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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1201**

James Cortese, et al.,
Appellants,

vs.

Jay D. Hedin, et al.,
Respondents.

**Filed May 14, 2018
Affirmed
Bratvold, Judge**

Beltrami County District Court
File No. 04-CV-16-3029

Darrell Carter, Bemidji, Minnesota (for appellants)

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Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellants James and Sharon Cortese challenge the district court's decision after a bench trial, rejecting appellants' claim for practical location of a boundary based on James Cortese's express agreement with a previous neighbor. Instead, the district court entered

judgment for the current neighbors, respondents Jay and Samantha Hedin, and determined that the boundary was correctly stated in the recorded warranty deed. We affirm.

FACTS

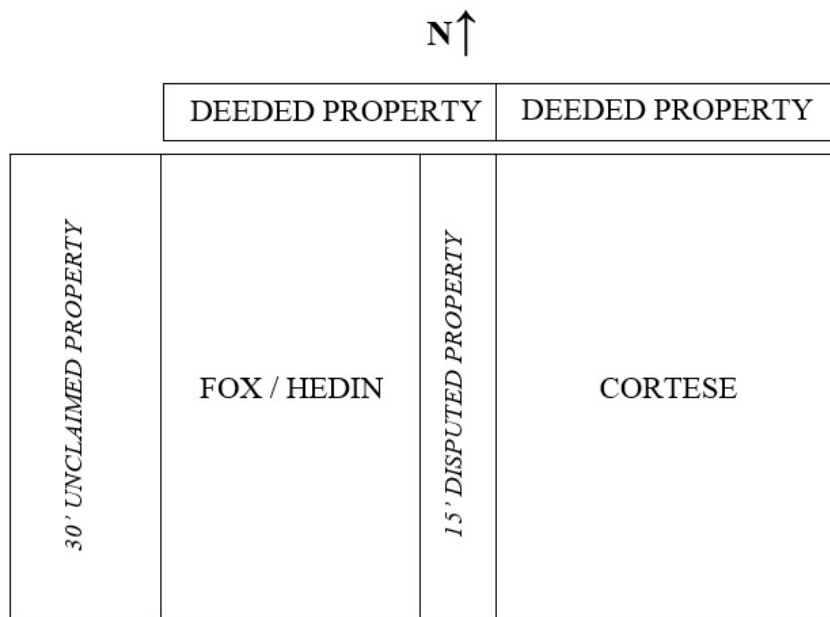
In June 1971, the Corteses purchased property and a home in Beltrami County by a warranty deed from Robertson Lumber Co.

In May 1972, Benjamin and Ellen Fox purchased the adjacent parcel to the west of the Corteses' property by a warranty deed, also from Robertson Lumber. The lots owned by the Corteses and the Foxes were approximately the same size, 100 feet wide and 155 feet deep.

The Foxes' lot changed hands two more times before reaching the Hedins. In July 1989, the Foxes conveyed the property by a warranty deed to Kris and Deborah Diaz. In May 1996, the Diazes conveyed the property by a warranty deed to Jeffrey and Angela Scripture. In August 2001, the Scriptures conveyed the property by a warranty deed to Jay Hedin. In 2002, Hedin conveyed the property by a quit-claim deed to himself and his wife, as joint tenants. All deeds were recorded.

In 2016, the Corteses sued the Hedins for boundary by practical location, claiming that, shortly after the Foxes purchased their property in the early 1970s, James Cortese and Benjamin Fox agreed to move the property line dividing their lots 15 feet to the west. Alternatively, the Corteses' complaint claimed title to the disputed 15-foot by 155-foot section by adverse possession. The Hedins responded and asserted a counterclaim, seeking a legal declaration that their property was as described on their warranty deed: "South 150

feet of the North 320 feet of the East 100 feet of the West 130 feet of Government Lot 3, Section 33, Township 147, Range 33.”



The district court held a bench trial in April 2017. The Corteses called four witnesses—themselves, Benjamin Fox, and the Corteses’ daughter. James Cortese testified that, sometime in the first two years after Fox became his neighbor, they had agreed to move their shared boundary to the west by 15 feet. Fox testified to this agreement, explaining that Robertson Lumber had “gifted” him the 30-foot-wide lot immediately to the west of his property. Fox also testified that, by agreeing to move his eastern boundary 15 feet to the west, he was “trying to be a fair neighbor” by sharing the additional 30 feet of property with Cortese. Fox testified that he later erected a decorative log fence that ran along the southern boundary. The district court found that the log fence formed a corner with an additional section that ran approximately eight feet northward along the agreed-upon eastern boundary of the Foxes’ lot. The Corteses’ daughter testified that, while she

lived in her parents' house, she mowed grass up to the log fence installed by the Foxes and along the shared boundary as far north as her parents' lilac bushes at the back of the property. She explained that, after the Diazes installed a chain link fence along their shared boundary, she mowed up to the chain link fence.

The Hedins called three witnesses—themselves and Jeffrey Scripture. Scripture testified that, when he purchased the property from the Diazes, he had “a rough idea” of the location of the lot lines but did not recall whether the log fence and chain link fences “lined up perfectly.” Jay Hedin testified that when he purchased the property from the Scriptures, he did not “have any understanding of where the lot lines were” located. He also testified that the log fence “didn’t line up with the chain link fence” on the east side of his property. Hedin testified that he removed the log fence in about 2005. Sometime later, he also removed the chain link fence.

Hedin further testified that, around 2008, a neighbor to the south of his lot located a boundary marker that Hedin believed indicated his shared boundary with the Corteses. Hedin testified that he discussed the marker with Cortese, who told him about his agreement with Fox. Hedin relied on the marker to plant a row of shrubs on the eastern boundary of his lot. At approximately the same time, Hedin initiated a successful quiet-title action and acquired title to the 30-foot by 155-foot parcel of land to the west of his property.

On June 2, 2017, the district court issued findings of fact, conclusions of law, and an order that rejected the Corteses' claims and ruled in favor of the Hedins' counterclaim. The district court found that, although “there was discussion between James Cortese and

Benjamin Fox regarding the boundary line between their respective houses,” the Corteses did not satisfy their burden to prove that “there was an actual agreement and what exactly it was.” The district court also found that, although Cortese and Fox testified that they had measured when they allegedly moved the boundary line, their trial testimony differed from their deposition testimony, which was received into evidence. The district court questioned their “credibility as to exactly where the log fence was located.” And the district court found, “There was no marker on the north side of the property to indicate where a boundary line extended from the log fence.” The district court found that the testimony regarding who planted and tended shrubs and gardens was incomplete and not compelling. Additionally, because the chain link fence installed by the Diazes did not run the length of the shared boundary with the Corteses, the district court questioned “where or how a purported boundary line would be extended from the end of the log fence.” Ultimately, the district court found no evidence supporting the Corteses’ contention that the log and chain link fences were installed to “mark any type of boundary between the two properties.”

The district court concluded that the Corteses failed to prove, by clear and convincing evidence, boundary by practical location based on an express agreement with Fox. The district court’s order gave two reasons. First, the Corteses did not establish that they reached an express agreement to set an “exact, precise line” between their properties. Second, even if Cortese and Fox had reached an express agreement, Cortese failed to establish that the new boundary line was clearly marked or definite. The district court also rejected the Corteses’ adverse possession claim. The district court entered judgment for the

Hedins and declared that their property description was as indicated in their warranty deed. This appeal follows.

DECISION

The Corteses seek reversal of the judgment, raising two issues relating to their claim that the shared boundary was established by practical location. First, the Corteses argue that we should not defer to the district court's factual determinations because it adopted verbatim the Hedins' proposed findings of fact and conclusions of law. Second, they contend that the district court's findings of fact were not supported by the record evidence. We will discuss each issue in turn.¹

As to the first issue, we agree with the Corteses that verbatim adoption of proposed findings is not preferred. *See Schallinger*, 699 N.W.2d at 23 (stating that "if a court adopts a proposed order, it raises the question of whether the court independently evaluated the evidence"). However, we reject the Corteses' argument that we should review the district court's findings of fact any differently because it adopted the proposed order submitted by the Hedins. We review de novo whether the factual findings support the district court's legal conclusions. *Slindee v. Fritch Invs., LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009).

In addressing the Corteses' second issue challenging the district court's factual findings, we apply a clear-error standard of review. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). This standard of review applies even when the district court adopts verbatim a party's proposed findings of fact and conclusions of law.

¹ The Corteses do not raise adverse possession on appeal, therefore, we do not consider it.

Schallinger v. Schallinger, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). We review the record in the light most favorable to the district court’s findings, *see Vangsness*, 607 N.W.2d at 472, and will not reverse the decision on appeal unless the findings “are manifestly and palpably contrary to the evidence.” *Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 849-50 (Minn. App. 2001) (quotation omitted).

The common-law doctrine of practical location of boundaries is used to resolve disputes between private parties as to where a boundary between their properties lies. *Slindee*, 760 N.W.2d at 907. “Boundary by practical location, like adverse possession, transfers title between deed holders.” *Id.* (quoting *Gabler v. Fedoruk*, 756 N.W.2d 725, 728-29 (Minn. App. 2008)). A party may establish a boundary by practical location in one of three ways: (1) by acquiesce to an express agreement between the landowners on both sides of the official boundary line, (2) by acquiescence to a boundary for “a sufficient period of time to bar a right of entry under the statute of limitations” for adverse possession, i.e. 15 years, (3) or by estoppel. *Id.*; *see also* Minn. Stat. § 541.02 (2016) (establishing time frame for adverse possession).

Here, the only theory advanced by the Corteses on appeal is that the boundary was established by express agreement. To establish an express agreement, the claimant must prove that the landowners on both sides of the official boundary agreed to set an “exact, precise line.” *Slindee*, 760 N.W.2d at 907 (citation omitted). An express agreement need

not be a formal or written agreement but must be made after “a specific discussion identifying the boundary line or a specific boundary-related action.” *Id.* at 909-10.

Two Minnesota cases guide our analysis of the Corteses’ challenges because the decisions address facts similar to those found by the district court in this case. In *Phillips v. Blowers*, the supreme court reversed a district court decision that determined that Phillips had established a boundary by practical location. 281 Minn. 267, 267-68, 161 N.W.2d 524, 525-26 (1968). Phillips and his previous next-door neighbor reached an agreement about the boundary and marked the corner of the property by laying down an iron pipe. *Id.* at 270-71, 161 N.W.2d at 527. Several years later, Blowers purchased the next-door property. When Blowers questioned the boundary, Phillips erected a fence “as a positive assertion of his boundary,” which he argued was created by the agreement with the previous neighbor. *Id.* at 270-71, 161 N.W.2d at 527. At trial, Phillips testified that he marked the northwest corner of his property with an iron pipe because the original wood lot-markers had disappeared. *Id.* at 272, 161 N.W.2d at 528.

The supreme court determined that the iron pipe and the wood stakes placed by Phillips were not direct evidence of where the original survey stakes were located. *Id.* at 273, 161 N.W.2d at 529. The supreme court also noted that the results of the resurvey of the land stood “in substantial contradiction” to the district court’s finding of “actual location.” *Id.* at 273-74, 161 N.W.2d at 529. The supreme court concluded that there was “no substantial evidence in the record” that established that the wood stake replaced the original survey stake and there was “no corroboration” of Phillips’s testimony that “his iron pipe was an accurate replacement of it.” *Id.* at 273, 161 N.W.2d at 529. Because the

trial court based its decision on unreliable evidence and did not consider whether the boundary was established by evidence that is “truly clear and convincing,” the supreme court reversed and remanded the case for a new trial. *Id.* at 275, 161 N.W.2d at 530.

Likewise, in *Slindee v. Fritch Investments, LLC*, this court reversed a district court decision after a bench trial and held that respondent failed to prove that the original property owners “entered into an agreement that relocated [their shared] boundary westward.” 760 N.W.2d at 905. The district court found that the boundary between the properties was “virtually undisputed” because the mow line, building locations, and fence along the boundary provided a clear line. *Id.* at 907. On appeal, however, this court held that record evidence did not support these findings. *Id.* At trial, evidence established that two previous neighbors had created a path through the woods to designate a shared boundary. *Id.* at 905. Subsequent owners of both properties used the same path and extended it by an irregular mow line that curved with the land. *Id.* Eventually, yet another owner continued the previous owners’ practice and “mowed the same area and kept the same eastern mow line.” *Id.*

This court determined that the evidence was insufficient to establish an express agreement to move the boundary because the mow line “is a meandering, curvy line that does not resemble the boundary . . . as depicted in the recorded plat.” *Id.* at 908. This court also concluded that respondent did not offer evidence of “a specific discussion identifying the boundary line or a specific boundary-related action clearly proving that the parties or their predecessors in interest had agreed to a specific boundary.” *Id.* at 910.

In this case, the Corteses make three challenges to the district court's findings of fact, which we will discuss in turn. First, the Corteses argue that five of the district court's factual findings are incorrect because the record evidence also supported different factual findings. We defer to a district court's decision regarding the weight of the evidence. *See Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 789 (Minn. App. 2011). We will affirm a district court's factual findings so long as some record evidence supports the finding, even if other record evidence is in conflict. *See Chancellor Manor v. Thibodeaux*, 628 N.W.2d 193, 196 (Minn. App. 2001).

Record evidence supported the district court's findings that there was no express agreement and that "there was no clearly marked or definite line." Fox testified that Robertson Lumber gave him the 30-foot parcel to the west of his property line. Cortese and Fox also testified about their conversation during which they agreed to equally divide the additional 30 feet of land by moving the boundary line between their lots 15 feet west. Fox testified that, after agreeing to a new boundary line, he installed a decorative log fence along the south side of his property to the southeast corner, from which he extended the log fence northward approximately eight feet. Later, Diaz installed a chain link fence part way along the shared boundary. But both Fox's log fence and Diaz's chain link fence had been removed and the district court found that it was "unable to determine" whether the fences "line[d] up." Thus the district court had support for its finding that no evidence demonstrated the exact location of the shared boundary, as contended by Cortese.

These factual findings supported the district court's legal conclusion that, even if Fox and Cortese reached an agreement, the agreement was not sufficiently specific. Even

if we accept that the agreement was sufficiently specific, which it was not, and that Cortese established the location of the log and chain fences, which he did not, the district court's conclusion still was supported by existing precedent. Evidence of a corner at the junction between two properties, as marked by Foxes' decorative log fence, was insufficient to create a boundary by practical location. *See Phillips*, 281 Minn. at 271-74, 161 N.W.2d at 528-29. Moreover, as the district court noted, the Corteses did not offer any evidence demonstrating that the log fence was used as anything other than decoration. Nor did the Corteses offer any evidence that the chain link fence installed by the Diazes created a definite boundary line from the log fence on the south to the north end of the property. Finally, record evidence supported the district court's finding that the log and chain link fences were not in a straight line. Witnesses testified to the "goofy" line made by the two fences and described the inconsistent mow line that resulted from following the fences. A curving mow line is insufficient evidence of a specific boundary. *See Slindee*, 760 N.W.2d at 910.

Second, the Corteses argue that the district court erred in focusing on when the log and chain link fences were erected because specific dates were irrelevant. The district court found conflicting testimony as to when Fox installed the log fence, which was sometime between 1972 and 1974. The district court reasoned that the installation date affected whether the boundary existed for 15 years before the Diazes purchased the Foxes' property; this 15-year period was relevant to the Corteses' adverse-possession claim, which is not part of this appeal. We conclude that the district court correctly recognized that when the fences were installed was relevant to the Corteses' adverse-possession claim. *See Minn.*

Stat. § 541.02. We agree with the Corteses that the 15-year period does not affect our review of the district court's decision that the Corteses failed to prove their claim of boundary by practical location based on express agreement.

Third, the Corteses urge us to conclude that any differences between deposition and trial testimonies should not have affected the district court's decision because the trial testimony established that Cortese and Fox had an express agreement as to an exact location for their shared boundary line and that line was 15 feet west of the deeded line. But the district court did not find Cortese or Fox credible, at least in part, because there were significant inconsistencies between their trial and deposition testimonies. We defer to a district court's credibility determinations. *Vangsness*, 607 N.W.2d at 472.

At trial, Fox testified that when he and Cortese agreed to move the boundary, they located a marker and measured. In his deposition, however, Fox testified that he did not know the location of any markers, they took no measurements when he and Cortese agreed to move the boundary, and, instead, they agreed to move the boundary "in the middle" of the houses. In his deposition, Fox drew the shared boundary line in a different location than the location he indicated during the trial. Cortese similarly testified in his deposition that he did not know where his exact property lines or any boundary markers were located. Without consistent testimony from Cortese and Fox, the district court appropriately questioned their credibility and, more fundamentally, concluded that Cortese failed to establish that they had reached an express agreement to establish a boundary marked by an "exact, precise line."

We conclude that the district court thoroughly evaluated the evidence before issuing its written order. Because record evidence supported each of the district court's factual findings, the district court did not err by concluding that the Corteses failed to prove boundary by practical location by clear and convincing evidence.

Affirmed.