultivate and some even missing for a significant period of time, and that the crop line was not exact and definite enough to serve as a boundary line because it lacks the characteristics of permanence and stability required by law, the court disagrees. The court finds that the boundary is definite, recognized, and easily identifiable since the boundary lined up exactly with the neighbor's fence line to the north . . . . There was always a steel post, and for many years, more than one steel post marking the boundary line. Also there was a wooden post, steel post, or a piece of steel re-rod at the south end of the farm identifying the boundary. . . . Mr. Blum's survey reflects this right of way fence to the north and identifies a lone steel post 37.29' east in the field. The survey also identifies a lone steel post and the boar at the south end located 32.05' east. The total acres involved in the disputed area totals 2.12.

There has never been an objection or complaint by anyone over the recognized boundary line for more than 68 years. Numerous photographs reflect how this disputed tract has been farmed for more than 68 years. . . .

. . . .

While the court does believe that initially the fence was intended as a barrier probably to keep cattle from straying onto

adjacent property, “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.” [citation omitted] In this case the adjoining landowners acquiesced at least since sometime before 1939. The court finds the testimony of the Plaintiffs’ witnesses to be credible, especially the testimony of Jerald Heifner, James Fisher, and Ron Harris. These are neutral witnesses who have personal knowledge about the history of the disputed area. . . .

In conclusion, the court finds that the Kinnels have proven by clear and convincing evidence that the common boundary between the Kinnel farm and the Gardner farm has long been located and established in accordance with the definite and certain old fence line to which the parties’ predecessors-in-interest continuously and mutually acquiesced for more than 10 years.

On appeal, Gardner asserts the Kinnels did not prove they acquired title to the disputed land by acquiescence. We first address the parties’ initial disagreement as to what standard of review this court applies when examining the claim on appeal.

Gardner asserts the case was tried in equity and our review is *de novo*. While the action does have an equity designation, in its ruling the district court specifically notes “this is a special action tried at law under Iowa Code chapter 650 (2009).” The district court ruled on evidentiary objections in its ruling. See *Citizens Sav. Bank v. Sac City State Bank*, 315 N.W.2d 20, 24 (Iowa 1982) (explaining where it is unclear whether the case was tried in equity or at law, we often look to whether the district court ruled on evidentiary objections—if the court ruled on objections this indicates the case was not an equitable proceeding, but was heard at law). Under the present circumstances, we find that the petition was brought as a special action under chapter 650 and tried as such. Therefore, our review is for errors at law.

Under this limited extent of review the findings of fact by the trial court have the effect of a special verdict and are equivalent to a jury verdict. If supported by substantial evidence, the judgment will not be disturbed on appeal.

*Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 804 (Iowa 1994) (citations and internal quotation marks omitted); *see also Sille v. Shaffer*, 297 N.W.2d 379, 380 (Iowa 1980) (“The issue of acquiescence presents mostly fact questions, and the judgment in such a case has the effect of a jury verdict.”); *Davis v. Hansen*, 224 N.W.2d 4, 5 (Iowa 1974) (“Stated in other words, in a law action tried to the court its findings of fact having adequate evidentiary support shall not be set aside unless induced by an erroneous view of law.”).

Upon our review and giving weight to the district court’s credibility determinations, we conclude substantial evidence supports the district court’s judgment. We therefore affirm. See Iowa Ct. R. 21.29(b), (e).

**AFFIRMED.**