

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KEVIN RICHARDS AND COLETTE	:	
RICHARDS, husband and wife,	:	
Plaintiffs	:	
	:	
v.	:	No. 03-00,233
	:	CIVIL ACTION
JOSEPH W. EDWARDS AND MYRTLE	:	
M. EDWARDS, husband and wife¹,	:	
Defendants	:	NON-JURY TRIAL

OPINION AND ORDER

This matter is before the Court for non-jury trial disposition. Trial in this matter was held on June 22, 2007. The Plaintiffs claim that the Defendant illegally trespassed and converted timber on their land causing him to incur various costs and damages. The Defendant does not deny that he harvested the timber along the boundary of the parties respective properties; however, he contends that the land, via the doctrine of Consentable Boundaries, was his and therefore the trees on said land were his to harvest. After a review of the evidence presented at the trial, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

1. The Plaintiffs, Kevin and Colette Richards, husband and wife, are adult individuals who reside at 1943 Canoe Run Road, Mifflin Township, Pennsylvania.
2. The Defendant is Joseph W. Edwards, an adult individual, who resides at 2345 Canoe Run Road, Mifflin Township, Pennsylvania.

¹ Defendant Myrtle M. Edwards died in 1986; she is not an actual party to this action. However, to remain consistent with previous filings, the Court utilized the same caption, but any decision of the Court will only pertain to Defendant Joseph W. Edwards.

3. The Plaintiffs are fee simple owners of a parcel of real property situated in Mifflin Township, Lycoming County, Pennsylvania described in Lycoming County Deed Book 2306, Page 260.
4. Plaintiff Kevin Richards acquired interest in the land at issue, from his father, in 1983 (he had lived on the land prior to that since 1961). His wife, Colette Richards joined in his acquisition of this land in 1994.
5. The Defendant is fee simple owner of a parcel of real property situated in Mifflin Township, Lycoming County, Pennsylvania described in Lycoming County Deed Book 375, Page 129.
6. The Defendant acquired interest in the land at issue in 1951.
7. The Court adopts the chain of title regarding both parties' properties as set forth in pages 10 – 15 of the Defendant's March 31, 2003 Answer and New Matter.
8. The Plaintiffs' and the Defendant's respective properties, as described *infra*, abut along the Plaintiffs' western border and the Defendant's eastern border; it is this border currently at issue.
9. At all times relevant to the instant matter, the disputed property line was within undeveloped woodlands and delineated with a barbed wire fence that ran from tree to tree along the edge of the parties' respective properties. The fencing was not kept up throughout the years and trees have grown over parts of the fencing and, in other places, the fencing has entirely fallen to the ground.

10. At all times relevant to the instant matter, both parties were aware of the barbed wire fencing along the disputed border; until the filing of the instant action, neither party has disputed that the barbed wire fencing constituted the border between the two pieces of land.
11. In the summer of 2001, the Defendant began to harvest timber on his property and, as the Plaintiffs allege, on their property along the disputed border. The Defendant immediately ceased this activity after the Plaintiffs notified him that they believed that the Defendant was harvesting trees on his property.
12. In response to the Defendant's actions, the Plaintiffs commissioned a survey of the parties' properties. Said survey revealed that the boundary delineated by the barbed wire fence was not exactly the same as was delineated in the deeds for the parcels.
13. In February 2003, the Plaintiffs filed the instant action in quiet title, for violations of the Timber Trespass Act, and Trespass and Conversion.
14. The Plaintiffs' Complaint seeks treble damages for the value of the timbered trees alleged to have been wrongfully harvested by the Defendant from the Plaintiffs' property, remuneration for the costs they incurred for surveying and timber trespass reports, remuneration for the costs they claim to have incurred to comply with the Clean Streams Law (which they claim the Defendant violated when he harvested the trees), attorney's fees, and lost wages incurred by Plaintiff Kevin Richards.

Conclusions of Law

1. The Consentable Boundary Line Doctrine (hereinafter “the Doctrine”) applies to the instant matter.
2. The parties and/or their respective predecessors have consensually accepted the barbed wire fence separating their respective properties as the border for a period of at least twenty-one years.
3. Under the Doctrine, the barbed wire fence spanning the boundary between the parties’ property constitutes the actual boundary; accordingly, the Defendant has not harvested timber from the Plaintiffs property and is consequently not liable under the Timber Trespass Act or for trespass and conversion.

Discussion

Fundamental to the case *sub judice* is determining what constitutes the border between the parties’ properties; the line as described in the applicable deeds or, as the Defendant argues, the barbed wire fencing boundary. For the following reasons, the Court agrees with the Defendant and, based on the testimony and evidence presented at trial, finds that the barbed wire fencing is the legal boundary between the parties properties.

It is well established in Pennsylvania that a boundary line may be established if each party has claimed and occupied the land on his side of the line as his own for the statutory period of twenty-one years (i.e. the Consentable Boundary Doctrine). *Zeiglin v. Gahagen*, 571 Pa. 321, 326, 812 A.2d 558, 561 (Pa. 2002). It is equally established that, although the doctrines of adverse possession and consentable boundaries lead to similar results, the requirements of the latter, especially as it relates to tacking, are more lax than that of the former. *Zeiglin*, 571 Pa.

321, 812 A.2d 557 (Pa. 2002). Specifically, regarding consentable boundaries, tacking is permitted upon proof of privity of possession; privity of estate, as required to tack under a theory of adverse possession, is not necessary to succeed on a theory of consentable boundaries. *Id.*

Here, both parties agree that a barbed wire fence separated the two properties since before both parties acquired their respective parcels (Plaintiff Kevin Richards in 1983 from his father and the Defendant in 1951) (i.e. for at least twenty-one years). Both parties equally agree that the barbed wire fence division is a common divider in rural woodland areas and that it runs as near as possible to the boundary described in the applicable deeds. Finally, both parties agree that until the recent action, there has never been a dispute regarding the boundary line between the parties.

The Court finds that the aforecited facts, coupled with the testimony and evidence presented at trial, reveal that both parties consented to the barbed wire fence as being the boundary between their respective properties for at least the statutory twenty-one year period. Accordingly, the barbed wire fencing constitutes the legal boundary between the parties properties and that because the Defendant only harvested trees up to that fencing, he is not liable for timber trespass and/or conversion.

VERDICT

AND NOW, this _____ day of July 2007, the Court hereby finds in favor of the Defendant and against the Plaintiff on all counts in their complaint. The Court further finds that the legal boundary line between the parties property is the barbed wire fencing running the length of the disputed border.

By the Court,

Nancy L. Butts, Judge

xc: Matthew J. Zeigler, Esq./Rebecca L. Reinhardt, Esq.
Marc S. Drier, Esq.
Judges
Nancy L. Butts, Judge
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq. (Lycoming Reporter)