

IN THE COURT OF APPEALS OF IOWA

No. 2-207 / 11-1449
Filed May 23, 2012

DANIEL BUDREAU and JULIE BUDREAU,
Plaintiffs-Appellants,

vs.

STEVE SCHMITZ and ROMY SCHMITZ,
Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge.

Daniel and Julie Budreau appeal a district court's order granting Steve and Romy Schmitz's claims of quiet title and trespass. **AFFIRMED.**

Michael J. Lanigan of Law Office of Michael Lanigan, Waterloo, for appellants.

David L. Riley of McCoy, Riley, Shea & Bevel, P.L.C., Waterloo, for appellees.

Heard by Eisenhauer, C.J., and Vogel and Tabor, JJ.

VOGEL, J.

Daniel Budreau filed trespass and nuisance claims against Steve and Romy Schmitz; the Schmitzes counterclaimed with a quiet title action and trespass claim against Daniel and his wife, Julie. We affirm the quiet title action because substantial evidence supported that from 1987 until 2009, the four steel posts marking the corners of the Schmitz property were recognized as drawing the boundary lines between the two properties. We also affirm the district court's dismissal of Daniel's trespass and nuisance claims against the Schmitzes because on appeal, where no findings have been made by the district court, we assume as fact an unstated finding that is necessary to support the judgment.

I. Background Facts and Proceedings

In 1987, Steve and Romy Schmitz purchased real property in Black Hawk County. In 2000, Daniel and Julie Budreau purchased approximately fifty-two acres of real property that surrounds and borders the Schmitz property to the north, east, and south; to the west, the Schmitz property is bordered by Hudson Road. Neither the Schmitz property nor the Budreau property was surveyed at the time of their respective purchases. At dispute in this case are the east and south boundaries of the Schmitz property. Although there were four steel posts that marked the corners of the Schmitz property in 2000 when the Budreaus bought their property, in 2009 Daniel Budreau wanted to determine the exact boundaries between the two properties. Daniel located the engineer who had surveyed the property in 1987, obtained a copy of the survey, used a metal detector to find the metal pins that indicated the drawing of the survey lines, and

replaced the previously existing steel posts with wooden posts at the corresponding survey locations.

On April 5, 2010, Daniel Budreau filed this action based on his location of the survey pins and his newly placed wooden posts, asserting trespass and nuisance against the Schmitzes. The Schmitzes counterclaimed, asserting a quiet title action and trespass. The Schmitzes later amended their counterclaim to join Budreau's wife, Julie, to the action. Other motions and hearings on related issues were held, none of which are relevant to this appeal.

A trial to the bench was held May 25, 2011. On August 17, 2011, the district court granted the Schmitzes' counterclaims and quieted title in the Schmitzes; the court also found for the Schmitzes on their trespass claim and awarded damages. The district court denied Daniel Budreau's claims of nuisance and trespass. The Budreaus appeal.

II. Standard of Review

Quiet title actions are codified in chapter 649 (2009) of the Iowa Code and generally, our review of quiet title actions is de novo. *Baratta v. Polk Cnty. Health Servs.*, 588 N.W.2d 107, 109 (Iowa 1999). However, to prove their claim, the Schmitzes rely on Iowa Code chapter 650, "Disputed Corners and Boundaries." The parties agree that we review the district court's decision for errors at law. See *Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997) (stating actions brought under Iowa Code chapter 650, which includes boundary by acquiescence, is for errors at law). The district court's judgment has the effect of a jury verdict; we are therefore bound by the district court's findings of fact if supported by substantial evidence. *Id.*

III. Boundary by Acquiescence and Quiet Title

The Budreaus allege the district court erred in quieting title in the Schmitzes based on acquiescence. Where the corners and boundaries of real property are in dispute, Iowa Code chapter 650 applies. Iowa Code section 650.14 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.” “A party seeking to establish a boundary other than a survey line must prove it by ‘clear’ evidence.” *Egli v. Troy*, 602 N.W.2d 329, 333 (Iowa 1999).

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.”

Id. (internal citation omitted).

Daniel Budreau testified that when he and Julie purchased their property in 2000, there were steel posts marking all four corners of the Schmitz property. Daniel explained that the driveway constructed in 2000—which runs north-south along the eastern side of the Schmitz property—was constructed where it is currently located because “we ran it parallel with the two posts that were there,” staying to the east of the posts. Daniel also explained that in 2009, while placing the wooden posts based on the 1987 survey, he did not have to move the northwest or southeast posts. However, as the previously placed southwest post was missing when Daniel located the survey pin, he placed a wooden post there. Daniel also stated he placed a new post in the northeast corner, but could not

remember if this replaced a post or if a post was not there at the time. When Daniel ran a string from the northeast pin to the southeast pin, the dike adjacent to the pond constructed by the Schmitzes in 2005 or 2006 crossed the boundary line by “a few feet.” Daniel then alleged that after he placed the new wooden posts and informed Steve that the dike was on the Budreau property, Steve told him that if the dike was on the Budreau property, he would move it. As to the southern border of the property, Daniel explained that he ran a string from the southwest post to the southeast post and two evergreen trees hung over the line. Rather than have Daniel trim the trees, Romy volunteered to move the evergreens, which was done. Daniel also admitted to tearing up a two-foot section¹ of asphalt located just south of the Schmitzes’ machine shed on the southern border because “it was on the property line” and he and Gene Schmitz wanted to farm that area.

Gene Schmitz, the Budreaus’ tenant farmer, has been farming forty acres on the Budreau property since 1993.² Gene stated he was never aware of the exact boundaries, as there was never a fence marking them; nor did he consider the steel posts to be boundary markers. Gene did state, however, that prior to the Budreaus’ completion of the driveway in 2000, he farmed where the existing driveway is located, but never to the west of it. He also indicated that since he began farming this land, he only farmed east of the eastern-most posts and south of the southeast post. Gene stated that although he did not recognize the steel

¹ The Schmitzes asserted the “two-foot section” referenced by Daniel was two-feet by approximately seventy-one-feet.

² Prior to the Budreaus purchasing the property in 2000, the property was owned by Steve Gibson—who Gene also rented the land from—and prior to Gibson, Max Jenson.

posts as formal boundary markers, he honored them as he did not want to encroach on property that he was not renting.

Steve Schmitz testified that from 1987 to 2009, he and the neighbors treated the steel posts as if they were the corner boundaries between the properties. This included Gene Schmitz, who always farmed outside the boundary line established by the steel posts. Steve testified regarding Daniel's placement of the new wooden posts in 2009. He stated the northeast post was previously located within two to four feet west of the drive and Daniel moved it approximately twenty-seven or twenty-eight feet further to the west. Steve stated the southeast post was previously located approximately four feet west of the drive and was also moved further west, distorting its historic location. As to the southwest post, Steve explained that Daniel placed the new wooden posts to the north but that the two evergreens had been originally planted inside the boundary previously established by the steel posts. He considered the asphalt located south of the machine shed that had been laid by the Schmitzes in 1995 to be even with the evergreen tree line. Steve further explained that the red line on Defendant's Exhibit F showed the perimeter of his property, as previously marked by the steel posts, from 1987 until Daniel moved and replaced the steel posts in 2009.

Romy Schmitz testified that when she and Steve purchased their property in 1987, there were corner posts marking the edge of the property at the southwest, southeast, and northeast corners. With respect to the significance of the posts, Romy testified:

Q: If you're driving through the country and you see a post or a stake stuck in a field somewhere, to you does that represent automatically a property boundary? [Objection; allowed to answer]
A: I would say yes. Of the neighbors that I have, all have posts by their fields, you know, they have grass around their houses and post by the grass and that's where they all go off of.

Kenneth VanDeest testified he mowed the Schmitzes' lawn for a period that included the late 1990s to early 2000s. He explained that he mowed up to the western edge of the driveway and that the southeast and northeast posts were located where the eastern grass met the drive. VanDeest also confirmed that the red line shown on Defendant's Exhibit F was consistent with the boundaries he remembers, which differs from the boundaries alleged by the Budreaus.

On our review, we agree with the Schmitzes that there was substantial evidence presented at trial demonstrating that the steel posts were the recognized corners of the Schmitz property, serving as guides for the boundaries between the two properties from 1987 to 2009. Because the boundaries were recognized between the two properties for a period in excess of ten years, the district court did not err in finding boundaries by acquiescence and quieting title in the Schmitzes.³ *Id.*; see also Iowa Code § 650.14.

IV. Dismissal of Budreaus' Claims for Trespass and Nuisance

The Budreaus maintain the district court erred in dismissing their petition for trespass and nuisance. The Budreaus specifically cite a 2007 incident in

³ The Budreaus also assert the district court erred in granting the Schmitzes' claim for trespass and awarding damages in the amount of \$2250. Other than claiming there was "no proof to support the amount claimed," the Budreaus failed to cite any authority to support this issue on appeal. Iowa Rule of Appellate Procedure 6.903(2)(g)(3) provides, "Failure to cite authority in support of an issue may be deemed waiver of that issue." We therefore affirm as to the trespass claim and damages awarded.

which they allege the pond on the Schmitz property, which drains from the northwest to the southeast, damaged their driveway and caused siltation of the culvert. The Schmitzes reiterate that the district court's findings of fact are binding on appeal if supported by substantial evidence and argue the Budreaus' claims for nuisance and trespass must fail because the Budreaus merely discuss facts that may have supported a different conclusion "if [such facts] were believed and if contrary facts were ignored."

Although the district court denied the Budreaus' claims for trespass and nuisance, it made no separate findings regarding the flow of water from the Schmitz property to the Budreau property; instead, the district court focused its findings on the boundary issue. A district court hearing a case without a jury "is required to make findings of fact and separately state its conclusion of law." *U.S. Cellular Corp. v. Bd. of Adjustment*, 589 N.W.2d 712, 719 (Iowa 1999); see also Iowa R. Civ. P. 1.904(1) ("The court trying an issue of fact without a jury . . . shall find the facts in writing, separately stating its conclusion of law, and direct an appropriate judgment."). When the district court fails to comply with Iowa Rule of Civil Procedure 1.904(1), "a party may request that the court enlarge or amend its findings or conclusions." *U.S. Cellular Corp.*, 589 N.W.2d at 720; see also Iowa R. Civ. P. 1.904(2). "When a motion to enlarge or amend is not made, the appellate court assumes as fact an unstated finding that is necessary to support the judgment." *U.S. Cellular Corp.*, 589 N.W.2d at 720; *PEB Practice Sales, Inc. v. Wright*, 473 N.W.2d 624, 626 (Iowa Ct. App. 1991) ("If no [Rule 1.904(2)] motion is made, or an issue is not raised, we will assume as fact an unstated

finding necessary to support the trial court's judgment. Any ambiguity in the trial court's findings is decided in favor of the judgment." (internal citation omitted)).

Here, the district court denied the Budreaus' claims of trespass and nuisance. This conclusion was warranted only if the district court found the requisite elements of trespass and nuisance were not proved by the Budreaus. There are no findings by the district court to instruct our review of the trespass and nuisance claims as they relate to the flow of water from the Schmitz property to the Budreau property. In the absence of a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) to enlarge the district court's findings, "we will assume as fact an unstated finding necessary to support the trial court's judgment." *PEB Practice Sales, Inc.*, 473 N.W.2d at 626; see also *U.S. Cellular Corp.*, 589 N.W.2d at 720 (explaining that where what is now a rule 1.904(2) motion is not made as to an issue, the court would "presume the district court found the facts necessary to support its decision"). Accordingly, we affirm the district court in its dismissal of the Budreaus' trespass and nuisance claims.

AFFIRMED.