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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0289**

Lyle Batton, et al.,
Appellants,

vs.

Terry Hawk, et al.,
Respondents.

**Filed December 9, 2019
Affirmed in part and remanded
Hooten, Judge**

Pennington County District Court
File No. 57-CV-17-229

Delray Sparby, Ihle Sparby & Haase P.A., Thief River Falls, Minnesota (for appellants)

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

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

In this boundary dispute between neighbors, appellants argue that the district court erred by denying their request for damages and determining that appellants failed to prove

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

adverse possession and the establishment of a boundary by practical location. We affirm the district court's conclusion that appellants had adversely possessed land which includes the area immediately adjacent to, and including a portion of, their residence and its denial of all of appellants' other claims of adverse possession, establishment of a boundary by practical location, and damages. But, because the district court failed to provide a remedy after finding that appellants adversely possessed a portion of land on respondents' side of the original boundary, we remand for further proceedings.

FACTS

Appellants Lyle Batton and Katherine Batton bought land in Thief River Falls on July 20, 2000. At the time, they shared their southern boundary line with Daniel Bylander and Kathy Bylander. During the time that the Battons and Bylanders were neighbors, neither knew where the exact boundary line existed between their properties. The Bylanders planted evergreen trees on what they believed was their property on the western side of their northern boundary line. The Bylanders believed that their property line was about eight to ten feet north of the line of evergreen trees and mowed that area accordingly. The Battons believed that the tree line was the boundary line.

Also, during the time that the Bylanders were their neighbors, the Battons planted various trees along what they believed was their southern boundary line in the eastern part of the land, extending to the edge of Thief River. They began planting the trees in 2001 or 2002. A second tree line, made up of about 12 spruce trees, sat north of the Bylanders' home on the west side of the adjoining properties and acted as a windbreaker for their house. The Battons gave the Bylanders permission to plant more trees along the line.

On October 25, 2013, respondents Terry and Dawn Hawk purchased the Bylanders' property, becoming the Battons' neighbors to the south. The next year, the Hawks wanted to erect a fence along the northern line of their property. The Hawks spoke with the Battons about the location of the property line, and the Battons explained that they believed it was along the tree line.

Following their discussion, the Hawks hired Houston Engineering to do a survey of the boundary line. The survey indicated that the Battons' understanding of the boundary line was incorrect, as the boundary line went through, or was very close to, the southeast corner of the Battons' house.

In August 2015, Lyle Batton and Terry Hawk met with a Houston Engineering surveyor to discuss the survey results. At the meeting, Lyle Batton and Terry Hawk discussed establishing a new boundary line with the surveyor's help. The new boundary line was shaped as a very shallow "v." On the west end of the property, the new boundary line ran 13.5 feet north of the original boundary line and would become the Hawks' property. The surveyor labeled this "Tract A." Tract A included the wind-breaking tree line that sat north of the Hawks' home. On the east end of the properties, the new boundary line was 25 feet south of the original boundary line and would become the Battons' property. The surveyor labeled this "Tract B," which included an area south of the Battons' home. Tract A is .021 acres, and Tract B is .326 acres. The parties agreed that Tract A would become the Hawks' land and Tract B would become the Battons' land. After the meeting, surveyors from Houston Engineering placed markers along the new boundary line.

The Hawks began to build a fence near the markers placed by the surveyors. The parties disagree about what happened next. According to the Hawks, they started to build the fence about three feet south of the new boundary line, but after discussing the issue, the Battons told them to build the fence directly on the new boundary line, and gave the Hawks permission to enter their land to maintain the fence. According to the Battons, when Terry Hawk was finishing the eastern part of the fence near the river, Lyle Batton realized that the fence was over the new boundary line by a few inches based on the marker's location. The Battons alleged that the markers placed by the surveyors were not in the correct spots and that the fence built by the Hawks was "maybe a few inches up to many feet" north of what the Battons believed was the new boundary line.

The parties also dispute what happened to four trees in the disputed area. The Battons argue that the Hawks cut down four of their spruce trees on the western side of their property in order to build the fence. The Hawks maintained that during the summer of 2015, when the Hawks were building the fence, several trees fell down due to a heavy storm.

Following a hostile confrontation between Lyle Batton and Terry Hawk in July 2016, the Battons brought suit against the Hawks and requested that the district court (1) order the parties to exchange deeds to Tract A and Tract B, (2) determine the practical boundary line of the property, and (3) rule that the Battons had adversely possessed some of the Hawks' property. Their summons and complaint had a typographical error and, instead of requesting that the district court determine they had adversely possessed Tract B, they requested Tract A, which was already part of their property by deed.

The Hawks answered the complaint, alleging that the parties had discussed exchanging deeds to the tracts of land, but that they had never come to an agreement to exchange the deeds. The Hawks counterclaimed that (1) the Battons had trespassed on their land, (2) the Battons damaged their property by removing the survey markers, and (3) the Hawks relied on the Battons' promise to grant them an easement.

The district court held a bench trial over two days in August 2018. The issue with the Battons' complaint soon surfaced, as well as confusion over exactly what land the Battons claimed they owned. When the Battons rested, they moved to amend the pleadings to indicate that they adversely possessed Tract B, and the district court granted the motion. They then moved to amend the complaint further to state that they adversely possessed the land that extended from Tract B to the middle of the tree line. The district court never ruled on this motion.

The following December, the district court issued its decision. It concluded that the Battons failed to establish their claim for adverse possession of most of the disputed land:

The evidence established that they and their successors openly and continuously possessed an undefined area of land immediately surrounding their residence. But, the evidence did not establish that they openly and continuously possessed the rest of the land that they claim north of the tree line. . . . [T]he Battons did not prove by clear and convincing evidence that they possessed property north of the tree line for the required 15-year period.

The district court then determined that the boundary line between the parties' land is the "original survey line." It noted that, "While the [Battons] adversely possessed land that includes a portion of their residence and land that is immediately adjacent to their

residence, the court cannot determine a legal description for this land based on the evidence introduced by the parties.”

The district court also ruled that the Battons failed to establish a claim for boundary by practical location, even though the parties made an express agreement, because they failed to acquiesce to the agreed line for a substantial period of time. After concluding that the Battons’ claim to the entire disputed land failed, the district court stated that “it is not clear to the Court if [the four removed] trees are on land that belongs to the Battons.” And, because the Battons did not meet their burden of demonstrating the value of the trees, the district court ruled that the Battons were not entitled to damages.

This appeal follows.

D E C I S I O N

I. The district court did not err by determining that the Battons failed to prove by clear and convincing evidence that they adversely possessed the entirety of the disputed land.

The Battons argue that they proved adverse possession of all of the disputed land by clear and convincing evidence. The primary land in dispute is Tract B.

Individuals claiming adverse possession must show, by clear and convincing evidence, that their possession was actual, open, continuous, exclusive, and hostile for 15 years. *Ehle v. Prosser*, 197 N.W.2d 458, 462 (Minn. 1972). Whether a plaintiff establishes the elements of adverse possession is a question of fact. *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. App. 2003) (citing *Wortman v. Siedow*, 216 N.W. 782, 783 (Minn. 1927)). Evidence presented in support of adverse possession must be strictly construed, with every presumption or inference to be taken against the party claiming adverse possession.

Ebenhoh v. Hodgman, 642 N.W.2d 104, 108 (Minn. App. 2002). This court will not reverse a district court’s findings of fact absent clear error. Minn. R. Civ. P. 52.01. Before such a finding will be deemed clearly erroneous, this court “must be left with the definite and firm conviction that a mistake has been made.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotation omitted).

The district court found that the Battons had not established open, hostile, and continuous use of all of the land. “The law does not prescribe any particular manner by which an adverse possessor must possess a disputed tract of property.” *Ganje*, 659 N.W.2d at 266. But it must give “unequivocal notice to the true owner that some one is in possession in hostility to his title.” *Skala v. Lindbeck*, 214 N.W. 271, 272 (Minn. 1927). There is sufficient evidence when “visible and notorious acts of ownership have been continuously exercised over the land for the time limited by the statute.” *Young v. Grieb*, 104 N.W. 131, 131 (Minn. 1905).

The Battons and the Hawks have different understandings of where the boundary line fell. The Battons testified that they treated the tree line as the boundary, while the Hawks, and the Bylanders before them, treated the boundary line as eight to ten feet north of the tree line. Before the Hawks moved in, the Bylanders mowed up to that line and, when the Hawks moved in, the Bylanders instructed them to continue to mow up to that line. While both parties testified that they used the land for other purposes, there is no dispute that the Bylanders and the Hawks mowed part of the disputed land. For that reason alone, we cannot conclude that the Battons gave the Hawks unequivocal notice of their hostile possession of all of the disputed land.

The district court also found that the Battons' use of the land was not continuous. The Battons testified that they used the disputed land for fishing, playing Frisbee and soccer with their kids, planting a garden and trees, and placing birdhouses and bird feeders. The Battons testified that they treated the disputed land as their own because they planted a garden, but could not remember how long it was there. Lyle Batton testified that he placed birdhouses and bird feeders on the disputed land, but all had been removed for several years by the time of trial. The district court found that these were occasional uses of the land and were insufficient to meet the standards required to prove adverse possession. Because evidence tending to support adverse possession must be strictly construed, the district court's finding that the Battons' use of the land was simply occasional is not clearly erroneous. The district court, therefore, did not err by determining that the Battons failed to prove adverse possession over all of the disputed land by clear and convincing evidence.

II. The district court did not err by determining that the Battons failed to prove a boundary by practical location.

The Battons argue that the district court erred by determining that they had not proven a boundary line by practical location.

A party attempting to prove a boundary by practical location must do so by clear and convincing evidence. *Phillips v. Blowers*, 161 N.W.2d 524, 526–27 (Minn. 1968). A district court's ruling on a practical location issue is a question of fact. *Allred v. Reed*, 362 N.W.2d 374, 376 (Minn. App. 1985), *review denied* (Minn. Apr. 18, 1985). This court will not disturb the district court's findings regarding practical location unless they are

“manifestly and palpably contrary to the evidence.” *Gifford v. Vore*, 72 N.W.2d 625, 626 (Minn. 1955).

A boundary by practical location may be established in one of three ways: “(1) by acquiescing in the boundary for a sufficient period of time to bar a right of entry under the statute of limitations; (2) by expressly agreeing with the other party on the boundary and then by acquiescing to that agreement; or (3) by estoppel.” *Slindee v. Fritch Investments, LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009). On appeal, the Battons argue that they proved boundary by practical location based on acquiescence and express agreement.

A. Acquiescence

The Battons argue first that they established a boundary by practical location by acquiescence. The district court did not expressly address whether they had established a boundary by acquiescence. But the district court noted that there must be acquiescence to a boundary line for the statutorily required 15 years in order to be established as a boundary by practical location.

“If a party acquiesces in a boundary for a sufficient length of time to bar a right of entry under the statute of limitations, the district court may establish the boundary by practical location.” *Ruikkie v. Nall*, 798 N.W.2d 806, 819 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. July 19, 2011). Because the statute of limitations is 15 years, “this ‘acquiescence’ basis is more demanding.” *Id.*

Because the Hawks have not lived in the home long enough to meet the 15-year requirement, we look to their predecessors—the Bylanders. As previously mentioned, the Battons and Bylanders treated the boundary line differently. While the Bylanders believed

the boundary was eight to ten feet north of the tree line, the Battons believed the boundary was along the tree line. The disputed eight to ten feet shows that the parties did not acquiesce to a boundary line to “bar a right of entry.” *See id.* The Battons therefore have failed to establish a boundary by acquiescence.

B. Express Agreement

The Battons argue second that they established a boundary by an express agreement. The district court ruled that “[w]hile the parties entered into an express oral agreement for the location of a new boundary line, the parties failed to acquiesce in it for the substantial period of time required.”

Unlike practical location by acquiescence, to establish a boundary line by practical location through express agreement, the Battons have the burden to prove that an express agreement between the landowners set an “exact, precise line” between their parcel and the Hawks’ parcel and that the agreement had been acquiesced to “for a considerable time.” *See id.* (citing *Beardsley v. Crane*, 54 N.W. 740, 742 (Minn. 1893)). This period of time has not been defined or limited by caselaw and “must necessarily depend upon the particular circumstances of each case.” *Beardsley*, 54 N.W. at 742. “[A]cquiescence in the agreed-upon boundary must be for a substantial period of time, although not necessarily the full 15 years required under the acquiescence theory.” *Ruikkie*, 798 N.W.2d at 818; *see, e.g., Beardsley*, 54 N.W. at 743 (nine years following survey and establishment of fence); *County of Houston v. Burns*, 148 N.W. 115, 115 (Minn. 1914) (nearly ten years following survey and establishment of fence).

Here, the Battons and Hawks met with Houston Engineering in early August 2015 to discuss establishing a new boundary line. In July 2016, the Hawks were nearly finished with constructing the fence when the disagreement about the boundary line began. At that time, the parties had acquiesced to the boundary line for less than one year, which is not a “considerable time” in light of the caselaw. Accordingly, the district court did not err by ruling that the Battons failed to establish boundary by practical location based on an express agreement.

III. The district court did not err by denying the Battons’ request for damages.

The Battons argue that the district court should have awarded them damages for four trees that the Hawks allegedly removed from their land.

Again, we review findings of fact for clear error. *Rasmussen*, 832 N.W.2d at 797. “That is, we examine the record to see if there is reasonable evidence in the record to support the court’s findings.” *Id.* (quotation omitted). If we are “left with the definite and firm conviction that a mistake has been made,” a reversal is warranted. *Id.* (quotation omitted).

The district court concluded that it could not determine if the four trees were on the Battons’ land. Based on this inability, the district court did not award them treble damages for trespassing and felling under Minn. Stat. § 561.04 (2018). Lyle Batton testified that the Hawks cut down four trees that were on the Battons’ land in order to erect their fence. The Hawks testified that during the summer of 2015, a storm downed some trees and the Hawks removed them from the property. Terry Hawk testified that he did not cut down any trees north of the fence line. Because the district court sits in the best position to weigh

the credibility of witnesses, Minn. R. Civ. P. 52.01, we are not left with the firm conviction that, based on the conflicting testimony, the district court made a clear error. We affirm the district court's denial of the Battons' request for damages.

IV. While the district court correctly determined that it was unable to provide the parties with a legal description of the land adversely possessed by the Battons, this matter must be remanded for the district court's consideration of an equitable remedy.

The Battons argue that the district court erred by failing to provide a legal description of the land they had adversely possessed. While the district court held that the Battons did not prove adverse possession of *all* the land that they claimed for the requisite time period, it held that they had adversely possessed “an undefined area of land immediately surrounding their residence.” But because “the court cannot determine a legal description for this land based on the evidence introduced by the parties,” the district court determined that the boundary line between the properties was the original survey line, which effectively awarded the land to the Hawks. This includes a corner of the Battons' house.

District courts generally have broad discretion in fashioning remedies. *Gabler v. Fedoruk*, 756 N.W.2d 725, 730 (Minn. App. 2008). “A court may fashion equitable remedies based on the exigencies and facts of each case so as to accomplish justice.” *Pooley v. Mankato Iron & Metal, Inc.*, 513 N.W.2d 834, 837 (Minn. App. 1994), review denied (Minn. May 17, 1994). Adverse possession is an equitable action. *Gabler*, 756 N.W.2d at 730. In *Gabler*, this court addressed whether “a district court is free to disregard the basic remedy that has always been granted in Minnesota's long and consistent

jurisprudence.” *Id.* In that case, the district court found that the appellants had established a boundary by practical location. *Id.* Instead of recognizing that boundary and transferring titles, the district court granted the appellants an easement by prescription, providing them “substantially less relief.” *Id.* On appeal, this court held that the district court erred by failing to apply the “uniform and plainly nondiscriminatory” remedy of establishing the boundary and transferring titles. *Id.* at 731.

In other boundary dispute cases, appellate courts have also remanded and directed the district court to establish a boundary. For example, in *Ebenhoh*, after concluding that appellants had established adverse possession, we directed the district court to “enter judgment in favor of appellants and to enter an order establishing the boundary between the two parcels.” 642 N.W.2d at 112. In *SSM Investments v. Siemers*, the supreme court reversed and remanded to the district court for “issuance of amended findings of fact, conclusions of law, and order for judgment” consistent with supreme court’s finding that appellants had established adverse possession. 291 N.W.2d 383, 386 (Minn. 1980).

After finding that the Battons had adversely possessed part of the disputed land in Tract B, the district court should have considered providing Battons with a remedy. The district court found that the Battons adversely possessed the area located at the corner of their home and “an undefined area of land immediately surrounding their residence.” While the district court is correct that the parties did not provide the district court with sufficient evidence of a legal description, the parties will not be able to obtain such legal description until the district court has provided more guidance as to what constitutes the “area immediately surrounding” the Battons’ residence. Accordingly, we remand this

matter to the district court for its further consideration of a remedy. We leave it to the discretion of the district court to determine if additional testimony and briefing by parties is required in defining the area surrounding the Battons' residence, including, if it deems appropriate, the issuance of an order that the parties conduct a new land survey reflecting the land that has been adversely possessed by the Battons.

Affirmed in part and remanded.