

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-150

SEPTEMBER TERM, 2002

Susan Reynolds v. Geoffrey R. MacDonald	} APPEALED FROM: } Chittenden Superior Court } } DOCKET NO. S0522-99 CnC } Trial Judge: Mary Miles Teachout } }
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In the above-entitled cause, the Clerk will enter:

In this boundary dispute, defendant Geoffrey R. MacDonald appeals the Chittenden Superior Court's declaratory judgment in favor of plaintiff Susan Reynolds. MacDonald seeks reversal claiming the court failed to consider his claim of acquiescence, and erred by relying on a survey Reynolds commissioned, which MacDonald asserts was rife with mistakes. We affirm.

Viewing the findings in the light most favorable to Reynolds, the prevailing party below, *Harlow v. Miller*, 147 Vt. 480, 481 (1986), the trial court found the following relevant facts. The parties own adjacent properties in Bolton, Vermont. Once a single parcel, the parties' land was divided in 1953. The disputed line is Reynolds' s southern boundary and MacDonald' s northern boundary. After MacDonald claimed the common boundary was further to the north than Reynolds believed it to be, she obtained two surveys, both of which were entered into evidence. The survey done by Larry Young located the common boundary through references to deeds in the parties' chains of title and by monuments on the ground. The boundary he located lines up nearly perfectly with the northern side of a three-sided berm on MacDonald' s property. The court found Young' s opinion as to the boundary' s location to be credible and reliable.

In contrast, the court found a survey MacDonald had prepared by William Robenstein to be incredible and unreliable. MacDonald' s surveyor concluded that he could not rely on the prior deeds or physical monumentation on the ground to prepare his survey. Instead, he based the survey on a conversation he had with Reynolds and Janet Peterson, a former owner of the Reynolds parcel. During their conversation, Peterson showed Robenstein where she thought the boundary was situated. Reynolds neither agreed nor disagreed with Peterson' s belief. Although Peterson pointed to different features on the land and described their history, she could not locate the boundary line directly on the ground. Robenstein prepared his survey believing that Peterson and Reynolds agreed on the disputed boundary's location. The court, however, found that no such agreement existed and concluded that the boundary was in the location advanced by Reynolds. MacDonald appeals that conclusion.

MacDonald' s principal claim on appeal is that the trial court did not address his acquiescence claim, which he raised in his counterclaim and proposed findings, by failing to analyze the elements of the legal doctrine or to even mention the

theory in its order. The court's omission, MacDonald argues, is reversible error. We do not agree. The trial court's findings reflect that it considered MacDonald's claim and rejected it. Moreover, neither the court's findings nor the evidence supports the conclusion MacDonald urges. To establish a boundary by acquiescence, MacDonald had to prove that there was mutual recognition of the boundary by the adjoining owners and actual continuous possession by one or both to the line for fifteen years. Lakeview Farm, Inc. v. Enman, 166 Vt. 158, 162 (1997)(citations omitted). " Both mutual recognition and knowledge of the boundary are required." Id. The court found that no agreement existed between Reynolds and Peterson regarding the location of the disputed boundary. The court also found that Peterson could not locate the boundary on the ground. Those findings demonstrate that the court determined that no mutual recognition of the boundary's location by the adjoining owners existed to support MacDonald's claim of acquiescence.

Similarly, the evidence was scant on the issue of mutual recognition and knowledge of the boundary's location by the adjoining landowners. As MacDonald points out in his brief, the only witness to testify as to the historical location of the boundary was Peterson. Peterson testified about her understanding of where the boundary is situated. MacDonald does not point to any evidence showing that Peterson's belief as to the location of the common boundary was shared and recognized by the adjoining landowner for the requisite period. Cf. id. (evidence was sufficient to find acquiescence where evidence included testimony of landowner indicating that both adjoining property owners accepted location of common boundary line for at least two generations, no dispute ever arose with adjoining owner about the location of that line, and line was later confirmed by successors in title).

MacDonald's other claim of error relates to the trial court's reliance on the Young survey. He argues that we should reverse the court's decision because the Young survey was full of mistakes. MacDonald provides us with a long list of claimed errors Young made in preparing his survey, but provides no legal authority supporting his contention that the court's reliance on Young's survey is reversible error. It is the trial court's sole responsibility as trier of fact to determine the credibility of witnesses, the persuasive effect of testimony, and the weight to accord the evidence. See Armstrong v. Hanover Ins. Co., 130 Vt. 182, 185 (1972). We will uphold the court's determination if credible evidence supports it even if inconsistencies or substantial evidence to the contrary exist. LaFlamme v. Church, 143 Vt. 219, 220 (1983). In this case, we find no basis to reverse the court's determination because of alleged mistakes in the Young survey, particularly where the court explicitly found MacDonald's primary evidence unreliable and lacked credibility.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice