STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION Docket No, 21-CV-181
TRICIA TETREAULT, Plaintiff, v. DANIEL VAILLANCOURT, ALANA NORWAY, and DIANA HARRINGTON, Defendants	

RULING ON DEFENDANTS VAILLANCOURT'S AND NORWAY'S JOINT MOTION FOR SUMMARY JUDGMENT

This is a boundary dispute between adjoining landowners. Presently before the Court is a motion for summary judgment filed by Defendants Daniel Vaillancourt and Alana Norway, who reside at 163 Martin Meadow Road in Plainfield, Vermont. At issue is the location of their common boundary with their next-door-neighbor, Plaintiff Tricia Tetreault, who resides at 179 Martin Meadow Road.

The amount of land in dispute is very small. The original location of the boundary line is not disputed by the parties; it was established years ago by survey and deed. Vaillancourt and Norway claim that the original line was adjusted slightly by the parties, or their predecessors, when they mutually agreed to plant a row of lilacs between their properties, and that their common boundary now is defined by the row of lilacs rather than by the original survey line. The difference between the two lines is about one foot. Vaillancourt and Norway base their claim on the doctrine of acquiescence. Tetreault denies their claim and opposes their motion.[1]

The material facts are not in dispute. Vaillancourt and Norway trace their title to 163 Martin Meadow Road to May 22, 1998, when a couple named Smith conveyed the property to Alana Norway and her then husband, Jeffrey Norway (Defendants' Statement of Undisputed Material Facts, ¶¶ 4, 9). Their next-door-

[1] Defendant Dianna Harrington sold the lot at 179 Martin Meadow Road to Tetreault in 2018. She also opposes the Vaillancourt-Norway motion for summary judgment.

neighbors at the time were Lance and Diana Harrington, who then owned 179 Martin Meadow Road (Id., ¶ 8). In 1999, Lance Harrington approached the Norways about erecting a fence on the parties' common boundary line (Id., ¶ 10). After discussion, the parties discarded that idea and decided instead to plant a row of lilacs on a portion of their common boundary line and to split the costs of buying, planting and maintaining the lilacs (Id., ¶¶ 11-14).

The lilacs were planted in 1999, and the cost of buying and planting them was split equally between the two couples (Id., ¶ 14). The row of lilacs did not extend the full 230' length of the parties' common boundary line; they extended only a distance of perhaps 30 or 40 feet as a screen between the two houses (compare Exhibits C and D). At the time they planted the lilacs, the Harringtons and the Norways each believed that the lilacs were planted on, and represented the location of, their common boundary line in that area where the trees were located, although neither couple apparently hired a surveyor to confirm that belief (Statement of Undisputed Facts, ¶ 15).

The Harringtons and the Norways continued to treat the lilacs as their common boundary and to share in the maintenance of the lilacs over the years (Id., ¶ 17). In addition, the Harringtons maintained the lawn on their side of the row of lilacs, and the Norways maintained the lawn on their side of the row of lilacs, from 1999 until 2018, when Tetreault succeeded the Harringtons as the owner of 179 Martin Meadow Road.

The lilacs remain today where they were planted in 1999, although they have grown considerably since then (Id., ¶ 16). The lilacs are plainly visible from both properties and from both houses. They would have been clearly visible to Tetreault in 2018, when she purchased 179 Martin Meadow Road from Diana Harrington.

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). The material facts are undisputed. The question is whether they establish acquiescence as a matter of law. The Court concludes that they do not.

"A boundary is established by acquiescence when there is 'mutual recognition of a given line by the adjoining owners, and such actual continuous possession by one or both to the line' for the statutory period required to establish ownership by adverse possession." Lakeview Farm, Inc. v. Enman, 166 Vt. 158, 162 (1997) (citation omitted). "Both mutual recognition and knowledge of the boundary are required.) (Id., citing Heath v. Dudley, 148 Vt. 145, 148 (1987) ("Mutual recognition is necessary to establish a line by acquiescence, as well as knowledge of the boundaries. A party must know of facts enabling the party to take action if he chooses to.... To be effective, 'the concurrence of the party against whom the

recognized line operates must be clear and definite.'" (citation omitted)). Lastly, "[o]nce a boundary is established by acquiescence, the line is conclusive upon successors in title." Lakeview Farm, Inc., 166 Vt. at 162.

There are several problems with the Defendants' acquiescence claim. First, the Harringtons and the Norways could not have recognized the line of lilacs as constituting their mutual boundary line, either in 1999 when they installed the lilacs, or at any time thereafter. This is because the parties' mutual boundary line extends for 230', whereas the row of lilacs probably extends no more than 40' in length. Thus, the "mutual recognition" element of the doctrine of acquiescence is absent. Lakeview Farm, Inc.

Secondly, although the parties may have believed that they had planted the row of lilacs on their boundary line, they did not take any steps to confirm that they had in fact done so. In reality, they had planted the row of lilacs about one foot closer to the Harringtons' house than it should have been, but neither party knew that until this dispute arose many years later. Thus, the "knowledge of the boundaries" element of acquiescence is also absent. There is simply no evidence to support a conclusion that the Harringtons ever knew that the trees were not on the actual boundary line, or that they ever acquiesced in the trees becoming the boundary line if they were not on the actual line. Heath v. Dudley.

Lastly, acquiescence is a form of adverse possession, and adverse possession requires claimants to have "planted their flag on the land and left it unfurled ... [and] never retreat[ed] in their claim." N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 444 (1999). This mutually-agreed upon plan to plant a row of lilacs between the parties' houses can hardly be viewed as an unambiguous assertion by either party of the creation of a new boundary line.

II. Conclusion and Order

For the foregoing reasons, Daniel Vaillancourt's and Alana Norway's' motion for summary judgment must be and is DENIED.

SO ORDERED this 22nd day of November, 2021.

Robert A. Mello
Superior Judge