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**ARKANSAS COURT OF APPEALS**  
DIVISION II  
No. CV-22-557

HURLAN MUNCY AND YVONNE  
MUNCY

APPELLANTS

V.

NELLA LAWSON

APPELLEE

Opinion Delivered March 13, 2024

APPEAL FROM THE POPE COUNTY  
CIRCUIT COURT  
[NO. 58CV-21-487]

HONORABLE KEN D. COKER, JR.,  
JUDGE

AFFIRMED

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**ROBERT J. GLADWIN, Judge**

This is an appeal from an order of the Pope County Circuit Court granting summary judgment to appellee Nella Lawson (“Lawson”) and dismissing with prejudice the petition filed by appellants, Yvonne and Hurlan Muncy (the “Muncys” or collectively referenced herein as “the appellants”). Appellants maintain on appeal that the circuit court erred by granting summary judgment because there are material facts regarding the existence of a boundary by acquiescence and that the court committed error by ruling that they failed to plead facts to support relief based on the theory of adverse possession. We affirm.

*I. Background Facts*

On December 31, 1980, the Muncys purchased property located in Pope County, Arkansas, from Vida and Stanford Trigg. To date, the Muncys are record owners of this property. On May 14, 2019, Lawson purchased adjacent property to the north of the

Muncys' property. Accordingly, the Muncys and Lawson share a common boundary along the north border of the Muncys' property. At issue is the ownership of a 0.4-acre strip of land that lies between an old tree-line fence and Lawson's surveyed property line. It is undisputed that the tree-line fence was in existence before either party took ownership of either tract of land and that the fence has been used by the Muncys for containing livestock since 1980.

After Lawson purchased her property, she hired a surveyor to perform a survey of the property. The survey indicated that the fence that separates the tracts is located to the north of Lawson's surveyed boundary line. In 2021, Lawson hired a crew to cut down the fence and erected a new fence on the surveyed property line. As a result, the Muncys filed a petition for ejectment, injunction, and to quiet title on December 1, 2021. Lawson was served with the petition on December 10. The circuit court held a preliminary hearing on the petition on January 7, 2022. Afterward, the court entered an order directing the parties to maintain the status quo on the property until the case could be decided on its merits.

On March 30, 2022, the Muncys filed a motion for finding of default and to strike answer seeking to strike Lawson's belated answer and to grant the relief requested in their petition. On the same day, Lawson moved for summary judgment, arguing that no genuine issues of material fact exist with respect to her ownership of the 0.4-acre strip of land. Lawson's motion was supported by the sworn testimony of Mary and Bobby Standridge—long-time prior owners of Lawson's property—who attest that the tree-line fence was merely a convenience fence for containing livestock between the property on the north and the

property on the south. Thus, the Standridges' testimony was that the fence was mutually created by prior property owners and was never meant—nor recognized—as a boundary line. Furthermore, the Standridges attested to conversations they had with the Muncys wherein they reminded the appellants that the fence was not the boundary between the properties.

The Muncys filed their response to the summary-judgment motion on May 2, 2022. To support their response, the Muncys relied on excerpts from their testimony at the temporary hearing. Hurlan testified they had owned the property since 1980; he had allowed his cattle to graze up to the fence since they purchased the property; he had paid taxes and maintained the property up to the tree-line fence; and no one had tried to “take on” his side of the fence since owning the property. Hurlan also relied on comments he alleged were made to him by the person from whom they purchased their property that the fence is the boundary line. The Muncys also relied on Yvonne's deposition testimony wherein she relayed a conversation she had with Mary Standridge in which Mary expressed her intent to request relocation of a county road in a manner that would affect the fence line. Yvonne further recalled telling Mary that she and Hurlan would not agree to relocation of the county road.

The circuit court held a hearing on the Muncys' motion to strike Lawson's answer and Lawson's motion for summary judgment. The court held that no genuine issue of material fact existed as to boundary by acquiescence or by agreement. Regarding adverse possession, the court held as follows:

[The Muncys'] counsel has claimed in his brief and argument that they have pled facts entitling them to relief based on the theory of adverse possession. However, the Court finds that the [Muncys] have not pled facts in their petition necessary to establish a claim based on adverse possession and does not rule on that issue.

On May 27, 2022, the court entered an order granting Lawson's motion for summary judgment and dismissed the case with prejudice. The Muncys filed their timely notice of appeal wherein they abandoned any pending but unresolved claims pursuant to Arkansas Rule of Appellate Procedure–Civil 3(e)(vi) (2023). This appeal followed.

## II. *Standard of Review*

Summary judgment should be granted only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Riverdale Dev. Co., LLC v. Ruffin Bldg. Sys., Inc.*, 356 Ark. 90, 146 S.W.3d 852 (2004); *Craighead Elec. Coop. Corp. v. Craighead Cnty.*, 352 Ark. 76, 98 S.W.3d 414 (2003); *Cole v. Laws*, 349 Ark. 177, 76 S.W.3d 878 (2002). The burden of sustaining a motion for summary judgment is the responsibility of the moving party. *Pugh v. Griggs*, 327 Ark. 577, 940 S.W.2d 445 (1997). Once the moving party has established a prima facie entitlement to summary judgment, the nonmoving party must meet proof with proof and demonstrate the existence of a material issue of fact. *Id.*

On appellate review, we determine if summary judgment was appropriate by deciding whether the evidence presented by the moving party in support of its motion leaves a material fact unanswered. *George v. Jefferson Hosp. Ass'n, Inc.*, 337 Ark. 206, 987 S.W.2d 710 (1999). We view the evidence in the light most favorable to the nonmoving party, resolving all doubts

and inferences against the moving party. *Adams v. Arthur*, 333 Ark. 53, 969 S.W.2d 598 (1998).

### III. *Points on Appeal*

The Muncys argue the following points on appeal: (1) the circuit court erred in granting Lawson’s motion for summary judgment, finding there were no genuine issues as to any material fact regarding the establishment of a boundary by acquiescence; (2) the circuit court erred in ruling their petition failed to plead facts that would support relief based on the theory of adverse possession; and (3) the circuit court erred by dismissing with prejudice their petition for relief.

### IV. *Discussion*

#### A. *Boundary by Acquiescence*

First, the Muncys contend the circuit court erred in holding that there were no genuine issues of material fact regarding the establishment of a boundary by acquiescence.<sup>1</sup> Specifically, appellants argue that the actions of property owners—here, no action was taken to stop their use of, or put them on notice that they did not acquiesce to, the old fence line being a boundary—amounts to tacit acceptance of the fence as a boundary line between the parties, thus constituting boundary by acquiescence. We disagree.

When adjoining landowners tacitly accept a fence line or other monument as the visible evidence of their dividing line and thus apparently consent to that line, it becomes

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<sup>1</sup>Below, the appellants argued ownership of the land in question through boundary by agreement; however, the Muncys abandoned that argument on appeal.

the boundary by acquiescence. *Myers v. Yingling*, 372 Ark. 523, 279 S.W.3d 83 (2008). Boundaries are frequently found to exist at locations other than those shown by an accurate survey of the premises in question and may be affected by the concepts of acquiescence and adverse possession. *Charles R. Griffith Farms, Inc. v. Grauman*, 2009 Ark. App. 515, 333 S.W.3d 430. A boundary line by acquiescence is inferred from the landowners' conduct over many years so as to imply the existence of an agreement about the location of the boundary line, and in such circumstances, the adjoining landowners and their grantees are precluded from claiming that the boundary so recognized and acquiesced in is not the true one, although it may not be. *Mullins v. Helgren*, 2022 Ark. App. 3, 638 S.W.3d 864. Moreover, a boundary line by acquiescence may exist without the necessity of a prior dispute. *Id.*

Boundary by acquiescence requires three key elements: (1) a tacit agreement between the parties, (2) recognition of the boundary for a long period of time, and (3) a fixed line that is definite and certain. *Id.* (citing *Follett v. Fitzsimmons*, 103 Ark. App. 82, 286 S.W.3d 742 (2008)). Whether a boundary line by acquiescence exists is to be determined by the evidence in each individual case. *Boyette v. Vogelpohl*, 92 Ark. App. 436, 214 S.W.3d 874 (2005).

The Muncys argue they have possessed and used the land up to the fence line since they purchased their property in 1980. Further, they contend that they used the property “openly, adversely, and contrary to all other interest” for a period of time in excess of forty-one years. However, this court has noted that the mere existence of a fence, without evidence

of mutual recognition, cannot sustain a finding of such a boundary. *Strother v. Mitchell*, 2011 Ark. App. 224, 382 S.W.3d 741. Also, the fact that a landowner puts a fence inside his boundary line does not mean that he is acquiescing in the fence as the boundary, thereby losing title to the strip on the other side. *Id.*

Moreover, it is well established that it is the agreement and acquiescence, not the fence itself, that controls. *See Camp v. Liberatore*, 1 Ark. App. 300, 615 S.W.2d 401 (1981). The intention of the parties and the significance they attach to the fence are to be considered rather than its location and condition. *Id.* Neither a prior dispute about the boundary line nor adverse usage up to a fence is required to establish a boundary by acquiescence. *Strother, supra.*

Here, the court held there are no genuine issues as to any material fact regarding the issue of boundary by acquiescence; thus, Lawson was entitled to judgment as a matter of law. Accordingly, we must look to the evidence set forth by Lawson in her summary-judgment motion to determine if she set forth a prima facie entitlement to judgment as a matter of law and, if so, whether the Muncys met proof with proof by showing that a material issue of fact exists.

In support of her motion, Lawson presented the sworn affidavits of Mary Standridge and Bobby Standridge. Mary attested that in approximately 1965, Mable and Fred Ring purchased a tract of property that included the acreage in question. In October 1972, Mary and Bobby acquired their own interest in a portion of the family's homestead that included the 0.4-acre tract at issue. Mary stated that after the Muncys bought the adjacent property

in 1980, she and Bobby “attempted to make it clear to the Muncys any time the issue of the tree line came up that the tree line was not the property line and that [she] and [her] husband owned all the way up to the legal boundary line.” Furthermore, Mary attested that at no point during her family’s ownership of the property—which predates the Muncys by almost twenty years—did she or anyone from her family treat or consider the tree-line fence to represent the boundary of the property. Rather, Mary contends that the “assortment of fencing nailed or erected along and inside that tree line had always been known to be and treated by my family and I since the 1960s as simply a method for livestock control between all the neighbors in the area.” Finally, Mary recounted a conversation she had with Yvonne Muncy wherein Mary suggested that, rather than make repairs to the fence, they rebuild it “from scratch” and do so on the actual property line. Mary remembered Yvonne becoming confrontational during the conversation.

Bobby Standridge’s affidavit recalled an encounter with Hurlan Muncy in the late 1990s or early 2000s wherein Bobby saw Hurlan cutting limbs off some trees along the fence, and Bobby alleged that he approached Hurlan and reminded him that the tree-line fence was not on his property. Bobby attests that Hurlan did not dispute this declaration.

The Standridges owned the property north of the Muncys until 2016, when they sold it to Lawson’s predecessor. Accordingly, Lawson set forth prima facie sworn testimony that the prior owners of her property—dating back to the 1960s—never recognized the tree-line fence to be a boundary between the adjoining properties. On the contrary, the testimony of

the Standridges sets forth that there was no implied agreement between the property owners and that the Muncys were apprised of this on several occasions.

Next, we must determine whether the Muncys successfully rebutted Lawson's evidence of intent with proof that established a disputed material fact. The Muncys cite excerpts from their testimony at the temporary hearing to rebut Lawson's prima facie evidence. Hurlan testified that he had cattle on his property since 1980; he maintained the property up to the fence line since the 1980s; and he used the property up to the fence line since 1980. When asked whether his predecessor in title—Stanford Trigg—ever made any representation to him regarding the location of the boundary line, Hurlan stated that Trigg told him that he and Fred Ringer—who owned the property to the north at that time—built the fence together and agreed that the fence represented the boundary line. In the order granting summary judgment, the circuit court noted that the previous testimony at the temporary hearing as to the conversation between Trigg and Ringer was not considered in its ruling because it was inadmissible hearsay. When asked whether he could identify other interactions with any of the adjacent property owners that would indicate that they considered the fence to be a boundary, Hurlan testified, "I haven't had any." Specifically, the exchange proceeded as follows:

ATTORNEY: Okay. Did you ever indicate to the Standridge Family over the intervening 40 or 50 years that you considered the property on - on - on the north side of that tree line to be yours?

HURLAN: I - I thought - have always considered the fence as the property line since that's what I was told when I bought it.

ATTORNEY: And I – and I know – we’ve established that you have always considered it that way.

HURLAN: Yes.

ATTORNEY: But when we’re talking about the adjacent property owner, has anybody ever done or said anything to you to indicate they believed it was the property line?

HURLAN: Not to me, no.

Additionally, Yvonne testified about a phone call she received from Mary Standridge regarding the possibility of having a county judge move the old county road below the tree-line fence. Yvonne testified that she called Mary back and told her that “[w]e don’t intend to give our land away. We bought everything within the fence, and we intend to keep it.” When asked whether Mary indicated who she thought owned the property in question, Yvonne responded that “she indicated she did.”

Our case law provides that there must be “mutual recognition” of a fence as the dividing line or boundary to establish boundary by acquiescence. *Carney v. Barnes*, 235 Ark. 887, 363 S.W.2d 417 (1962). We do not have that here. The Muncys provided no admissible testimony that Lawson or any of her predecessors in title ever intended to claim anything except the surveyed boundary line that includes the tree-line fence and the 0.4-acre strip below the fence. The evidence merely establishes that the Muncys considered the fence to represent the boundary, but the intent of the Muncys alone cannot establish a boundary by acquiescence. As argued by Lawson, rather than rebutting her prima facie showing of entitlement to summary judgment, Yvonne’s testimony further supports the motion by

representing that the long-standing prior owner of Lawson's property—Mary Standridge—expressed to Yvonne that she and her husband owned the acreage in question.

Because the Muncys set forth no admissible evidence that created a material fact in question regarding mutual recognition of the fence as a boundary, we affirm the circuit court's order granting summary judgment to Lawson.

### B. Abandoned Claims

As discussed above, the Muncys abandoned their argument on appeal for boundary by agreement as well as their argument that Lawson defaulted by filing an untimely answer to the complaint. The Muncys do not dispute that these claims were abandoned. They do, however, maintain that their claim for adverse possession was properly pled and that the circuit court therefore erred in holding otherwise and dismissing their complaint with prejudice. In response, Lawson contends that because the circuit court did not rule on the issue of adverse possession, the Muncys abandoned the claim in their notice of appeal.

Pursuant to Rule 3(e)(vi) of the Arkansas Rules of Appellate Procedure—Civil, if a party states that it is abandoning any pending but unresolved claims in the notice of appeal, this abandonment “shall operate as a dismissal with prejudice effective on the date that the otherwise final order of judgment appealed from was entered.” Accordingly, because the Muncys abandoned all pending but unresolved claims pursuant to Arkansas Rule of Appellate Procedure—Civil 3(e)(vi), we affirm without addressing the merits of their adverse-possession argument.

### V. Conclusion

For the above-referenced reasons, we affirm the circuit court's order granting summary judgment in favor of Lawson.

Affirmed.

GRUBER and BARRETT, JJ., agree.

*Michael S. Robbins*, for appellants.

*Streett Law Firm, P.A.*, by: *James A. Streett*; and *Brian G. Brooks, Attorney at Law, PLLC*,  
by: *Brian G. Brooks*, for appellee.