IN THE COURT OF APPEALS OF IOWA

No. 9-928 / 09-0443
Filed February 10, 2010

LEE E. GUTHRIE and FREEDA GUTHRIE,
Plaintiffs-Appellants,

vs.

MARILYN S. JONES, PAUL JONES,
ROB JONES, and JESSIE JONES,
Defendants-Appellees.

Appeal from the Iowa District Court for Guthrie County, Darrell J. Goodhue, Judge.

Landowners appeal a district court's order finding that the boundary line with the landowners' neighbor should not deviate from the surveyed boundary under the law of boundaries by acquiescence. **AFFIRMED.**

Martin L. Fisher, Adair, for appellant.

Ryan A. Genest, Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

VAITHESWARAN, J.

Lee and Freeda Guthrie owned a parcel of land in Menlo that abutted land owned by Marilyn Jones. Along one side of the adjacent properties was a line of shrubs and trees. In 2007, Jones had her property surveyed. The surveyed property line was situated ten feet to the west of the shrub/tree line.

The Guthries sued under Iowa Code chapter 650 (2007) to have the shrub/tree line rather than the surveyed line established as the actual boundary. After a bench trial, the district court concluded that the Guthries did not prove their theory that the shrub tree boundary was established by acquiescence. The Guthries appealed.

Since this case involves an action brought under chapter 650, our review of the district court's ruling is on assigned error, with the court's fact-findings binding us if supported by substantial evidence. *Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997).

The district court correctly stated the law governing boundaries by acquiescence, which is as follows: "[A] boundary line may be established by a showing that the two adjoining landowners or their predecessors in title have recognized and acquiesced in a boundary line for a period of ten years." *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 806 (Iowa 1994); *see also* Iowa Code § 650.14. "[R]ecognition may be by conduct or claims asserted, but it must be by both parties." *Brown v. McDaniel*, 261 Iowa 730, 735, 156 N.W.2d 349, 352 (1968). This is a condition precedent for existence of a boundary by acquiescence. *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). The party

seeking to establish a boundary line that deviates from the surveyed boundary line "must prove acquiescence by clear evidence." *Tewes*, 522 N.W.2d at 806.

The district court determined that Jones and her son and daughter-in-law, who periodically lived on her land, did not consent to the shrub/tree boundary for the requisite ten-year period. This determination is supported by substantial evidence. The Guthries purchased their lot in August 1979. Jones's son, Rob, testified that he thought he began to purchase the adjacent lot on contract sometime in 1989. He stated that the contract seller placed pins in the ground to mark the boundary, and that boundary roughly coincided with the surveyed boundary line. Both he and his mother said they mowed the grass close to the boundary demarcated by the pins from that time period forward. Although Rob Jones acknowledged that he did not object to the Guthries' use of the land close to, if not over, the surveyed boundary line, he stated his failure to call this use to their attention could only be viewed as a neighborly gesture rather than consent to the shrub/tree line.

The testimony of Rob Jones calls into question the Guthries' testimony that they exclusively maintained the disputed area up to the shrub/tree line from 1979 to 2007 and that they and the Joneses acted in conformity with this natural boundary. While the district court questioned Rob Jones's credibility, the court ultimately found that his testimony could not be ignored. This was the court's prerogative as fact finder. *See McAvoy v. Saunders*, 161 Iowa 651, 655, 143 N.W. 548, 549 (1913) ("[T]he evidence was in dispute whether plaintiff kept up the fence immediately north of the hedge at each end. Presumably, the trial court found for defendant on this issue; and, as neither party is much

corroborated, we are not inclined to disagree with such conclusion."); *McGovern v. Heery*, 159 Iowa 507, 511–12, 141 N.W. 435, 437 (1913) ("Where there is a conflict in the evidence, and the case is not triable de novo in this court, this court will not review the evidence for the purpose of sitting in judgment upon the weight of the evidence, or the credibility of the witnesses. The finding of the court upon the facts submitted to it by the commissioners has the force and effect of a verdict of a jury upon the evidence.").

In light of Rob Jones's assertion that he maintained the disputed area beginning sometime in 1989 and he did not recognize the shrub/tree line as the true boundary, the district court did not err in concluding that the Guthries failed to prove their boundary-by-acquiescence claim by clear evidence and that they specifically failed to prove acquiescence for the requisite ten-year period.

The Guthries seek attorney fees. As they did not prevail on appeal, they are not entitled to fees, even if a fee award were authorized by statute. We affirm the judgment of the district court.

AFFIRMED.