

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0713**

In re the Matter of the Application of
Mekonnen Tulu and Tadelech N. Guda
to Register the Title to Certain Land.

**Filed December 30, 2024
Affirmed
Kirk, Judge***

Hennepin County District Court
File No. 27-ET-CV-21-28

Mark W. Vyvyan, Sarah Theisen, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for
appellants Mekonnen Tulu and Tadelech N. Guda)

Keith S. Moheban, Stinson, LLP, Minneapolis, Minnesota (for respondent Gregory
Schirmers)

Considered and decided by Worke, Presiding Judge; Bentley, Judge; and Kirk,
Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

On appeal in this boundary dispute, appellants argue that the district court erred in
concluding that a boundary line was not established under the doctrine of boundary by
practical location. We affirm.

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

FACTS

Respondent Greg Schirmers and appellants Mekonnen Tulu and Tadelech N. Guda own adjacent residential properties. Respondent purchased his property in 1991 and appellants purchased their property in 2008. Appellants' south boundary line abuts respondent's north boundary line for the width of both properties. Appellants' property includes a driveway that runs east-west along the parties' shared north-south boundary line.

Respondent testified that in 1992 he had a conversation with the prior owner of appellants' property, Roger Preuss, during which Preuss pointed to a "stake" or "pipe" driven into the ground between the parties' garages. Respondent testified that Preuss told him that the stake "denotes a property line."

In 2020, appellants hired contractors to install a concrete drainage trench between their garage and respondent's. During the installation, the contractors excavated the stake and discarded it. Respondent testified that after the stake was removed, he commissioned a boundary survey because he was concerned that appellants would encroach on his property. The survey revealed that approximately 9-12 inches of the southern edge of appellants' driveway was located on respondent's property, and that the boundary line ran roughly down the middle of appellants' concrete trench.

Respondent demanded that appellants remove the trench and the encroaching portion of the driveway. In late 2020 and early 2021, appellants petitioned the district court for an order establishing the south edge of their driveway as the south boundary line of their property and filed an action to register the property line accordingly. In their filings, appellants argued that respondent's interest in the 9-12 inches of his property encroached

upon by appellants' driveway was terminated under the doctrine of boundary by practical location.

The Hennepin County Title Examiner held a trial on the matter in January 2024. The title examiner recommended the district court enter an order denying appellants' request to adjust the boundary and terminate respondent's interest. The district court adopted the title examiners findings of fact and conclusions of law and denied appellants' petition. This appeal followed.

DECISION

Boundary determinations present mixed questions of fact and of law. *Slindee v. Fritch Invs., LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009). A district court's boundary determination is a question of fact, and we review the district court's factual findings for clear error. *Id.* A district court's factual findings are clearly erroneous if they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). We review de novo whether a district court's factual findings support its legal conclusions. *Slindee*, 760 N.W.2d at 907. A district court's findings in a boundary line dispute "will not be reversed on appeal unless they are manifestly and palpably contrary to the evidence." *Gifford v. Vore*, 72 N.W.2d 625, 627 (Minn. 1955).

A party establishes a boundary by practical location in one of three ways: (1) by acquiescence for a sufficient length of time to bar a right of entry under the statute of limitations; (2) by express agreement between the parties and then acquiescence to that agreement; (3) by estoppel. *Theros v. Phillips*, 256 N.W.2d 852, 858 (Minn. 1977).

“Because the effect of a practical location is to divest one party of property that is clearly and concededly his by deed, the evidence establishing the practical location must be clear, positive, and unequivocal.” *Id.*

Findings of fact

We begin by reviewing the district court’s factual findings for clear error. The district court’s factual findings include that respondent did not obtain a boundary survey when he purchased his property in 1991, that he did not know the true boundary line until 2020, and that Preuss did not use or park his car on the disputed portion of the driveway.

The record supports these findings. First, the findings relied in part on respondent’s testimony at trial. The district court found his testimony credible, and we defer to a district court’s credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); Minn. R. Civ. P. 52.01 (“[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”).

Second, although respondent testified that Preuss told him that the stake between the garages “denotes a property line,” the record shows that the stake bore no markings indicating its origin or purpose, and the record contains no evidence that Preuss actually knew the stake served as a boundary marker.

Finally, the record lacks conclusive evidence that the stake marked the true boundary line. And, because appellants’ contractor removed the stake before the boundary survey was completed and the stake’s precise location is not otherwise known, appellants cannot prove that the stake was located on the boundary line.

Because the record supports the district court’s factual findings, we conclude they are not clearly erroneous. We next consider whether the district court’s factual findings support its conclusion that appellants failed to establish the boundary line by practical location.

Practical location by estoppel

To establish the practical location of a boundary by estoppel, “[t]he party whose rights are to be barred must have silently looked on with knowledge of the true line while the other party encroached thereon or subjected himself to expense which he would not have incurred had the line been in dispute.” *Theros*, 256 N.W.2d at 859. Estoppel therefore requires “knowing silence on the part of the party to be charged and unknowing detriment by the other.” *Id.*

Appellants argue that respondent is estopped from asserting his interest in the disputed portion of the driveway because he obtained knowledge of the true boundary line after speaking with Preuss in 1992 and looked on silently as appellants incurred costs by improving their property. But the district court correctly concluded that estoppel did not apply in this case because respondent did *not* know the true boundary line until 2020 and therefore could not have silently looked on as appellants improved their property. *Fishman v. Nielsen*, 53 N.W.2d 553, 557 (Minn. 1952) (“[W]ithout evidence of knowledge, one of the essential elements to create an estoppel is missing.”).

Practical location by acquiescence

To establish the practical location of a boundary by acquiescence, “the location relied upon must have been acquiesced in for a sufficient length of time to bar a right of

entry under the statute of limitations.” *Theros*, 256 N.W.2d at 858. The statute of limitations is 15 years. Minn. Stat. § 541.02 (2020) (“No action for the recovery of real estate or possession thereof shall be maintained unless it appears that the plaintiff . . . possessed of the premises in question within 15 years before the beginning of the action.”); *see also Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 849 (Minn. App. 2001) (citing Minn. Stat. § 541.02 in a boundary-by-acquiescence case). Courts may consider the acts and conduct of the parties and their predecessors in interest to determine whether a boundary by practical location has been established. *Amato v. Haraden*, 159 N.W.2d 907, 910 (Minn. 1968). However, “[t]he acquiescence required is not merely passive consent, but conduct from which assent may be reasonably inferred.” *Pratt*, 636 N.W.2d at 850.

Here, because only twelve years transpired between 2008, when appellants purchased their property, and 2020, when respondent objected to the encroachment, to satisfy the 15-year requirement appellants needed to prove that respondent acquiesced to the supposed boundary for at least three years prior to 2008. The district court determined that appellants failed to do so.

Appellants argue that they established acquiescence prior to 2008 because they proved that respondent learned the true boundary line after speaking with Preuss in 1992 and thereafter never objected when Preuss parked his car on the driveway. But the district court found that respondent did not know the true boundary line prior to 2020, and we conclude that the record supports that finding. And although knowledge is not a prerequisite to establish a practical location by acquiescence, *Fishman*, 53 N.W.2d at 557, it is required under appellants’ theory here. Appellants argue that respondent’s failure to

object was an act of acquiescence. But if respondent did not know the true boundary line, he would have no reason to object to Preuss's use of the driveway. And, if respondent had no reason to object, a lack of objection cannot reasonably be construed as assent. *See Pratt*, 636 N.W.2d at 850 (asserting that acquiescence is not "passive consent" but affirmative conduct from which assent can be inferred).

Furthermore, even if appellants could establish that respondent knew the true boundary line prior to 2008, the existence of the driveway alone does not establish acquiescence. *Wojahn v. Johnson*, 297 N.W.2d 298, 305 (Minn. 1980) ("When a [physical barrier] 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 [physical barrier] as near the dividing line as possible."). To prove that the boundary was "relied" upon, appellants needed to prove that Preuss "substantially used or possessed" the *disputed* portion of the driveway. *Pratt*, 626 N.W.2d at 849. The district court found that respondent testified credibly that Preuss did not use or park his car on the disputed portion of the driveway, *Sefkow*, 427 N.W.2d at 210 (noting that this court defers to the district court's credibility determinations), and appellants offer no evidence to contradict that finding, *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.").

The district court did not err in determining that appellants failed to establish the practical location of their southern boundary line by estoppel or acquiescence.

Affirmed.