NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-1059

	Opinion Delivered April 22, 2009
DOROTHY PUTMAN AND KERVIN PUTMAN APPELLANTS	APPEAL FROM THE POLK COUNTY CIRCUIT COURT [NO. CV-2007-74]
V.	
	HONORABLE J.W. LOONEY, JUDGE
CHUCK G. COX AND PAULA R. COX APPELLEES	AFFIRMED

JOHN MAUZY PITTMAN, Judge

This boundary-line dispute arose between the parties, adjoining landowners, when appellants obtained a new land survey and built a new fence on the boundary line shown by that survey. Appellees filed a complaint alleging that the old fence had been the true boundary line and praying that the trial court quiet title, enjoin further trespass, and award damages for their losses resulting from appellants' trespass. After a trial, the circuit judge found that the former fence line was a boundary by acquiescence, quieting title in appellees and ordering appellants to remove the new fence. Appellants now argue that the trial judge erred in finding that the former fence line was a boundary by acquiescence. We affirm.

An action to quiet title sounds in equity. *Walker v. Peay*, 22 Ark. 103 (1860); *see generally* PAUL JONES, JR., ARKANSAS TITLES § 1322 (1935). We review matters that sound in equity *de novo* on the record with respect to questions of both law and fact, but we will not

reverse a trial court's fact findings in such a case unless they are clearly erroneous. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003). A finding of fact by a trial court sitting in an equity case is clearly erroneous when, despite supporting evidence in the record, the appellate court viewing all of the evidence is left with a definite and firm conviction that a mistake has been committed. *Id.*

The crux of appellants' argument is that there was insufficient evidence to show mutual recognition of the boundary by acquiescence. Appellants assert that there is no evidence that either they or their predecessors-in-title recognized the fence as a boundary and that the old fence was intended to confine livestock rather than to establish a boundary line. We do not agree.

It is true that neither the mere existence of a fence nor one party's subjective belief that a fence is the boundary line will sustain a finding of acquiescence. *Boyster v. Shoemake*, 101 Ark. 148, 272 S.W.3d 139 (2008). However, express recognition or agreement between the parties is not necessary: tacit acceptance will suffice, and silent acquiescence is sufficient where mutual recognition of the boundary line can be inferred from the conduct of the parties over a period of years. *Id.*

Here, appellee Chuck Cox testified that he had lived at or near the property for twenty-five years, had been responsible for maintenance of the fence, and that there had been no changes to the fence line during that time. Appellee Paula Cox testified that she had lived on the property since childhood and that there had never been any question about the fence being the boundary line. Finally, Billy Duff attested that he was appellants' predecessor-in-

title; that he occupied the property for a period of thirty years; that the fence had been in existence during that period; that he had recognized the fence as the boundary line between the properties for that entire time; and that appellees and their predecessor-in-title has been in actual, open, and exclusive possession of the disputed area for the past thirty years. Although there was some contrary evidence, on this record we cannot say that the circuit judge clearly erred in finding a boundary by acquiescence.

Finally, appellants maintain that the evidence demonstrates that the fence originally was erected to contain cattle rather than to establish a boundary line. However, it is of no consequence that the fence line may not have been originally erected to serve as a boundary line; instead, where acquiescence is at issue, it is the conduct of the parties that is important. *Boyette v. Vogelpohl*, 92 Ark. App. 436, 214 S.W.3d 874 (2005).

Affirmed.

GLADWIN and HENRY, JJ., agree.