

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-000830-MR

ERSEL ANDERSON AND  
DONETTA ANDERSON

APPELLANTS

v.

APPEAL FROM BOONE CIRCUIT COURT  
HONORABLE JAMES R. SCHRAND, JUDGE  
ACTION NO. 16-CI-00650

MELVIN BRUMLEY AND  
BONNIE BRUMLEY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

ACREE, JUDGE: Appellants, Ersel and Donetta Anderson, appeal from the Boone Circuit Court's judgment in a boundary line dispute in favor of Appellees, Melvin and Bonnie Brumley. After careful review, we affirm.

## **FACTS AND PROCEDURAL HISTORY**

This action resolves a boundary dispute between the parties. The Brumleys purchased their property in 1969 when a chain link fence ran across the easternmost side of the property.<sup>1</sup> In 1995, the Andersons purchased the land on the other side of the fence. For over twenty years, there was no dispute over the boundary of their properties. Sometime between 2000 and 2004, Mrs. Brumley stated to Mrs. Anderson that she assumed the fence was on the Andersons' property. However, the Andersons took no action to remedy the problem.

This dispute did not arise until the Brumleys placed timbers on their side of the fence, blocking the flow of water and allegedly causing the Andersons' basement to leak. In 2016, the Brumleys filed a complaint to quiet their title. The Boone Circuit Court held a bench trial and considered the parties' testimony and that of a licensed surveyor. The surveyor concluded a narrow strip of the Andersons' land extended beyond the fence approximately one foot at the north end of the property and widening to about two and a half feet at the south end.

The circuit court found both parties had continuously maintained the land on each of their respective sides of the fence and up to it regardless of actual ownership. Additionally, the parties recognized the fence as the boundary line

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<sup>1</sup> After the commencement of this action, the Andersons removed the fence in violation of a court order. The circuit court's order resolving the dispute required them to replace the fence.

since purchasing their respective parcels. The circuit court concluded the parties “acquiesced that the fence, and since it has been removed, the line the fence previously occupied, is the boundary line between the two parcels.” The Andersons appeal.

### **STANDARD OF REVIEW**

Because this is an appeal from a bench trial, our standard of review is governed by Kentucky Rule of Civil Procedure (CR) 52.01. Under CR 52.01, the trial court makes specific findings of fact and separately states its conclusions of law. Further, “[f]indings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” CR 52.01.

“If the trial judge’s findings of fact in the underlying action are not clearly erroneous, *i.e.*, are supported by substantial evidence, then the appellate court’s role is confined to determining whether those facts support the trial judge’s legal conclusion.” *Barber v. Bradley*, 505 S.W.3d 749, 754 (Ky. 2016) (quoting *Commonwealth v. Deloney*, 20 S.W.3d 471, 473-74 (Ky. 2000)). “However, while deferential to the lower court’s factual findings, appellate review of legal determinations and conclusions from a bench trial is *de novo*.” *Id.* (citation omitted).

## ANALYSIS

The circuit court relied on the principles articulated in *Combs v. Combs*, where our highest court said it was “well settled that where parties for fifteen years or more have recognized a certain line as the true, common boundary of their property, the record line becomes unimportant, and the courts will recognize that as the true location.” 240 S.W.2d 558, 559 (Ky. 1951) (citing *Lewallen v. Mays*, 265 Ky. 1, 95 S.W.2d 1125 (1936)). This Court has since repeated this standard:

It is well established that if adjoining landowners occupy their respective premises up to a certain line which they mutually recognize and acquiesce in for a long period of time—usually the time prescribed by the statute of limitations—they are precluded from claiming that the boundary line thus recognized and acquiesced in is not the true one. In other words, such recognition of, and acquiescence in, a line as the true boundary line, if continued for a sufficient length of time, will afford a conclusive presumption that the line thus acquiesced in is the true boundary line.

*Elsea v. Day*, 448 S.W.3d 259, 265 (Ky. App. 2014) (quoting *Liberty Nat’l Bank & Trust Co. v. Merchant’s & Mfr.’s Paint Co.*, 307 Ky. 184, 191, 209 S.W.2d 828, 832 (1948)). An action for recovery of real property must be brought within fifteen years. Kentucky Revised Statute (KRS) 413.010.

The Andersons assert the circuit court erred in finding the parties recognized and acquiesced that the fence was the true boundary line for fifteen

years. They claim the conversation between Mrs. Brumley and Mrs. Anderson shows this could not be so. We disagree.

The fence had been in existence since before the Brumleys purchased their property in 1969. Presumably, the prior owners of the property recognized it as the boundary line, as there is no evidence to the contrary. Nevertheless, and more importantly, the fence had been in plain sight of the Andersons since they purchased their property in 1995. They consistently maintained the property to the east of the fence, while the Brumleys maintained the property to the west. Not once did they attempt to maintain the strip of land that allegedly belonged to them.

Mrs. Brumley's comment that she "assumed" the fence was erected on the Andersons' side of the property was not conclusive of the fact. Nor was it a concession. Upon learning of the possible error, the Andersons took no action to remedy the problem for more than a decade. To the contrary, they did not attempt to move the fence and, for years after learning of the potential boundary issue, they continued to maintain only the property on their side of the fence. We find there is substantial evidence to support the circuit court's finding that the Brumleys and the Andersons recognized and acquiesced that the fence was the true boundary line between them for at least fifteen years before filing suit over the boundary.

The Andersons argue the circuit court erred when it concluded the Brumleys adversely possessed the disputed strip of land. They assert the Brumleys

did not plead the elements of adverse possession nor did they prove them at trial. This argument is without merit. The circuit court did not rely on the traditional elements of adverse possession. Instead, it relied on the similar, but distinct, legal theory commonly referred to as “boundary by inaction” or “boundary by acquiescence” as described in *Combs, Elsea, and Liberty National Bank, supra*. See *Barnett v. Cates*, No. 2011-CA-002087-MR, 2013 WL 1003449, at \*2 (Ky. App. Mar. 15, 2013); *Hargrove v. Hall*, No. 2002-CA-002027-MR, 2005 WL 3441358, at \*4 (Ky. App. Dec. 16, 2005).

### **CONCLUSION**

The Boone Circuit Court’s order resolving the boundary line dispute between the Brumleys and Andersons is affirmed.

CLAYTON, CHIEF JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEES:

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