STATE OF MINNESOTA
IN COURT OF APPEALS
A11-158

Sara J. Fredrickson, et al.,
Respondents,

vs.

Donald Riepe, et al.,
Appellants.

Filed September 12, 2011
Affirmed
Willis, Judge[*]

Washington County District Court
File No. 82-CV-08-2288

G. Courtland Borle, Marcus C. Stubbles, Tennis and Collins, P.A., Forest Lake, Minnesota (for respondents)

Scott M. Lucas, Shaun D. Redford, Olson & Lucas, P.A., Edina, Minnesota (for appellants)

Considered and decided by Stoneburner, Presiding Judge; Johnson, Chief Judge; and Willis, Judge.

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

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

WILLIS, Judge

This case involves a boundary dispute between one-time friendly, adjacent landowners in Hugo. Appellants challenge the district court's findings that a slightly crooked horse fence separating the plots and a line extending north from the fence designate a boundary by practical location through express agreement. They also challenge the district court's conclusion that appellant Donald Riepe's chopping down and moving the fence was conversion and trespass, and its awards of punitive damages and prejudgment interest. We affirm.

FACTS

Respondents Sara Fredrickson and Patrick Weisman moved to Hugo so they could have enough land to raise horses. They bought a property in March 1991 and soon commissioned a survey so that they could build a boundary fence to enclose horses. The dispute in this case centers on their property's 670-foot western boundary line, which in 1991 separated them from a farm belonging to Janice Freels, the predecessor in interest to appellants Donald and Mary Riepe.

The 1991 survey marked the four corners of Frederickson and Weisman's property but did not designate the entire boundary between the marks. At the time of the survey, a 66-foot fence extended northward from the southwest corner of Frederickson and Weisman's property, but unbeknownst to them, it did not run exactly along the record boundary line; after nearly 30 feet it angled slightly and encroached onto Janice Freels's property; its maximum encroachment—at its northernmost point—was less than one foot.

Shortly after the survey, Fredrickson and Weisman began building a horse fence that extended the preexisting old fence by 130 feet along what they believed was the property line. They marked a proposed fence line beginning at the end of the old fence and extended the line to the north end of the property. After plotting the line, Fredrickson and Weisman contacted Freels and asked her to view the line and approve it. Freels asked Fredrickson and Weisman to angle the line back a little toward their property. After the adjustment was made, Freels approved the new line, and Fredrickson and Weisman completed the construction of their fence by May 1991. At its maximum encroachment—at its northernmost point—the horse fence was about three and one-half feet onto Freels's property. Frederickson and Weisman believed at this time, and until 2007, that the horse fence was along the property line and that the remainder of the property line was a northward extension of the line established by the fence.

Fredrickson and Weisman later built a dog-kennel fence north of the horse fence. They believed that the kennel fence was three feet east of the property line so that they could mow around it with their tractor.

In 1998, Freels sold her property to Donald Riepe, who subsequently married Mary Riepe. Frederickson and Weisman initially got along well with the Riepes. Mary Riepe described Frederickson as "one of [her] best friends" and testified that "[t]hey were like family."

It is not clear from the record when the neighborly relationship soured. But in 2006, Donald Riepe confronted Weisman with an aerial photograph of the properties overlaid with what Riepe claimed was the property line, and he suggested that the fence

encroached onto the Riepes' property, that some of Frederickson and Weisman's compost was on the Riepes' property, and that the dog kennel was against the property line. Weisman responded that he could not tell from the photograph whether the fence was on the overlaid line or not, but he agreed to move the compost.

In May 2007, Donald Riepe was trimming trees that he claimed were on the eastern edge of his land when Fredrickson told him that he was over the boundary line and that he was trimming her trees. A dispute ensued in which both parties claimed they were pushed and after which each called the sheriff.

Ultimately, in the summer of 2007, Fredrickson and Weisman hired a surveying company to mark the western line of their property. The surveyors marked the line with flags. The flags showed that the horse fence encroached slightly onto the Riepes' property.

In November 2007, the Riepes sent Frederickson and Weisman a letter stating that the horse fence was on their property and asking them to sign a statement acknowledging that they were using the Riepes' property for their fence. Frederickson and Weisman refused to sign and responded by a letter from their attorney claiming that they had acquired the disputed property either by the doctrine of adverse possession or by the doctrine of boundary by practical location.

On December 1, 2007, Donald Riepe cut the fence posts that were on what he claimed was his property, moved the fence about three feet onto Frederickson and Weisman's property, and reerected the fence using cinder blocks and stakes.

Frederickson later testified that Riepe's actions destroyed the integrity of the fence and that all of the fence posts needed to be replaced.

Twenty-six days later, Frederickson and Wiesman sued the Riepes to quiet title to the disputed land, for conversion and trespass damages arising from Donald Riepe's moving the fence, and treble damages, allowed under Minnesota Statutes sections 557.08 or 557.089 when a party is "put out" in a "forcible manner" or evicted from real property. The Riepes counterclaimed, seeking to quiet title in their favor and to recover damages for trespass. After a four-day trial at which the Riepes appeared pro se, the district court found for Frederickson and Weisman on all of their claims except the claim for treble damages and the claim for punitive damages for trespass, and denied all of the Riepes' counterclaims. The Riepes moved for amended findings, and the district court issued a materially similar amended order. The Reipes appeal.

D E C I S I O N

I. The district court did not err by finding that a boundary by practical location was established by express agreement.

The doctrine of boundary by practical location automatically transfers title between neighboring landowners when the landowner seeking title (the disseisor) can prove one of three circumstances: (1) that the party against whom a claim of title is made (the disseisee) acquiesced in a practical boundary for a statutory limitations period; (2) that the disseisee (or his predecessor in interest) expressly agreed to a boundary line, and all interested parties then acquiesced in that boundary for a "considerable time"; or (3) by estoppel, arising, for example, if the disseisee, with knowledge of the true

boundary line, silently looks on, letting the disseisor spend time and money that he would not have spent had he known the line was in dispute. *Theros v. Phillips*, 256 N.W.2d 852, 858 (Minn. 1977); *Beardsley v. Crane*, 52 Minn. 537, 545-46, 54 N.W. 740, 742 (1893). Under any of these circumstances, the disseisor must present clear and convincing evidence that establishes the practical boundary clearly, positively, and unequivocally. *Phillips v. Blowers*, 281 Minn. 267, 274, 161 N.W.2d 524, 529 (1968); *Slindee v. Fritch Investments, LLC*, 760 N.W.2d 903, 907 (Minn. App. 2009).

Here, the district court found that a practical boundary was established by express agreement, which required Frederickson and Weisman to prove that the agreement set an "exact, precise line" between the two parcels, and that the parties acquiesced in that line for a considerable time. *Beardsley*, 52 Minn. at 545, 54 N.W. at 742. The Riepes challenge the district court's finding of a practical boundary by express agreement on two grounds: (1) they argue that the practical boundary line is not exact, precise, and complete, and (2) they argue that there was no express agreement. The parties do not challenge the district court's finding that the line was acquiesced in for "at least 12 years" or that 12 years is a "considerable time." *See Nadeau v. Johnson*, 147 N.W. 241, 241, 125 Minn. 365, 366 (1914); *Beardsley*, 52 Minn. at 546, 54 N.W. at 742.

A. The district court did not clearly err by finding that the boundary line was exact, precise, and complete.

The Riepes challenge the district court's determination that the practical boundary line here is the fence and a line extending north from it. We review the district court's boundary determination for clear error. *Slindee*, 760 N.W.2d at 907. The Riepes argue

that the boundary line is not exact or precise because there is not "some type of marking of the line," and it is not straight, but "a composite of lines which run at four different angles." They also say it is not complete because the horse fence along which the line begins does not extend the full length of the boundary. The Riepes' arguments fail, both as a matter of fact and as a matter of law.

In fact, there is "some type of marking" delineating the line: there is a fence. The Riepes argue that the fence is one "end point," but there is no second end point. They rely on *Phillips*, in which the supreme court held that a claimed boundary line with an iron pipe on one end and that the other end was somewhere in "an 8-foot space" between trees was insufficient to prove a practical boundary. 281 Minn. at 271, 161 N.W.2d at 527. But this is not a case in which there is a fixed end point from which a boundary line might be drawn to end somewhere in a range of locations. Here, the fence is a line and to create a boundary by extending that line necessarily requires that the extension continue the angle of the fence. The Riepes' reliance on *Phillips* is therefore misplaced. Likewise, the argument of the alleged "incompleteness" of the district court's practical boundary also fails as a matter of fact. Evidence at trial showed that the line, though invisible, runs completely from the southern end of Frederickson and Weisman's farm to the northern end. Frederickson and Weisman used that line to plan where their dog kennel and barn would be located and to determine where to place trees on their property.

The Riepes' argument also fails as a matter of law. There is no requirement that a boundary line be perfectly straight. Minor variations caused by a slightly crooked fence are legally inconsequential. *Cf. Slindee*, 760 N.W.2d at 908 (holding that a mow line,

described as "meandering" and "curvy" did not appear to have been *intended* as a boundary line, but implying that the line, if so intended, could have been a practical boundary).

B. The district court's finding that there was an express agreement was not clearly erroneous.

The Riepes argue that there was no express agreement regarding the location of the boundary line but, at most, only an implied agreement. The district court found that the boundary was established in 1991 by an express agreement between Freels and Frederickson and Weisman, and that the agreement was that the proposed fence line, and therefore the subsequent fence, marked the boundary between the properties. It also found that the parties "further understood and intended" that the shared boundary ran directly north from the horse fence to the road at the end of the properties. We review the district court's factual finding of an express agreement for clear error. *Slindee*, 760 N.W.2d at 907.

The district court based its finding on Weisman's testimony that he and Frederickson built the fence only after Freels inspected their proposed fence line, and on Frederickson's testimony that, after she and Weisman drew the proposed fence line, they contacted Freels and she approved it. Frederickson described the exchange as follows:

> [W]e called [Freels] and asked her to come over, we all looked at the line, and she said, "well, I think it's a little bit too far over onto my side," so we kind of hedged it back over a little bit more, and then she said, "yeah, that looks pretty good to me," and we said "okay." We said, "we just wanted to make sure that you were okay with where we put the

> fence," and she said, "it looks fine to me," and that was pretty much the end of that.

This testimony, paraphrased by the district court, supports its express finding that Frederickson and Weisman presented "clear [and] convincing . . . evidence" that Freels expressly agreed that the proposed fence line was along the boundary between the properties. *See Nadeau*, 125 Minn. at 367, 147 N.W.2d at 241–242 (upholding the district court's factual finding of an express agreement based on the disseisor's testimony alleging the agreement).

The crux of the Riepes' argument is that the evidence supports an express agreement to the length of the proposed fence only and that any agreement regarding a boundary extending beyond the fence is, at most, implied. The Riepes rely on a definition of "express," as "[c]learly and unmistakably communicated." *Black's Law Dictionary* 661 (9th ed. 2009). But the district court did find that the express agreement encompassed a "further underst[anding]" that the boundary line extended to the north end of the properties. This finding is supported by the record. First, at the time of the agreement, all of the parties were operating under the shared—and correct—assumption that the true boundary line ran north-south. Second, the evidence shows that all parties intended for the fence to be placed directly along that boundary line. Third, Freels and Frederickson and Weisman expressly agreed that the fence was located along that boundary line. And fourth, a boundary line, in order to properly divide two properties, must run the length of the shared boundary. Freels's express agreement that the fence was along the boundary line necessarily communicated unmistakably an agreement that

the line established by the fence, extended to the road at the north end of the properties, is the boundary line between the properties.

The Riepes point to the district court's finding that "Ms. Freels informed Mr. Riepe that the record northeastern corner of his property was marked by the telephone pole." This, they argue, proves that she never expressly agreed to a line running north of the fence that, as it turns out, places the north end of the boundary about three and a half feet west of the telephone pole. Although the district court made this finding, whether Freels told Riepe about the telephone pole is immaterial because once a boundary has been established by practical location, the previously recorded boundary no longer controls. *See Slindee*, 760 N.W.2d at 907.

II. The district court's determination that the Riepes are liable for trespass and conversion is not error.

The Riepes challenge the district court's determination that they are liable for trespass and conversion, arguing only that the fence was on their land. Because we affirm the district court's finding of a practical boundary along which the fence was built, the Riepes' arguments regarding trespass and conversion necessarily fail.

III. The district court did not err by holding the Reipes liable for punitive damages for conversion of the horse fence.

We next address the Riepes' challenge to the district court's award of punitive damages for conversion of the horse fence. Punitive damages are permitted in civil actions "upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subd. 1(a) (2010). They "punish willful and malicious conduct that is intended to harass and

oppress another," and they are available in conversion-of-property cases in which the only damage is to property. *Jensen v. Walsh*, 623 N.W.2d 247, 249, 251 (Minn. 2001). The district court found that Frederickson and Weisman are entitled to $4,450 in punitive damages for the Riepes' conversion of their horse fence because the Riepes treated it "in such a manner as to show deliberate disregard for the rights of [Frederickson and Weisman]." Whether punitive damages are available is a question of law subject to de novo review. *Id.*

The Riepes argue only that the punitive-damages award for conversion is inconsistent with the district court's conclusion that Frederickson and Weisman were not entitled to punitive damages for trespass. With regard to the claim for punitive damages for trespass, the district court held that "Mr. Riepe . . . believed that he owned the [land on which the fence was located] and thus, he believed that he was acting pursuant to his own interests by simply moving [the fence] back onto the correct side of the boundary line." The Riepes reason that if Donald Riepe "believed" that he was acting within his rights by trespassing, he had to believe that he was acting within his rights by cutting the fence down and moving it and that he could therefore not have been deliberately disregarding the owners' rights. But Donald Riepe's belief that the fence was on his land does not mean that the manner in which he moved the fence was not conduct that was "intended to harass and oppress another," deliberately disregarding Frederickson and Weisman's rights. *See* Minn. Stat. § 549.20, subd. 1; *Jensen*, 623 N.W.2d at 249. So the punitive-damages award need not be reversed merely because Donald Riepe believed the fence was on his land when he cut it down.

The Riepes also argue that Frederickson and Weisman are not entitled to prejudgment interest on the $1,725 cost of repairing the fence from the date that Donald Riepe cut it down because they could not have known at that time the cost of replacing the fence. The district court's conclusions of law, filed May 19, 2010, referred to prejudgment interest, but no award of interest was included in the related order for judgment, the resulting judgment entered on May 20, or the final judgment from which this appeal is taken. Respondents did not file a notice of related appeal or otherwise make a timely challenge to the omission of prejudgment interest. Because no award of prejudgment interest was included in the judgment, appellants are not aggrieved, and we do not address this issue.

Affirmed.