

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GOOD WILL HUNTING CLUB, INC.,	: NO. 16 - 0819
Plaintiff	:
vs.	:
	: CIVIL ACTION
	:
JAMES R. SHIPMAN,	:
Defendant	: Non-jury Trial

OPINION AND VERDICT

Before the Court is Plaintiff’s request, sounding in quiet title, for a declaratory judgment that the boundary line between the parties’ adjoining parcels is in a certain location, contrary to Defendant’s position that it is in a different location. A trial was held on February 14 and 15, and March 1, 2018, following which the parties requested and were granted the opportunity to file post-trial findings of fact and conclusions of law. Those filings were made March 8, 2018. As the matter is now ripe for decision, the Court enters the following:

FINDINGS OF FACT

1. Plaintiff, the Good Will Hunting Club, Inc., acquired approximately 300 acres of wooded land, part of Warrant 1672 in Lewis Township, Lycoming County, Pennsylvania, by deed dated March 2, 1949. There is no metes and bounds description in the deed.
2. Defendant, James Shipman, acquired an adjoining parcel of wooded land in Lewis Township by deed dated May 7, 1984. There are inconsistencies in the deeds in Defendant’s chain of title, but the parcel contains at least 120 acres and at most 172 acres.

3. The dispute in this case focuses on the boundary located between the north-northeast portion of Defendant's parcel and the south-southwest portion of Plaintiff's parcel, which is within the original Warrant 1672. Defendant contends the boundary is located farther north and east than does Plaintiff.

EXPERT SURVEYORS

4. Plaintiff's expert surveyor, Richard Trowbridge, performed surveying of Plaintiff's and Defendant's properties and surrounding property to determine the boundary line between Plaintiff's and Defendant's properties. He produced an expert report dated April 4, 2017.

5. Defendant's expert surveyor, Dan Vassallo, also performed surveying of Plaintiff's and Defendant's properties and surrounding property. He produced an expert report dated June 9, 2017.

6. The property boundary dispute is within the original Warrant 1672. Warrant 1672 shows the original southeast corner monument to be a "chestnut" oak (referred to in Plaintiff's Exhibit 5 as "Oak Corner G").

7. Warrant 1654 shows the Oak Corner G to be an "oak". The 1860 Deed in the Shipman chain of title calls for a "rock oak" in the same corner. The 1901 survey also calls for a "rock oak" at the same corner.

8. Plaintiff's expert, Mr. Trowbridge, testified that a chestnut oak and a rock oak were common names for the same tree.

9. Today there is no longer an oak, chestnut oak, or rock oak at the Oak Corner G. The now existing monument is described as "stone pile G" (and is so identified in Plaintiff's Exhibit 10) and accurately represents the southeast corner of Warrant 1672.

10. In 1989, Surveyor Laidecker conducted a survey of the southern border of Defendant's property between original Warrants 1672 and 1654.
11. Existing monuments H, I, J and K were located and made part of the 1989 survey.
12. A 2006 survey map for the Pennsylvania Game Commission agrees with the Laidecker survey.
13. Existing monuments H, I, J and K were found by Plaintiff's surveyor, Mr. Trowbridge, during the surveying process.
14. Existing monuments H, I, J and K are all in harmony and agreement with the 1901 survey, 1915 Deed, 1923 Deed, 1924 Deed and the 1989 survey with respect to distances and configuration.
15. Mr. Trowbridge projected a "best fit line" by surveying the warrant line approximately five miles to the north of Warrant 1672.
16. Mr. Trowbridge found seven existing monuments to the north of Warrant 1672 along this best fit line that runs 250 feet west of the Oak Corner/Stone Pile G.

CONSENTABLE BOUNDARY

17. Since at least the 1960s, the members of the hunting club have marked what they believed to be the south-southwestern boundary of the property by attaching "No Trespassing" or "Posted" signs to trees along that boundary.¹ These signs were placed on the south-southwestern side of the trees along that boundary so that they faced away from Plaintiff's property. The signs were

¹ This use of the word "boundary" in this recitation refers to the line being marked, and is not based on any deed description or survey.

placed from approximately thirty² to one hundred feet apart in an area which did not vary from the center line more than eight to ten feet, along the length of the property boundary. The signs were replaced when discovered to have been either removed or to have fallen down, and regular checks of the boundary were made throughout the years by the members, so that the boundary remained marked throughout these years.

18. Also since at least the 1960s, and until 1984 when Defendant purchased the property, the former owners of Defendant's parcel have marked the same boundary by attaching "No Trespassing" or "Posted" signs to trees along that boundary. These signs were placed on the north-northeastern side of the trees along that boundary so that they faced away from Defendant's property, often, if not always, on the same trees which had been posted by Plaintiff's members. They were also replaced periodically so that the boundary remained marked throughout these years.

19. Once Defendant purchased the property in 1984, and until 2012, Defendant also placed "No Trespassing" and "Posted signs" along the boundary in the same manner as had his predecessors. Thus, the boundary remained marked as it had since the 1960s until 2012 when Defendant began removing the posters.

20. Plaintiff's members constructed a road to the north and east of the posted boundary. This road was constructed along the northern section of that boundary to a "turnaround" in the 1970s, and extended further south, still to the east of the boundary, in the 1980s. Plaintiff's members have used this road continuously since it was constructed.

² The witness described the distance as "the length of this courtroom"; the Court is supplying the figure.

21. In the 1990s, the hunting club paid Defendant to do work on the portion of the road just south of the turnaround. (Defendant's work also included work at the southern end of the road, but that area is not in dispute.)
22. Defendant constructed a road to the south and west of the posted boundary sometime after purchasing the property. Defendant has used his road continuously since it was constructed.
23. Plaintiff's members constructed two tree stands to the north and east of the posted boundary.
24. Defendant constructed three tree stands to the south and west of the posted boundary.
25. Plaintiff's members used their property for hunting and in doing so, have respected the boundary as marked by the posters since at least the 1960s.
26. Defendant and his predecessors have also respected the boundary as marked by the posters since at least the 1960s until 2012.
27. At least once since Defendant has owned his property, he has expressed dissatisfaction with the boundary as marked by the posters to one or more members of the hunting club. He nevertheless respected that boundary until 2012.
28. In 2012, a well pad was constructed on Defendant's property, to the west and southwest of the boundary.
29. Sometime in 2012, Defendant began removing posters from the boundary, and also placed a barricade across Plaintiff's road and a "No Trespassing" sign in the middle of that road, both along the northern section of the road, leading to the filing of the instant suit.

DISCUSSION

Plaintiff's request for a declaratory judgment is based on two theories: first, that the deeds (as demonstrated by certain surveys) establish the boundary in a certain location,³ and second, that the boundary has been established by the poster line under the doctrine of "consentable line". These two theories are somewhat incompatible as under the first theory, Plaintiff's evidence would place the boundary farther south and west than the poster line, to Plaintiff's advantage, but the doctrine of "consentable line", if supported by the evidence, establishes a boundary based on the actions of the grantees in spite of what the grantors may have intended in making their deeds.⁴ The Court will address each theory in turn.

BOUNDARY BY DEEDS

In Pennsylvania, the order of precedence in determining boundaries is (1) natural monuments; (2) artificial marks or other objects made or placed by the hand of a person; (3) adjacent boundaries; (4) courses or distances; and, finally (5) recitals of quantity. See Long Run Timber Company v. Department of Conservation & Natural Resources, 145 A.3d 1217 (Pa. Commw. 2016).

Defendant's expert surveyor, Mr. Vassallo, agrees that the order of controlling factors is first the location of monuments, then the call for angles, and finally a call for distances. Mr. Vassallo further agrees that when the location of existing monuments conflicts with calls for angles and distances, the monuments control. Lastly, Mr. Vassallo agrees that the priority call in the Commonwealth

³ Defendant contends other surveys establish the boundary in a different location.

⁴ "[W]hen a consentable line is established, the land behind such a line becomes the property of each neighbor regardless of what the deed specifies. In essence, each neighbor gains marketable title to that land behind the line, some of which may not have been theirs under their deeds." Moore v. Moore, 921 A.2d 1, 5 (Pa. Super. 2007) (quoting Soderberg v. Weisel, 687 A.2d 839, 843 (Pa. Super. 1997) (internal citation omitted)).

of Pennsylvania relies on monuments first, then angles or bearings, then distances, and last is area.

Despite this, Mr. Vassallo hypothesizes that the original north/south warrant line between Warrant 1672 and Warrant 1654 should shift a distance of approximately 350 feet east of the oak corner/stone pile G. Mr. Vassallo thus ignores monuments E, the Oak Corner G, H, I, J and K to create new hypothetical locations for these monuments in order to reach his conclusion and move the warrant line.

By moving the warrant line, not only does Mr. Vassallo project a new hypothetical location of Oak Corner G, he also projects an angled warrant line. No existing monuments have been found in the southeast corner of Warrant 1672 that are consistent with the angled warrant line proposed by Mr. Vassallo, however. Further, Mr. Vassallo's new angled warrant line is not consistent with any of the seven existing monuments located by Mr. Trowbridge and identified during his survey of the warrant line for approximately five miles to the north of Warrant 1672. As with monuments E, Oak Corner G, H, I, J and K, Mr. Vassallo contends that all seven monuments found by Mr. Trowbridge marking the warrant line up to and including five miles north of Warrant 1672 are in the wrong location.

Mr. Vassallo ignores these existing monuments in an apparent effort to reconcile a change in angle between the 1901 survey and 1989 Laidecker survey.⁵ Mr. Trowbridge argues, and the Court concurs, that existing monuments cannot be moved to new hypothetical locations because of a change in call, based upon

⁵ The 1901 survey calls for a southeast angle between monuments L and K. The Laidecker survey calls for a southwest angle between monuments L and K.

the established hierarchy of monuments first, then angles, then distances, and last, area.

The Court concludes that Plaintiff has met its burden of proof demonstrating that existing monuments H, I, J and K found along the southern boundary of the Shipman property correspond with the 1901 survey, the 1915 deed description, the 1923 deed, the 1924 deed and the 1989 Laidecker survey. The Court further finds that the Plaintiff has met its burden of proof demonstrating the Oak Corner G, now marked with a stone pile, is the southeast corner of Warrant 1672 and the southeast corner of Defendant's property.

Defendant Shipman's proposed hypothetical property lines and hypothetical corners are inconsistent with the 1860 deed, the 1901 survey, the 1915 deed and the 1989 Laidecker survey. Furthermore, Defendant Shipman's proposal to shift the southeast corner of the Shipman property, and the southeast corner of Warrant 1672 results in an angled warrant that is inconsistent with the intentions of the original surveyors and grantor of Warrant 1672, as depicted in the September 1793 survey of Warrant 1672, and the August 1792 survey of Warrant 1654, and is in conflict with evidence of the warrant line found by Mr. Trowbridge up to and including five miles north of Warrant 1672.

Ultimately, this Court finds that the Trowbridge survey accurately reflects existing natural and artificial markers, and these existing markers are controlling over the Defendant's proposed hypothetical warrant line.

For all of the above-stated reasons, this Court concurs with Mr. Trowbridge's conclusion that existing monuments E, the Oak Corner G, H, I, J, K and L and existing monuments on the western boundary of the Shipman property

(as reflected on Plaintiff's Exhibit 10) correctly define the boundary of the Shipman property.

CONSENTABLE BOUNDARY

In Plauchak v. Boling, 653 A.2d 671, 675-676 (Pa. Super. 1995), the Superior Court set forth an overview of the doctrine and the evidentiary requirements for its application:

The doctrine of consentable line is a rule of repose for the purpose of quieting title and discouraging confusing and vexatious litigation. Plott v. Cole, 377 Pa. Super. at 592, 547 A.2d at 1220. *See generally* George M. Elsesser, Note, Consentable Lines in Pennsylvania, 54 Dick.L.Rev. 96 (1949) (discussing the history and application of the doctrine of consentable line in this Commonwealth). There are two ways in which a boundary may be established through consentable line: (1) by dispute and compromise, or (2) by recognition and acquiescence. Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 267, 545 A.2d 926, 930 (1988) (en banc). As the en banc court explained in Niles, the doctrine of consentable line is a separate and distinct theory from that of traditional adverse possession, although both involve a twenty-one year statute of limitation. *Id.* at 267-68, 545 A.2d at 930. Under the doctrine of consentable line,

if adjoining landowners occupy their respective premises up to a certain line which they mutually recognize and acquiesce in for the period of time prescribed by the statute of limitations, they are precluded from claiming that the boundary line thus recognized and acquiesced in is not the true one. *See Adams v. Tamaqua Underwear Co.*, 105 Pa. Super. 339, 161 A. 416 (1932); *see generally*, 12 Am.Jur.2d, Boundaries §§ 85-90.

Plott v. Cole, 377 Pa. Super. at 593, 547 A.2d at 1221. The establishment of a consentable line is not a conveyance of land

within the meaning of the Statute of Frauds because no estate is thereby created. Hagey v. Detweiler, 35 Pa. 409, 412 (1860). Therefore such a line may be initiated by oral agreement and proved by parol evidence. Beals v. Allison, 161 Pa. Super. 125, 128, 54 A.2d 84, 85 (1947).

The requirements for establishing a binding consentable line by recognition and acquiescence are: (1) a finding that each party has claimed the land on his side of the line as his own; and (2) a finding that this occupation has occurred for the statutory period of twenty-one years. Id. at 594, 547 A.2d at 1221. *See* Hagey v. Detweiler, *supra* (applying twenty-one year limitation period to controversy involving boundaries established under doctrine of consentable line). Accord Dimura v. Williams, 446 Pa. 316, 286 A.2d 370 (1972). In such a situation, the parties need not have specifically consented to the location of the line. Inn Le'Daerda, Inc. v. Davis, 241 Pa. Super. 150, 163, 360 A.2d 209, 215 (1976). "It must nevertheless appear that for the requisite twenty-one years a line was recognized and acquiesced in as a boundary by adjoining landowners." Id. at 163, 360 A.2d at 215-16 (citing Miles v. Pennsylvania Coal Co., 245 Pa. 94, 91 A. 211 (1914); Reiter v. McJunkin, 173 Pa. 82, 33 A. 1012 (1896)).

“Acquiescence” was further explained in Moore v. Moore⁶ to “denote[] passive conduct on the part of the lawful owner consisting of failure on his part to assert his paramount rights or interests against the hostile claims of the adverse user.”

The Court also noted that, “[s]ignificantly, because the finding of a consentable line depends upon possession rather than ownership, proof of the passage of sufficient time may be shown by tacking the current claimant's tenancy to that of his predecessor. Id.

⁶ 921 A.2d 1, 5 (Pa. Super. 2007) (quoting Zeglin v. Gahagen, 812 A.2d 558, 562 n.5 (Pa. 2002) (quoting Edward G. Mascolo, A Primer On Adverse Possession, 66 CONN. B.J. 303, 312-13 (Aug. 1992)).

In the instant case, the credible evidence clearly establishes that for more than twenty-one years, Plaintiff and Defendant recognized and acquiesced in the poster line as defining the boundary between the two properties.⁷ Several members of the club testified to having observed the poster line going back into the 1960s, and having themselves placed posters along that same line to the present day. One member testified that the line “never changed” over the years, and all members who testified stated that they considered the poster line to have been the property’s boundary and that they respected that boundary when hunting or riding four-wheelers on the property. The road constructed by the members, and the tree stands placed by them, all were located on the northern and northeastern side of the poster line, further supporting their testimony that they considered the poster line to be the boundary.

The evidence also showed that Defendant placed posters on the same line and observed that line as defining the boundary. A witness who testified that he had helped Defendant put in his road and build his barn and had hunted on Defendant’s property with his permission, stated that he had seen the posters “going back at least thirty years” and had stayed to the south and southwest of the poster line when hunting on the property. Tree stands placed by Defendant were placed on the southern and southwestern side of the line, as was the road constructed by Defendant after he purchased the property. Tellingly, Defendant accepted payment for performing work on Plaintiff’s road, indicating his belief that that road was on Plaintiff’s property.⁸

⁷ Because the twenty-one year period is satisfied by Defendant’s own actions, the Court need not consider the period of time prior to Defendant’s ownership, although the evidence shows that that period of time could be tacked to Defendant’s ownership period if necessary as the prior owners also recognized the poster line as the boundary.

⁸ Defendant’s assertion of the boundary’s “correct” location would have Plaintiff’s road on Defendant’s property.

Although Defendant testified that when he bought the property there were no posters to be found, that he had put up posters first and, only after that had members of the hunting club placed their own posters, the Court finds that testimony not credible.⁹ And, while the Court gives some credence to Defendant's claim that he had expressed dissatisfaction with the line as marked, as more than one witness alluded to this dissatisfaction, and that he had never "consented" to the poster line as a legal boundary, such is of no moment to the issue at hand.

As noted above, one "need not have specifically consented to the location of the line" to be bound by it. Plauchak, *supra* at 676. All that is required is acquiescence, or "failure on [one's] part to assert [one's] paramount rights or interests". Moore, *supra* at 5. Defendant testified that he never "objected" because he "wanted to be a good neighbor". While the Court need not pass on the credibility of this testimony, even if the testimony is found credible, such failure to "object" constitutes acquiescence.

Defendant also argues that even if the Court finds there was a poster line in existence for more than twenty-one years, "No Trespassing" and "Posted" signs alone are not sufficient to constitute a "consentable line". This argument is without merit. While many cases that address the doctrine of consentable line do involve a fence or similar physical barrier, there is no specific requirement that the line be marked by a fence. *See, for example, Sorg v. Cunningham*, 687 A.2d

⁹ With respect to Defendant's credibility, the Court notes that Defendant's testimony that he walked the perimeter of the property numerous times after having purchased it, looking for markers or monuments, which suggests an eagerness to establish the boundary, and his testimony that he was "disgusted" about Plaintiff's road-building activities, which suggests he was angry about the perceived infringement on his property rights, is inconsistent with the fact that he never had the property surveyed during that time and never formally objected to the poster line.

846 (Pa. Super. 1997)(row of pine trees sufficient to establish consentable boundary line). Indeed, in a case where the Court found metal spikes and pins, an old rail fence, rocks and large maple trees to be sufficient, the Court noted that “[u]nder either consentable line theory,¹⁰ it is not necessary that the boundary line be substantial.” Jedlicka v. Clemmer, 677 A.2d 1232, 1235 (Pa. Super. 1995). As the evidence in this case shows that the posters were placed on trees from approximately thirty to one hundred feet apart along the length of the property boundary, in an area which did not vary from the center line more than eight to ten feet, the Court finds such posting sufficient to establish a consentable line.

CONCLUSION

As noted above, “[W]hen a consentable line is established, the land behind such a line becomes the property of each neighbor regardless of what the deed specifies.” Moore v. Moore, 921 A.2d 1, 5 (Pa. Super. 2007) (quoting Soderberg v. Weisel, 687 A.2d 839, 843 (Pa. Super. 1997)). Therefore, even though the Court has concluded that Plaintiff has established its proposed boundary by survey and deeds, since Plaintiff has also established a different boundary under the theory of consentable line, that theory takes precedence.

Accordingly, the Court draws the following:

CONCLUSIONS OF LAW

1. The Trowbridge survey correctly depicts the boundary between the parties’ respective properties.

¹⁰ The Court is referring to both the dispute and compromise theory, which is not involved here, and the recognition and acquiescence theory. See Plauchak v. Boling, 653 A.2d 671, 675-676 (Pa. Super. 1995), quoted above.

2. The actions of both parties constituted recognition of and acquiescence in the boundary line as marked “historic poster line” on Plaintiff’s Exhibit 10.¹¹
3. The parties’ recognition and acquiescence in the boundary marked by the poster line occurred for the requisite time period of twenty-one years.
4. The poster line became the boundary under the theory of consentable lines.

VERDICT

AND NOW, this day of June 2018, for the foregoing reasons, the Court hereby declares that the line marked on Plaintiff’s Exhibit 10 as “historic poster line” shall be the boundary between the parties’ properties rather than any deed description or survey which conflicts with such line. The Court will issue a separate Order implementing this Verdict.

BY THE COURT,

Eric R. Linhardt, Judge

cc: Thomas Marshall, Esq.
Bret Southard, Esq.
Marc Drier, Esq.
Gary Weber, Esq.

¹¹ Both experts agreed that the placement of the “historic poster line” on the exhibit correctly located the poster line they had observed.