STATE OF MICHIGAN

COURT OF APPEALS

YVONNE G. CORNELL,

Plaintiff-Appellee,

v

CHARLES R. CORNELL and CINDY CORNELL,

Defendants-Appellants.

UNPUBLISHED
April 22, 2021

No. 352061
Mecosta Circuit Court
LC No. 18-024740-CH

Before: MARKEY, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

Defendants appeal as of right the order of the trial court determining title in plaintiff's favor to the western boundary of plaintiff's one-acre parcel. Defendants also challenge the trial court's order granting plaintiff partial summary disposition under MCR 2.116(C)(10), and thereby determining title in plaintiff's favor to the northern boundary of plaintiff's parcel. We affirm.

I. FACTS

This appeal arises from a property dispute between plaintiff, Yvonne Cornell, and her nephew and his wife, defendants Charles R. and Cindy Cornell. Plaintiff and defendants own adjoining parcels of real property; defendants' 79-acre parcel surrounds on three sides plaintiff's one-acre parcel. Plaintiff and her late husband purchased the one-acre parcel in 1977 from her husband's parents, Charles E. and Estelle Cornell. The parents later sold a parcel that included the 79 acres to another son, Phillip Cornell. In 2017, the estate of Phillip Cornell conveyed the 79-acre parcel to Phillip's son, defendant Charles Cornell, who thereafter conveyed the parcel to himself and his wife.

In 2018, plaintiff and defendants began to dispute the northern and western boundary lines of plaintiff's parcel. Plaintiff occupies an area that extends approximately 43 feet beyond the legally-described boundary lines on both the northern and western boundaries of her parcel. Plaintiff claimed that she had exercised dominion and control over these areas for more than 15 years, and thus had acquired the disputed area by either adverse possession or acquiescence.

Defendants opposed plaintiff's claims, and installed a fence on the western side of plaintiff's parcel where defendants contended the property line existed. Defendant Charles Cornell drove his truck in the disputed area on the side of the fence adjacent to his 79-acre parcel, and also served plaintiff with a notice to quit advising her to vacate the disputed area.

Plaintiff filed this action seeking to quiet title to the disputed area on the western and northern boundaries of her parcel, alleging that she had acquired the disputed area by adverse possession or acquiescence, and also alleging that defendants had trespassed onto her parcel. Plaintiff thereafter moved for summary disposition under MCR 2.116(C)(10), contending that there was no genuine issue of material fact regarding the disputed area and that she had acquired the disputed area by adverse possession or acquiescence. The trial court granted plaintiff's motion in part, finding that there was no genuine issue as to any material fact regarding the northern disputed area and that the documentary evidence demonstrated that plaintiff and defendants' predecessors in title acquiesced to the extended northern boundary. The trial court denied plaintiff's motion for summary disposition regarding her parcel's western boundary, determining that a genuine issue of material fact existed regarding whether plaintiff had acquired by acquiescence the land to the extended boundary on the western side of her parcel.

A bench trial was held to determine ownership of the disputed area on the western boundary of plaintiff's parcel, and also to determine plaintiff's allegation that defendants had trespassed on her property. At the conclusion of the trial, the trial court held that plaintiff proved by a preponderance of the evidence that plaintiff and defendants' predecessors in title had acquiesced to plaintiff's claimed western boundary line. The trial court also held that although defendants had trespassed, the trespass had not resulted in damages and thus plaintiff had not demonstrated a right to recovery. Defendants appeal, challenging the trial court's orders regarding the northern and western boundaries of plaintiff's parcel.

II. ANALYSIS

A. STANDARD OF REVIEW

An action to quiet title is an equitable action that this Court reviews de novo, *Beach v Lima Twp*, 489 Mich 99, 106; 802 NW2d 1 (2011), while reviewing the trial court's findings of fact for clear error. *Matthews v Dep't of Natural Resources*, 288 Mich App 23, 35; 792 NW2d 40 (2010). We also review de novo a trial court's decision to grant or deny summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id*. at 160. When reviewing a motion for summary disposition granted under MCR 2.116(C)(10), we consider all documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Id*. Summary disposition under MCR 2.116(C)(10) is warranted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id*. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018) (quotation marks and citations omitted).

B. ACQUIESCENCE

Plaintiff initiated this action seeking to quiet title to the disputed areas to the west and north of her parcel, and to determine the legal ownership of those disputed areas. The plaintiff in an action to quiet title has the initial burden to establish a prima facie case of title to the property in question. *Trademark Properties of Michigan, LLC v Fed Nat'l Mtg Ass'n*, 308 Mich App 132, 138; 863 NW2d 344 (2014).

In this case, plaintiff sought to establish title to the disputed areas in part under a theory of acquiescence. Under Michigan law, owners of adjacent property may acquiesce to a property line other than the legal property line by treating a particular boundary as the property line. *Houston v Mint Group, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 353082); slip op at 9. Acquiescence may be established by any of three methods, being "(1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from intention to deed to a marked boundary." *Id*., quoting *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). A party asserting a boundary line through acquiescence must prove acquiescence by a preponderance of the evidence. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001).

The trial court concluded that plaintiff and defendants' predecessors in title acquiesced to both the northern and the western boundaries of plaintiff's parcel for the statutory period. Acquiescence for the statutory period is demonstrated by proof that the parties treated a boundary as the property line for at least 15 years. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). When owners of adjoining property acquiesce to a boundary line for at least 15 years, that boundary becomes the legal boundary line. *Killips*, 244 Mich App at 260. The acquiescence of predecessors in title can be tacked onto that of the parties to establish the 15-year statutory period. *Houston*, ___ Mich App at ___; slip op at 9. Unlike the doctrine of adverse possession, an assertion of acquiescence does not require that possession be non-permissive. *Id*. In determining a claim of acquiescence, the proper inquiry is whether the property owners *treated* a particular line as the property line. See *Walters*, 239 Mich App at 458.

1. THE NORTHERN BOUNDARY

Defendants contend that the trial court erred by granting plaintiff summary disposition with respect to the disputed northern boundary. Defendants dispute the accuracy of the facts found by the trial court to support plaintiff's claim of title by acquiescence to the northern boundary, and argue that the facts found by the trial court do not support plaintiff's claim. We disagree.

With regard to the northern boundary of plaintiff's parcel, plaintiff moved for summary disposition under MCR 2.116(C)(10), contending in part that she had acquired the northern disputed area by acquiescence. In support of her motion, plaintiff submitted a current survey showing the northern disputed area, being the area extending to a boundary 43.7 feet north of the legal property line. The survey showed a wood shed, clothes line, and a play house located directly on this area. Plaintiff also submitted a number of aerial photos, one of which was dated 1989, showing the same wood shed and clothes line, as well as a garden plot, in the northern disputed area. Plaintiff submitted additional photos, dated from 1998 to 2008, showing plaintiff and her family using the northern disputed area. Plaintiff also affirmed in an affidavit that she and her

family had exclusively occupied and used the northern disputed area since the purchase of the property.

In response to this evidence, defendants submitted affidavits from Angela Stilson, who managed the 79 acres from 2006 to 2017 as Philip Cornell's guardian and conservator, and from defendant Charles Cornell, asserting that plaintiff had leased the 79-acre parcel, including the northern disputed area, for hunting from 2006 to 2017. Defendants contended that because their predecessors in title in the 79-acre parcel permitted plaintiff and her late husband to use the 79 acres for certain purposes, this permissive use defeated any claim plaintiff may have had to the disputed areas.

Defendants' assertions that plaintiff and her late husband were permitted to use the 79 acres for certain purposes does not negate the fact that for well over 15 years, defendants' predecessors in title treated the disputed area as part of plaintiff's parcel and treated the extended boundary as the property line of plaintiff's parcel. In addition, defendants offered no documentary evidence to counter plaintiff's photographs that indisputably show that the northern disputed area had been occupied and maintained by plaintiff and her family since at least 1989 as an area for a wood shed, garden, clothes line, and recreational area.

With respect to the northern disputed area, the trial court reasoned, in relevant part:

> Defendants' evidence does not create a genuine issue of material fact as to acquiescence. Plaintiff's affidavits state that all parties recognized the area she and her late husband mowed and maintained as her yard, and treated the claimed line as the boundary for at least 32 years. Photographs also show that Plaintiff mowed to that claimed line, and erected at least one building on the disputed property. Defendants' affidavits and photographs do not dispute that Plaintiff mowed, maintained, and erected buildings in the disputed area for longer than the statutory time period. Instead, the affidavits assert that Plaintiff's actions were with the permission of Defendants and their predecessors. Defendants argue that the surveys show that the mowed portions shift the northern and southern property lines northwards approximately 42 feet, meaning Plaintiff's use would give her 42 feet beyond her northern property line, but give Defendants 42 feet to the south. Finally, Defendants assert that they leased hunting rights to Plaintiff and her husband, and the lease included the disputed property.
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> Defendants' evidence does not contradict Plaintiff's claim that all parties treated the northern line she claims as the boundary between the properties. Instead, Defendants argue that Plaintiff's mow lines show that the northern boundary is shifted north of the surveyed line 42 feet, and that the southern boundary is shifted north the same amount. . . .
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> The other argument Defendants make in regard to the northern boundary is that the hunting lease included the subject property. . . . Nothing in the lease payments shows that the parties to the lease intended to include the property disputed in this

> case. Because Defendants have not presented admissible evidence that negates Plaintiff's evidence that her claimed northern boundary was treated as the boundary between the parcels in excess of fifteen years, there is no issue of material fact and Plaintiff's Motion for Summary Disposition is granted under MCR 2.116(C)(10) as to the northern boundary.

A party moving for summary disposition under MCR 2.116(C)(10) has the initial burden to provide documentary evidence to support its position. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). If the moving party meets this initial burden, the burden then shifts to the nonmoving party to provide its own documentary evidence to show a genuine issue of material fact. *Id*. If the party opposing the motion fails to present documentary evidence establishing a genuine issue of material fact, the motion is properly granted. *Id*. at 363.

Here, in support of her motion for summary disposition, plaintiff submitted documentary evidence demonstrating that she had occupied the northern disputed area since at least 1989 by locating a wood shed, clothes line, and a play house on this area, had used the area with her family for recreation from at least 1998, and that defendants' predecessors in title treated the northern boundary of the northern disputed area as the true property line, just as plaintiff had. Although defendants disagree with this assessment, defendants failed to offer documentary evidence to create a genuine issue of fact regarding whether plaintiff and defendants' predecessors in title treated the northern boundary of the disputed area as the boundary for at least 15 years. As discussed, defendants' assertion that plaintiff leased hunting rights on the 79 acres does not negate the fact that defendants' predecessors in title treated the extended northern boundary as the true boundary of plaintiff's parcel. The trial court therefore did not err in granting plaintiff summary disposition on her claim to the northern disputed area.

2. THE WESTERN BOUNDARY

Defendants also contend that the trial court erred by holding that plaintiff demonstrated that she and defendants' predecessors in title acquiesced to the extended boundary of the western disputed area. We disagree.

At trial, the evidence included photographs showing the distinct mow line encompassing the western disputed area and showing plaintiff and her family using the western disputed area and otherwise exercising control over it. Plaintiff testified that she began mowing the area and using it in the late 1980s and early 1990s. She testified that she mowed to the extended boundary line and that defendants' predecessors in title never crossed over the line and otherwise respected the line. She further testified that she never sought or obtained permission to use the area and that she had believed it to be her own property. Plaintiff's daughter's testimony corroborated plaintiff's testimony that the boundary line remained constant for decades and had been respected. Barbie Cornell, Philip Cornell's guardian and conservator from 1999 to 2006, testified that she managed the 79-acre parcel during this period and that plaintiff never sought permission to use the western disputed area.

After discussing the evidence in detail regarding the western disputed area, the trial court reasoned, in pertinent part:

> The Defendants claim that any use of the west disputed area was with their predecessor's permission, which negates any chance of plaintiff acquiring some ownership upon the argued legal theories. And, to the extent Plaintiff might prevail under one of her theories, the area used or mowed has varied over the years, and continuous use or mowing would be over a much lesser portion of the west disputed area than included in the full area bounded by the Tingley mow/plow lines. . . .
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> There is little testimonial or other evidentiary support that this is a situation where permission was sought or granted. Nearly all of the witnesses, whether offered by Plaintiff or Defendants, credibly testified that neither the possessors of the 1 acre parcel now owned by Plaintiff nor the possessors of the 79 acre parcel now owned by Defendants discussed, sought, or granted permissive use of the west disputed area. There were several hearsay statements offered to support the permission assertion, but these are not sufficient to do so. The defense of permission fails, and the court so finds.
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> Here it is uncontroverted that some line other than the legally-described west boundary of plaintiff's 1-acre parcel was acquiesced to. The parties differ on how far into the west disputed area this line is from the legally-described boundary, but the testimony and evidence consistently indicate that respect and acceptance was shown by Defendants' predecessors to something west of the legal boundary onto Defendants' 79 acre parcel. Use and mowing of the property by Plaintiff and her family was accepted. Angela Stilson testified that she did not want or expect Plaintiff's use of some portion of the west disputed area to stop and did not indicate to Plaintiff or her family that she wanted it to end. This is not controverted by other testimony or evidence in this case. Over several decades Defendants' predecessors did not interfere with Plaintiff's and her family's use of at least a portion of the west disputed area.
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> And there is no doubt that the acquiescence lasted far beyond the requisite 15 years; based upon the testimony of Angela Stilson, Barbie Cornell, Yvonne Cornell, and Sara Sellers, the acquiesced use by Plaintiff and her family out to the Tingley mow/plow lines began no later than 1999 when Barbie Cornell began serving as Phillip Cornell's guardian.

A review of the record demonstrates that ample evidence supports the trial court's findings, as well as its conclusion that plaintiff demonstrated acquiescence for the statutory period by a preponderance of the evidence. The photographs and witness testimony support the finding that plaintiff and defendants' predecessors in title treated the mowed line as the true boundary line in the western disputed area, and that the acquiescence to that boundary began at least as early as 1999. There was no evidence of any objection to plaintiff's claim to the disputed area until after defendants purchased the 79-acre parcel in 2017, which occurred well after the 15-year statutory period for acquiescence had occurred. We therefore find no error in the trial court's factual

findings, which support the trial court's conclusion that plaintiff and defendants' predecessors in title acquiesced to the northern and western extended property lines of plaintiff's parcel.

Affirmed.[1]

/s/ Jane E. Markey
/s/ Douglas B. Shapiro
/s/ Michael F. Gadola

[1] Plaintiff also requests that this Court impose sanctions upon defendants for a vexatious appeal. We observe that a party seeking sanctions on the basis that an appeal is vexatious may do so by motion filed under MCR 7.211(C)(8), but a request for sanctions contained in a brief filed under MCR 7.212 does not constitute such a motion. See MCR 7.211(C)(8); MCR 7.216(C); *In re Daniels Estate*, 301 Mich App 450, 460-461; 837 NW2d 1 (2013).