STATE OF MICHIGAN

COURT OF APPEALS

JAMES A. HYLENSKI,

Plaintiff-Appellant,

v

GRANT J. SERRELL and ESTA J. SERRELL,

Defendants-Appellees.

UNPUBLISHED
August 23, 2002

No. 231093
Oakland Circuit Court
LC No. 93-448255-CH

Before: Murray, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order settling a property line dispute in favor of defendants. We affirm.

I. Basic Facts and Procedural History

Plaintiff and defendants own adjacent pieces of property in Rose Township, Michigan. Plaintiff's property sits to the south of defendants' property. In 1926, the land which now constitutes both plaintiff's and defendants' property was owned by Franklyn Morrow and Jennie Morrow, defendant Esta Serrell's parents. In 1951, the property was divided, and the Morrows sold the southern parcel to the Obergs. Sometime around the mid-1960s, the Obergs sold the parcel to the Christiansons.[1] In 1984, the Christiansons sold the property to plaintiff. The Morrows owned the northern parcel until Jennie died. In 1978, Franklyn conveyed the parcel to himself and Esta as joint tenants. Franklyn subsequently died, and Esta conveyed the property to herself and Grant.

This case was initiated in 1993, which represents the first dispute involving the boundary line between the properties. At trial, there was conflicting testimony regarding the boundary line between the two parcels of property. Plaintiff testified that nothing delineated the boundary line between the properties. Gary Christianson, the son of plaintiff's predecessors in title, testified that the boundary line ran from a stake located behind an old barn[2] to a tree located at the lakeside of the properties. Christianson stated there were no disputes regarding the boundary

[1] Defendants testified that the Obergs sold their property to the Christiansons in 1971.

[2] The old barn was eventually torn down and replaced with defendants' garage.

line, and the boundary line was relatively easy to follow despite the absence of any physical barriers. Defendants testified that the boundary line ran from a stake located behind the old barn to a hollow metal pole located near the lakeside of the properties.[3] Esta indicated that the boundary line was established when the Obergs occupied the property. Esta further stated that her children were not allowed to cross the boundary line and that the rule also applied to the Obergs' children. Esta testified, however, that the Obergs installed their own pole in the ground near the hollow pole. Grant testified that the boundary line extended from the hollow pole to the stake located behind the barn, and that this boundary line became a point to which both sides would maintain their property. The hollow pole was eventually buried under the ground and the tree at the lakeside of the property was removed.

At the close of plaintiff's case, defendants brought a motion for a directed verdict.[4] The trial court determined that acquiescence was established by the testimony of Gary Christianson and granted defendants' motion. Although the trial court granted defendants' motion, the trial court did not determine the acquiesced boundary line. Instead, the trial court held an evidentiary hearing, at which time defendants' testimony was elicited. The trial court reiterated that acquiescence established the boundary line between the properties, and ruled that the boundary line extended from the stake located behind defendants' garage to ten inches north of the hollow metal pole located at the lakeside of the property, which accounted for an encroachment of defendants' garage on plaintiff's property.

II. Standard of Review

Actions to quiet title are equitable in nature and reviewed de novo by this Court. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). However, the trial court's factual findings are reviewed for clear error. *Id.* "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000) (*Walters II*).

III. Analysis

There are three theories under which acquiescence in a property dispute can occur: (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.* at 457. "The proper standard applicable to a claim of acquiescence is proof by a preponderance of the evidence." *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). "The acquiescence of

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[3] It should be noted that the hollow metal pole located at the lakeside of the property appears to be near the tree also located at the lakeside of the property, which Christianson referenced as the property line marker.

[4] Although defendants brought a motion for a directed verdict, such a motion in a bench trial is more accurately a motion for involuntary dismissal. See MCR 2.504(B)(2); *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 235 n 2; 615 NW2d 241 (2000); *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995).

predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years." *Id.*

The instant case was based on the theory of acquiescence for a statutory period. Recent Michigan case law provides the following general principles regarding this theory of acquiescence:

> "[A] claim of acquiescence to a boundary line based upon the statutory period of fifteen years, MCL 600.5801(4) . . . , requires merely a showing that the parties acquiesced in the line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary. *Sackett*[, *supra* at 681]. A claim of acquiescence does not require that the possession be hostile or without permission." [*Walters II*, *supra* at 456, quoting *Walters v Snyder*, 225 Mich App 219, 224; 570 NW2d 301 (1997) (*Walters I*).]

Although Michigan precedent has not defined an explicit set of elements necessary to satisfy the doctrine of acquiescence, the *Walters II* Court emphasized that case law has focused on whether the evidence presented establishes that the parties *treated* a particular boundary line as the property line. *Id.* at 457-458 (emphasis in original). "Fifteen years' recognition and acquiescence are ample for this purpose." *Id.* at 458 (citations omitted).

In *Sackett*, *supra* at 681-682, this Court, quoting *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993), further explained:

> "The law of acquiescence is concerned with a specific application of the statute of limitations to cases of adjoining property owners who are mistaken about where the line between their property is. Adjoining property owners may treat a boundary line, typically a fence, as the property line. If the boundary line is not the recorded property line, this results in one property owner possessing what is actually the other property owner's land. Regardless of the innocent nature of this mistake, the property owner whose land is being possessed by another would have a cause of action against the other property owner to recover possession of the land. After fifteen years, the period for bringing an action would expire. The result is that the property owner of record would no longer be able to enforce his title, and the other property owner would have title by virtue of his possession of land."

In *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974), this Court emphasized that proof of an agreed-to boundary line is crucial to a claim of acquiescence. In another case involving acquiescence, this Court looked for evidence in "the nature of *compliance or acceptance*, tacitly or passively, of an *agreed* line." See *Weisenberger v Kirkwood*, 7 Mich App 283, 290-291; 151 NW2d 889 (1967) (emphasis added).

Thus, the relevant inquiry in this case becomes whether the parties or their predecessors treated a particular boundary line as the property line, and whether this was established by a preponderance of the evidence. Esta testified that Franklyn, her father and predecessor in title, installed a hollow pole in the ground when he split the property into two parcels to represent the lakeside or easternmost boundary of defendants' property. Esta primarily used this hollow pole

for disciplinary means to keep her children from going on the adjoining property. Esta did not recall having a specific conversation with the Obergs regarding the hollow pole, but indicated the rule was that her children could not cross the north side of the hollow pole and that the Obergs' children could not cross the south side of the hollow pole. Grant testified that Franklyn pointed out a metal pipe located near the lake, and that he told him that was the property line between defendants' property and the Obergs' property. Grant stated that the primary distinction in maintaining the property line was mowing the lawn. Although there were no discussions as to why or where the property line was located, Grant indicated it was "just clearly understood or [a] general understanding." After the Christiansons purchased the lot from the Obergs, defendants would mow what was "considered" their portion, and the Christiansons would mow what they "considered" to be their portion. Indeed, Christianson testified that he would cut the grass up to the tree. Further, Christianson testified that although there was nothing located between the properties to establish a boundary line, the boundary line was relatively easy to follow and extended from a stake behind the old barn to somewhere by the tree at the lakeside of the property. This testimony reveals that defendants, the Obergs, and the Christiansons treated a line extending from a hollow pole at the lakeside of the properties to another stake located behind a barn as the property line. Defendants testified that there was no change in the way the Christiansons treated the boundary line from how the Obergs treated the boundary line.

Accordingly, this evidence supports the trial court's finding that the statutory period of fifteen years, which includes the time spanning from the time the Obergs purchased the property in 1951 through the time the Christiansons sold the property to plaintiff in 1984 or a time period of thirty-three years, had run. Therefore, we conclude that the trial court's findings of acquiescence were not clearly erroneous.

Plaintiff also contends that the trial court erred in determining the elements of adverse possession were met. Although this issue was raised in plaintiff's statement of questions presented, plaintiff failed to present an argument relating to this issue. Instead, plaintiff merely argued that the trial court referred to the terms "adverse possession" and "acquiescence" interchangeably. "A party may not merely announce a position and leave it to this Court to discover and rationalize a basis for the claim." *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 717; 591 NW2d 676 (1998). If the appellant has not adequately briefed an issue, the issue is deemed abandoned by this Court. *Id*. Accordingly, plaintiff has abandoned this issue on appeal.

Finally, plaintiff argues that the trial court erred in granting defendants' motion for directed verdict at the close of plaintiff's case. In cases tried without a jury, the appropriate motion for a defendant to bring at the close of the plaintiff's case is a motion for involuntary dismissal. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 235 n 2; 615 NW2d 241 (2000). Involuntary dismissal is only appropriate if the trial court, when sitting as the finder of fact, is satisfied at the close of the plaintiff's evidence that, on the facts and the law, the plaintiff is not entitled to relief. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). Although the trial court erred in granting defendants' motion for directed verdict as opposed to a motion for involuntary dismissal, we conclude that such error was harmless. See *Willoughby v Lehrbass*, 150 Mich App 319, 329-330; 388 NW2d 688 (1986) (error in granting motion for involuntary dismissal deemed harmless where the verdict would have been the same regardless of assumed error).

First, the standard for reviewing the evidence in a motion for involuntary dismissal is less stringent than the standard for reviewing evidence in a motion for directed verdict. A motion for directed verdict requires that the trial court review the evidence in a light most favorable to the nonmoving party, whereas in a motion for involuntary dismissal, the trial court is called upon to exercise its function as trier of fact and may weigh the evidence, pass upon the credibility of witnesses, and select between conflicting inferences. See *Marderosian v Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341 (1983). Second, the trial court held an evidentiary hearing after the trial, which was incorporated into the record. Based on our above conclusion that there was sufficient evidence to support the trial court's conclusion that the boundary was established by acquiescence for the statutory period, any error resulting from the trial court's granting defendants' motion for a directed verdict was harmless.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell