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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1156**

Richard S. Anderson, et al.,
Respondents,

vs.

Robert B. Hildreth, et al.,
Appellants,

vs.

U. S. Bank National Association,
Respondent,

and

Mortgage Electronic Registration Systems, Inc.,
as a nominee for U. S. Bank N. A.,
Respondent,

and

Robert B. Hildreth, et al.,
third party plaintiffs, Appellants,

vs.

Mortgage Electronic Registration Systems, Inc.,
as a nominee for BWM Mortgage, LLC,
third party defendant, Respondent,

and

Mortgage Electronic Registration Systems, Inc.,
as a nominee for Mortgageit, Inc.,
third party defendant, Respondent

Filed May 21, 2018
Affirmed in part and remanded
Worke, Judge

Itasca County District Court
File No. 31-CV-15-2861

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Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

WORKE, Judge

In this boundary dispute, appellants/cross-respondents Hildreths challenge the district court's determination that respondents/cross-appellants Andersons proved their

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

claim for practical location of Andersons' eastern boundary by acquiescence. Similarly, Andersons challenge the district court's determination that Hildreths proved their separate claim for determination of boundary location of Andersons' northern boundary by acquiescence. We affirm but remand for the district court to address and correct a clerical mistake in its description of Andersons' northern boundary.

FACTS

Appellants/cross-respondents Robert B. Hildreth and Angel Hildreth (Hildreths) and respondents/cross-appellants Richard S. Anderson, Tammi J. Anderson, and Jeremy D. Anderson (Andersons) live in Grand Rapids. The two families live adjacent to each other and share property borders on their northern and eastern edges. Neither family knew the true property lines until a 2015 survey, which spurred the current litigation.

The Hildreths' property was purchased in two parts by appellant Robert Hildreth's father, Keith Hildreth. Keith Hildreth did not survey the land when he bought it. After the first purchase in 1972, Keith Hildreth built a fence (pasture fence) running north-south to separate part of his property and to restrain livestock. The pasture fence was dismantled in the late 1970s or early 1980s. After purchasing the second parcel in 1976, Keith Hildreth built another fence running east-west (north fence). These two fences met at a fence post and gate somewhere near the northeastern corner of the present-day Anderson property. Robert Hildreth acquired the property from Keith Hildreth in 1998.

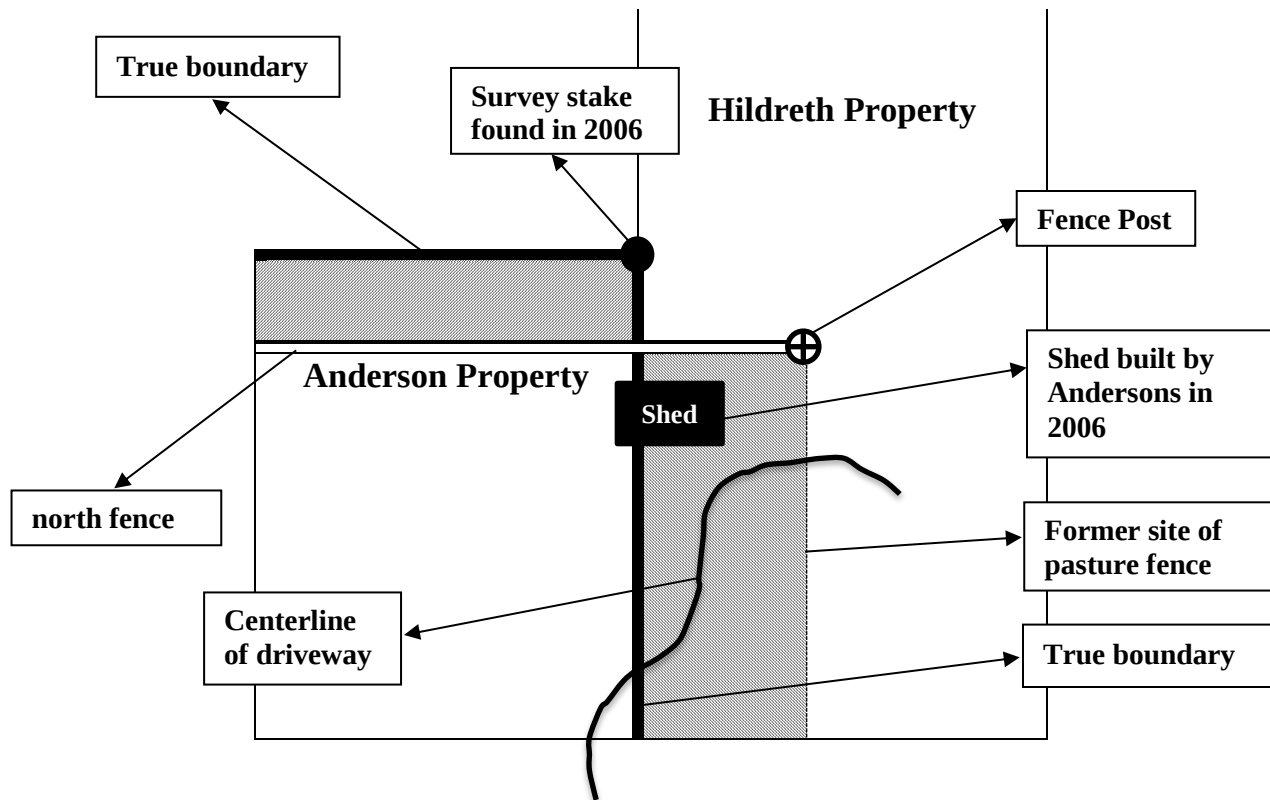
Andersons bought their property from Keith Hildreth in 1981. Because Andersons were young when they purchased the property, Keith Hildreth completed all of the required paperwork for them, including drafting and recording the deed. Shortly after Andersons

bought the property, Keith Hildreth installed a dirt driveway close to Andersons' eastern border so that he could access Andersons' property. Keith Hildreth does not appear to have complained that this driveway was built on his property. A few years later, Andersons extended the driveway to the north, using the current eastern boundary of the driveway as a guide. Andersons also improved the driveway with routine grading and adding gravel.

Andersons operated a small business out of their home and constructed additions in 2001 and 2004 to help their business grow. The additions extended the eastern part of their home and were undertaken with the belief that the eastern border of the Anderson property matched the eastern edge of the driveway. Andersons also built a shed in the northeastern part of their property in 2006. Andersons believed that the shed was still within their land because it was about 10 feet to the west of the fence post that joined the north fence with the former pasture fence (the pasture fence was dismantled by this time). The parties dispute if Hildreths gave Andersons permission to build the shed at this location. Also in 2006, while a nearby road was being reconstructed, Andersons found an old survey stake in the northeast corner of their property.

In May 2015, the parties had an argument. In July 2015, Andersons paid to have their land surveyed and discovered that their eastern property line was about 23.5 feet to the west of the fence post that had joined the north fence with the pasture fence. This meant that Andersons' driveway encroached on Hildreths' property by approximately 23.5 feet and Andersons' shed was mostly located on Hildreths' property. The survey also showed that the northern boundary of Andersons' property was about 10 feet past the north fence.

The state of the two properties at this time generally appeared as follows:¹



Andersons filed suit against Hildreths and Hildreths countersued to determine the boundary lines of the parties' respective properties. The district court found that the parties acquiesced to the practical boundary marked by the invisible line running south from the fence post, and Andersons had title to the area west of that line. The district court also found that the parties acquiesced to the practical boundary marked by the north fence, and Hildreths had title to the area north of the north fence. Hildreths appealed and Andersons timely filed a notice of related appeal to contest the district court's determinations.

¹ This image is not to scale and is only meant to provide the reader with a sense of the areas in dispute.

DECISION

Hildreths argue that the district court erred by finding that Andersons had acquired title to the land west of the boundary line running south from the fence post based on practical location of boundary by acquiescence. Andersons argue that the district court erred by finding that Hildreths proved that they acquired title to portions of Andersons' land beyond the north fence, also based on practical location of boundary by acquiescence.

The doctrine of boundary by practical location is used to resolve disputes between private parties regarding a boundary between their respective properties. *Slindee v. Fritch Invs., LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009). “To acquire land by practical location of boundaries by acquiescence, a person must show by evidence that is clear, positive, and unequivocal that the alleged property line was acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations.” *Britney v. Swan Lake Cabin Corp.*, 795 N.W.2d 867, 872 (Minn. App. 2011) (quotations omitted). A district court's conclusion concerning a boundary, including whether a landowner acquiesced in a boundary by practical location, is a factual finding, which is reviewed for clear error. *Wojahn v. Johnson*, 297 N.W.2d 298, 303 (Minn. App. 1980). An appealing party who lost property by practical location must “show that there is no substantial evidence reasonably tending to sustain the [district] court's findings.” *Gifford v. Vore*, 245 Minn. 432, 434, 72 N.W.2d 625, 627 (1955).

Andersons' claim for practical location of their eastern boundary

The first issue is whether the district court clearly erred in its determination that Hildreths acquiesced to the practical boundary line marked by the invisible line running

south from the fence post. The burden of proof is on the party asserting the practical boundary. *Britney*, 795 N.W.2d at 872. The conduct cannot be merely passive consent but rather “conduct from which assent may be reasonably inferred.” *Id.* (quotation omitted). “Typically, practical location by acquiescence occurs when neighbors attempt to establish a fence as close to the actual boundary as possible, or when the disseizor unilaterally marks the boundary, and the disseized neighbor thereafter recognizes that line as the actual boundary.” *Id.* “In order to demonstrate acquiescence, the boundary line must be certain, visible, and well-known.” *Ruikkie v. Nall*, 798 N.W.2d 806, 819 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. July 19, 2011).

The district court determined that Hildreths acquiesced to a new western boundary of their property that started at the fence post in the northeast corner of the Anderson property and ran south to a nearby road. The district court chose this line because it was built by Keith Hildreth “over 35 years ago when he installed fences to keep” and restrain livestock, and because Andersons built the driveway close to what they believed was the eastern boundary and it was actually constructed by Keith Hildreth, who never objected to its placement. The parties treated the line running south from the fence post as the dividing-line between the two properties for decades. Based on the record, the district court’s decision was not clearly erroneous.

While Hildreths argue that the driveway’s gravel and dirt surface was too uneven to be certain, visible, and well-known, this court has never held that only certain materials support a finding of acquiescence. Nor have we held that a ragged boundary line cannot qualify as a certain, visible, and well-known line. *See Slindee*, 760 N.W.2d at 907-08

(concluding that a “meandering” and “curvy” mow line was not intended to be a boundary line, but implying that if it was, it could have served as a practical boundary). Viewing the parties’ treatment of this invisible line against its history and context, we are convinced that Hildreths have failed to meet their burden of showing “that there is no substantial evidence reasonably tending to sustain the [district] court’s findings.” *See Gifford*, 245 Minn. at 434, 72 N.W.2d at 627. For these reasons, we conclude that the district court did not clearly err in deciding that the parties acquiesced in the practical location of Andersons’ eastern boundary.

Hildreths’ claim for practical location of Andersons’ northern boundary

Andersons argue that the district court erred when it found that Hildreths proved their claim for practical location of boundary based on the north fence by acquiescence. “When a fence is claimed to represent a boundary line under an acquiescence theory, one of the most important factors is whether the parties attempted and intended to place the fence as near the dividing line as possible.” *Wojahn*, 297 N.W.2d at 305. Even where there is a physical barrier, like a fence, there is no acquiescence if the landowners did not intend the barrier to be a boundary or the reasons for building the barrier are uncertain. *Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 850 (Minn. App. 2001).

The district court found that Andersons acquiesced in the north fence as the northern boundary line of their property because Andersons bought the property in 1981 and have always treated the north fence as the northern boundary line of their property. Andersons counter that the fence was originally built by Keith Hildreth to keep his livestock from roaming and not to demarcate a boundary line. To support this argument, Andersons cite

Weis v. Kozak, 410 N.W.2d 903, 905 (Minn. App. 1987), in which the parties built a fence between their properties to stop their cattle from mingling. Just after building the fence, the parties acknowledged that the fence did not actually sit on the boundary line of their properties, but agreed to keep the fence in place with that understanding. *Id.* This court wrote that this agreement was “an apparent mutual grant of permission for each party to use the available land” and the parties “acknowledged that the fence did not lie on the boundary line.” *Id.* at 906, 907.

The situation in this case is different than in *Weis*. Here, the record shows that the parties believed that the north fence marked the Anderson property’s northern boundary. Andersons claim that the original purpose of installing the fence is unclear, but Tammi Anderson testified that since purchasing the property, she believed that the north fence represented the property line based on what Keith Hildreth told her. Further, the record suggests that Andersons did not build on or use the property beyond the north fence, unlike the disputed area to the east where they constructed the driveway and a shed. Viewed as a whole, we conclude that Andersons have not met their burden of showing “that there is no substantial evidence reasonably tending to sustain the [district] court’s findings.” See *Gifford*, 245 Minn. at 434, 72 N.W.2d at 627. We conclude that the district court did not clearly err in determining that Andersons acquiesced in the north fence as the practical location of their property’s boundary.

The parties agree that the district court made a clerical mistake in its description of the acquiesced, practical boundary north of the north fence. After examining the district court’s order and descriptions, we agree. Therefore, while we affirm the district court’s

order finding that Andersons proved their claim for practical location of their eastern boundary by acquiescence, and finding that Hildreths proved their claim for practical location of boundary based on the north fence by acquiescence, we remand for the district court to correct its clerical error concerning the area north of the north fence.

Affirmed in part and remanded.