STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 338-7-11 Wrcv

Edward LaRow and Gloria LaRow
Plaintiffs

v.

Gregory Benson and Kathy Benson
Defendants

Findings of Fact, Conclusions of Law, and Order

At issue is the location of the boundary line between the properties of plaintiffs Edward and Gloria LaRow and defendants Gregory and Kathy Benson. A site visit was held on October 26th, 2012, and a merits hearing was held on November 9th, 2012. Mr. and Ms. LaRow were present and represented by Jonathan Springer, Esq. Mr. and Ms. Benson were also present and represented by Stephen Ankuda, Esq. The following findings of fact, conclusions of law, and order are based on the credible evidence presented at the merits hearing.

Findings of Fact

Chester Road (Vt. Rte. 11) runs east-west through Springfield. Both families own properties on the south side of the road: the Bensons own 90 Chester Road, and the LaRows own the neighboring property to the east at 86 Chester Road. Both properties have been owned within the respective families for many years, and the families have long agreed that the boundary at the rear of their properties is marked by an iron pin set into a stone wall. At issue is the northern terminus of the boundary along Chester Road, and thus the bias of the boundary line.

Ms. LaRow's family has owned 86 Chester Road since her grandparents bought it in 1938. Ms. LaRow's parents then acquired the property in 1961, and Ms. LaRow and Mr. LaRow acquired the property in 1977. For as long as Ms. LaRow can remember, there has been a hedge between 86 Chester Road and 90 Chester Road, starting at the road and running about 35 to 40 feet in a southerly direction, after which the boundary between the properties becomes less maintained. The hedge is located about eight feet west of the LaRow house. Ms. LaRow can specifically remember her grandfather trimming the hedge as far back as 1957, when she was ten years old. Mr. and Ms. LaRow have maintained both sides of the hedge since they moved onto the property in 1977, and Ms. LaRow does not recall anyone other than her family ever maintaining the hedge.

About six feet to the west of the LaRow house—two feet short of the hedge—there is a utility pole.

On the Benson side of the hedge, there is a narrow grassy area, and beyond that, there is a paved area that serves as the parking lot for the car-sales-and-repair business that operates at 90 Chester Road. Mr. Benson's father purchased the property in 1969 and paved the parking area shortly thereafter. When cars are parked in the parking area, the rear of the cars hang over the grassy

FILED
DEC 17 2012
VERMONT SUPERIOR COURT
WINDSOR UNIT

area and come within about three feet of the hedge. Once upon a time there was apparently an iron pin in the general vicinity, but the pin became lost at some point and its exact prior location is no longer known. In addition, there was a road sign in the grassy area a few years ago but it has since been removed.

Mr. Benson's parents lived at 90 Chester Road when he was born, and they then rented the property for a number of years. Mr. Benson moved back to the property in 1990 and bought it from his parents in 1998. At the time he purchased the property, he was under the impression that the property line was the middle of the hedge. It was only after a 2003 survey by registered land surveyor David Coleman that Mr. Benson became convinced that the northern terminus of the boundary was actually located at the utility pole two feet to the east (the LaRow's side) of the hedge.

Mr. Coleman's survey was introduced as D. Ex. E. It has not been shown to be inaccurate. It is true that the Benson deeds (the Bensons acquired their property in two separate deeds) contain a mistaken description calling for the Bensons to have 233.5 feet of frontage along Chester Road as measured starting from a marker on the western edge of the property. As measured from that point, however, 233.5 feet would place the property line in the middle of the LaRow house, which no one claims is the accurate line. The correct description, as reflected in prior deeds in the Benson chain of title, is 223.5 feet. Mr. Coleman used the correct number when measuring the amount of frontage.

Mr. Coleman used the 1959 state highway map to find the marker on the westerly edge of the Benson property. He then measured 223.5 feet from that marker. His measurement brought him to the utility pole. He drew the boundary between the properties as a straight line running from the utility pole to the iron pin in the stone wall.

Yet the evidence did not indicate that the parties have ever treated the boundary between the properties as being a straight line from the utility pole to the iron pin in the stone wall. On the contrary, all of the credible evidence showed that the hedge has served as the property boundary for several generations, that the LaRows have exclusively maintained both sides of the hedge since at least 1957, that the Bensons have never maintained the hedge nor complained about the LaRows' maintenance of the hedge, and that the Bensons have never occupied or used the area between the hedge and the utility pole.

Mr. Benson did testify that Mr. LaRow asked his permission to maintain the hedge in 1998. Even if some conversation about the hedge occurred, however, the court does not find it credible that the substance of the conversation would have amounted to Mr. LaRow asking Mr. Benson for legal permission to maintain the hedge. At the time of this conversation, Mr. LaRow had been maintaining the hedge himself for more than twenty years, and his wife's family had been maintaining the hedge since at least 1957. He did not need "permission" to maintain the hedge at that point.

Defendants also argue that the hedge has "migrated" towards their property over time from its original location. Here, defendants rely upon P. Ex. 4, a photograph that shows the hedge in the early 1980s, but this photograph does not show the relationship between the hedge and the utility pole and was taken from a different angle than other photographs, including P. Ex. 5. It may be that the hedge is now somewhat wider and taller than it was in the past, but there is no credible evidence that it has actually moved from its original location.

FILED

DEC 17 2012

VERMONT SUPERIOR COURT
WINDSOR UNIT

As for the narrow grassy area, the credible evidence established that both families have used it for their own purposes over time. Mr. and Ms. LaRow established that they have been the ones who exclusively mowed and raked the area during the summer: their daughter Amy recalled mowing the grassy area as part of her chores, and a neighbor testified that he had seen Mr. LaRow maintaining the hedge and mowing the grassy area. Mr. Benson testified that he had also mowed the grassy area every other week, but the court did not find this credible. Given the extent of the attention that Mr. LaRow gives to his own lawn and grounds, as evidenced by the photographs of the LaRow property, there would have been no need for additional maintenance or mowing of the grassy area if he was attending to it weekly. It is more credible that Mr. LaRow maintained the grassy area exclusively during the summer. However, as noted above, when Mr. Benson parks his cars at the edge of the pavement, the rear ends of the cars do stick out over the grassy area, coming within about three feet of the hedge.

Moreover, in the winter, Mr. Benson plows snow from the parking lot into the grassy area, sometimes up against the hedge. At other times, his plow has torn up the grassy area, and when this happens, he lays the sod back down in the spring. Neither party has ever complained about the other's maintenance or use of the grassy area. Both parties have used the grassy area for their respective purposes.

At the rear of the property, the parties agree that the boundary is marked by an iron pin set into a stone wall. Some time ago, Mr. LaRow maintained compost piles in the area, but it was not established whether the piles encroached upon the Benson property. Additionally, there are several iron pipes set into the ground, but it was not established whether the iron pipes have anything to do with the property boundary.

Mr. LaRow has recently (within the past six years) built some stone walls towards the southerly end of his property, near the boundary line. The stone walls are depicted in P. Ex. 9–12, and run generally parallel to the boundary.

In 2011, Mr. Benson planned to construct a concrete block wall along the property line, and in preparation for this, he placed a string along the surveyed line, touching off the present controversy. Prior to that time, the parties had not had any problems, even when a washout on the Benson property in 2000 caused sand and gravel to wash onto the LaRow's lawn. As litigation over the boundary ensued, the parties agreed to a standstill arrangement until the case could be decided by the court.

One final relevant fact: in 1981, Mr. LaRow applied for a construction permit to add a dormer to the back of his house. As part of his application, he attached a sketch showing the property line to be eight feet from the edge of the house—i.e., the hedge. He now claims that he meant to draw the line at the location of the now-missing pin on the Benson side of the hedge, a distance which would be somewhat more than eight feet. But while some of the distances on the sketch are approximated, others, including the setback from the house to the property line, are precise. Given then precision with which Mr. LaRow prepared his sketch, it is unlikely that he made the mistake he now claims, and much more likely that he meant to indicate that his property boundary was the hedge.

FILED

DEC 17 2012

VERMONT SUPERIOR COURT
WINDSOR UNIT

Conclusions of Law

All of the available survey evidence indicates that the northern terminus of the actual *deeded* boundary line is the utility pole. Yet this fact does not end the case, because the general rule is that the best evidence of the actual boundary line between two neighbors is not necessarily the deeded line but rather the line that both neighbors have observed and accepted for many years. *Beresford v. C.W. Gray & Sons, Inc.*, 138 Vt. 308, 310 (1980); *Amey v. Hall*, 123 Vt. 62, 66 (1962). In other words, regardless of the metes and bounds called out in the deed, the law generally recognizes boundary lines as existing at the location that has been mutually recognized and accepted between two neighbors for more than fifteen years. See *Okemo Mtn., Inc. v. Lysobey*, 2005 VT 55, ¶¶ 13–14, 178 Vt. 608 (mem.); *Lakeview Farm, Inc. v. Enman*, 166 Vt. 158, 162 (1997); see also *O'Hearne v. McClammer*, 42 A.3d 834, 839 (N.H. 2012) (explaining that the line mutually recognized and accepted by two neighbors for a lengthy period of time is regarded "as being the true one") (quotation omitted). The longstanding policy behind this rule is that neighbors should be precluded from "insisting upon a boundary line in opposition to one which has been steadily adhered to, upon both sides," for generations. *O'Hearne*, 42 A.3d at 839 (quoting *Richardson v. Chickering*, 41 N.H. 380, 384 (1860)).

A boundary is established by acquiescence when there has been "mutual recognition of a given line by the adjoining owners, and such actual continuous possession by one or both to the line" for more than fifteen years. *Lakeview Farm*, 166 Vt. at 162 (quotation omitted); see also *Dowley v. Morency*, 1999 ME 137, ¶ 16, 737 A.2d 1061 (elaborating that the elements of acquiescence require proof of possession up to a visible line clearly marked by monuments, actual or constructive notice to the adjoining landowner, conduct by the adjoining landowner from which recognition and acquiescence may be fairly inferred, and acquiescence for such a long period of time that the policy behind the doctrine is well served by recognizing the boundary). Most often, the elements of recognition and compliance are best shown by objective circumstantial evidence rather than by subjective testimony. *Lysobey*, 2005 VT 55, ¶ 14.

Here, the objective evidence established that the LaRow family and the Benson family have recognized the hedge as the boundary between the two properties since at least 1969, and probably as far back as 1957, if not longer. All of the credible evidence indicated that (1) the LaRow family has maintained the hedge as a boundary hedge for three generations, (2) the Benson family has always recognized the hedge as being the boundary, (3) at least between 1969 and 2003, the Benson family never acted as though their line went beyond the hedge to the utility pole, and (4) as the court's own site visit revealed, the character of this hedge is clearly that of a boundary hedge.[1] Given all of these circumstances, the policy purposes behind the doctrine of acquiescence would be well served by recognizing the hedge as the boundary between the two properties. Accord *Lakeview Farm*, 166 Vt. at 162 (holding that acquiescence was established where "[a]t least two generations of neighboring landowners accepted the fenced and blazed line as the boundary between the farms"); *Little v. Gray*, 137 Vt. 569, 570–71 (1979) (recognizing maintenance of fence line as sufficient to establish boundary between two properties); *Davis v. Mitchell*, 628 A.2d 657, 660–61 (Me. 1993) (recognizing barberry hedge as the boundary line between two properties).

---

[1] Moreover, even if Mr. Benson's testimony about the request for "permission" in 1998 was correct, it had no legal effect, because "permission granted after the statutory period has run does not defeat an acquiescence claim." *Lysobey*, 2005 VT 55, ¶ 14.

FILED
DEC 17 2012
VERMONT SUPERIOR COUR
WINDSOR UNIT

Furthermore, the credible circumstantial evidence established that the line between the two properties is best drawn on the Benson side of the hedge: the LaRow family has always maintained both sides of the hedge, whereas the occupation of the Bensons has gone up to the edge of the hedge, but no further. See *Lakeview Farm*, 166 Vt. at 162 (explaining that the boundary line drawn by acquiescence is drawn at the line where there has been "actual continuous possession by one or both"). In addition, the evidence establishes that the LaRow family is entitled to an easement to access the Benson side of the hedge for the sole purpose of maintaining that side of the hedge, such maintenance having occurred for more than fifteen years, and the Bensons never having objected to it. *Tallarico v. Brett*, 137 Vt. 52, 60 (1979).

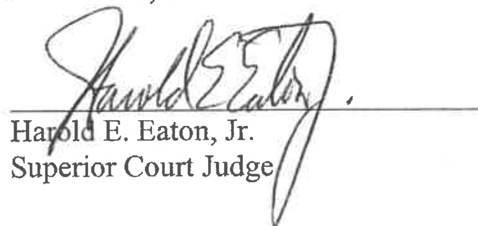
As for the narrow grassy area, however, the court cannot conclude that plaintiffs' acts of mowing and raking are sufficient to establish a claim for either acquiescence or adverse possession. See, e.g., *First Congregational Church of Enosburg v. Manley*, 2008 VT 9, ¶ 15, 183 Vt. 574 (mem.); *Dowley*, 1999 ME 137, ¶ 16. Nor did plaintiffs establish that they maintained continuous and exclusive possession of the grassy area; on the contrary, both neighbors have used it for their own purposes. See *D'Orazio v. Pashby*, 102 Vt. 480, 487 (1930) (explaining that evidence that both neighbors have used the same area tends to defeat a claim that the neighbors mutually recognized a given line as being the true boundary). Finally, Mr. LaRow's own 1981 construction permit application tends to weigh against his claim that he thought the grassy area belonged to him. For these reasons, plaintiffs have not established a right to possession of the grassy area under the theories of either acquiescence or adverse possession.

All that remains is the question of the drawing of the line between the southerly terminus of the hedge and the iron pin that is set into the stone wall at the rear of the properties. Here, based on the court's site view, the court is persuaded that the neighbors have generally recognized the boundary as being a straight line from the southerly terminus of the hedge to the iron pin.

ORDER

For the foregoing reasons, plaintiffs Edward LaRow and Gloria LaRow are entitled to a declaration that the true boundary line is begins at the point where the westerly edge of the hedge meets Chester Road, continues south along the westerly edge of the hedge to the end thereof, and then continues in a straight line to the iron pin in the stone wall. Plaintiffs are also entitled to an easement over the lands of Benson along the easterly boundary of Benson's land where it meets Rt. 11 to the end of the hedge for the sole purpose of maintaining the hedge. Plaintiffs' attorney shall prepare a form of judgment pursuant to V.R.C.P. 58.

Dated at Woodstock, Vermont this 14 day of December, 2012.



Harold E. Eaton, Jr.
Superior Court Judge

FILED

DEC 17 2012

VERMONT SUPERIOR COURT
WINDSOR UNIT