STATE OF MICHIGAN

COURT OF APPEALS

SCOTT HELD,

Plaintiff-Appellant,

v

ARTHUR W. JEWETT TRUST, ALICE L. JEWETT TRUST, MAAS DEVELOPMENT, and MAAS DEVELOPMENT, LLC,

Defendants-Appellees,

UNPUBLISHED
July 2, 2009

No. 286250
Ingham Circuit Court
LC No. 08-000553-CH

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition to defendants and dismissing his suit to quiet title under theories of acquiescence and adverse possession.[1] We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff owns real property in Ingham County that is adjacent to properties owned by defendants to the north, east, and west. Defendants' properties have been owned at all times relevant to this action by Arthur and Alice Jewett or their trusts. Defendants previously owned the property now owned by plaintiff. Defendants conveyed this property to Edward E. Ferris and Ruth V. Ferris by way of two warranty deeds in 1946 and 1952, respectively. In 2001, Elizabeth K. Sprague, the Ferrises' daughter, acquired title to that property. Sprague conveyed the property to her trust in 2006 and then to plaintiff, her son, in November 2007.

The legal description to plaintiff's property excludes portions of land to the north and to the east that he now claims are his by acquiescence or adverse possession (the "Disputed Property"). At all times relevant to this action, defendants have been the record owners of the Disputed Property. However, defendants gave plaintiff's grandparents, his predecessors in interest, an easement over the entire eastern portion of the Disputed Property in the 1946 deed.

[1] Defendants filed a counterclaim for slander of title and tortious interference with contractual and business relations; however, defendants do not appeal the trial court's order closing the case.

In or around April 2008, plaintiff filed a lawsuit to quiet title to the Disputed Property in his favor claiming adverse possession and acquiescence. Defendants filed a motion for summary disposition asserting that both of plaintiff's counts failed pursuant to MCR 2.116(C)(10) because he failed to meet the statutory fifteen-year requirement. Defendants also submitted affidavits stating that they were "never apprised of any boundary disputes" with plaintiff or his predecessors, and that there was no evidence of improvements or maintenance performed on the Disputed Property by plaintiff or his predecessors that would constitute open, notorious, exclusive, continuous and uninterrupted possession of the Disputed Property.

In a written opinion dated June 12, 2008, the trial court ruled in favor of defendants, granting their motion for summary disposition pursuant to MCR 2.116(C)(10). Regarding plaintiff's adverse possession claim, the trial court found:

> [T]here is no reference to the claimed property in the instruments of conveyance in the record, and Plaintiff has offered no evidence that a parol reference was made at the time of any of the successive conveyances. Accordingly, Plaintiff is not entitled to tack his predecessors' periods of possession and, therefore, he is unable to demonstrate adverse possession for the fifteen-year statutory period.

The trial court further noted that, regarding the portion of the Disputed Property to the east of plaintiff's parcel, "Plaintiff's use was permissive pursuant to an easement between the parties' and their predecessors in interest that this strip of land could be used as a means of ingress and egress to Plaintiff's property."

Regarding plaintiff's acquiescence claims, the trial court held that plaintiff could not establish acquiescence because:

> Unlike the typical acquiescence case, however, Plaintiff has not demonstrated that the parties ever experienced any confusion over where the location of the true boundary between the parties' parcel lies. . . . [T]he parties here never were in any doubt as to the location of the true boundary line.

Again the trial court noted that with regard to the eastern portion of the Disputed Property, plaintiff's use was permissive pursuant to the easement granted to them by defendants. The court stated:

> While permissive use can ripen into a claim for acquiescence, where use is pursuant to a written easement logically there can be no acquiescence to ownership of this property by the person granted usage. By its very terms, a written easement is an admission that ownership lies with the grantor, while use lies, sometimes exclusively, with the grantee. For this reason, too, Plaintiff's acquiescence claim fails as to that portion of the disputed property. [Footnote omitted.]

On appeal, plaintiff argues that the trial court erred by dismissing his claim for adverse possession of the Disputed Property. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We also review de novo equitable issues such as quiet title actions and the applicability of the doctrines of acquiescence and adverse possession, but our review of the circuit court's findings of fact is for clear error. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996).

A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue with respect to any material fact and that the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). All affidavits, pleadings, depositions, admissions, and other documentary evidence filed in the action or submitted by the parties are viewed in a light most favorable to the party opposing the motion. *Id.*

> Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Id*. at 363 (citations omitted).]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

To establish adverse possession, a party must show that his or her possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years. MCL 600.5801(4); *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). With regard to the required element of continuous possession, a party claiming adverse possession of land may "tack" on the possessory periods of his predecessors in interest to his own possessory period to achieve this fifteen-year period by showing privity of estate. *Dubois v Karazin*, 315 Mich 598, 605-606; 24 NW2d 414 (1946); *Connelly v Buckingham*, 136 Mich App 462, 474; 357 NW2d 70 (1984). This privity may be shown by inclusion of a description of the disputed acreage in the deed or by an actual transfer or conveyance of possession of the disputed acreage by parol statements made at the time of conveyance. *Dubois*, *supra; Siegel v Renkiewicz Estate*, 373 Mich 421, 425; 129 NW2d 876 (1964); *Connelly, supra*.

Here, plaintiff failed to demonstrate any question of fact regarding privity such that he could tack on the prior possession of the land by his predecessors. Plaintiff concedes that the Disputed Property was not included in his deed. Moreover, there was no evidence that the Disputed Property or its dimensions were mentioned at the time of conveyance. Nor was there any evidence that parol statements concerning the Disputed Property were made by any grantor in the chain of title. Accordingly, plaintiff's proofs failed to demonstrate a question of fact regarding the existence of a parol transfer. Plaintiff claims that the intention of the grantors was to convey the disputed land as part of the property to which they held title. He contends that no oral or written statements were needed because of this knowledge. However, an unstated intent to include the disputed property is insufficient. See *Siegel, supra.*

Plaintiff also attempts to rely on the alleged adverse possession of the Disputed Property by his grandparents, who owned plaintiff's property from 1946 to 1993. He argues that once a predecessor in title adversely possesses the property, the statutory requirement is met and the successor owner does not have to tack successive periods of ownership from his predecessors in title. Plaintiff cites no authority in support of this proposition. Furthermore, defendants conveyed plaintiff's grandparents an easement over the entire portion of the Disputed Property to the east of plaintiff's property in the 1946 deed. This amounts to permissive use of property and cannot result in an adverse possession. *Kimpka v Fountain*, 198 Mich App 435, 438; 466 NW2d 363 (1993). Finally, nothing in the record supports that plaintiff's predecessors' use of the Disputed Property was exclusive. To the contrary, there is evidence that defendants continued to use the Disputed Property throughout the years. Based on all of the foregoing, plaintiff did not establish a claim of adverse possession and so defendants were properly awarded judgment as a matter of law.

Next, plaintiff argues that it was not necessary that he or his predecessors in interest believed the true boundary line was other than where his deed provided and that acquiescence to his proposed boundary line has indeed been established. We disagree.

The doctrine of acquiescence usually arises in the context of border disputes. *Geneja v Ritter*, 132 Mich App 206, 210; 347 NW2d 207 (1984). The doctrine is comprised of three distinct theories: (1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from an intention to deed to a marked boundary. *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). The first of these theories is the basis for plaintiff's claim and is at issue in this appeal.

A plaintiff is required to prove a claim of acquiescence by a preponderance of the evidence. *Walters v Snyder*, 239 Mich App 453, 455; 608 NW2d 97 (2000). Under the acquiescence for the statutory period theory of acquiescence, a boundary line becomes fixed when it is acquiesced to by abutting landowners for the statutory period of fifteen years. *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964); MCL 600.5801(4). "Proof of privity is not necessary . . . to employ tacking of holdings to obtain the 15-year minimum under the doctrine of acquiescence." *Siegel, supra* at 426. "'A boundary line, long treated and acquiesced to as the true line, ought not to be disturbed on new surveys, 15 years' recognition and acquiescence being ample for purpose of establishing the boundary.'" *Walters v Bank of Marquette*, 314 Mich 699, 706; 23 NW2d 184 (1946), quoting *Gregory v Thorrez*, 277 Mich 197, 201; 269 NW 142 (1936).

We are aware of no Michigan precedent in which a court has applied the doctrine of acquiescence in the absence of a boundary dispute or a question regarding the true location of a property line. Indeed, where, as here, there is no uncertainty on the part of the parties as to the true boundary, the boundary line cannot be established by acquiescence.

We affirm. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio