M I C H I G A N
REAL PROPERTY REVIEW

Published by the Real Property Law Section State Bar of Michigan

Spring 2008 Vol. 35, No. 1

CONTENTS

ADVERSE POSSESSION – THE CASE AGAINST A LEGISLATIVE FIX

*by Gail A. Anderson and Michael F. Matheson**

Every few years, a bill is introduced in the Legislature calling for the abolition or severe limitation of the doctrine of adverse possession.[1] These proposals in large part stem from the popular perception that the doctrine is used primarily to assist property owners in acquiring their neighbor's property through stealth. Proponents of such legislation fail to recognize that the doctrine is often a useful tool in resolving legitimate property boundary issues. Proponents of this legislation also ignore or are unaware of the doctrine of acquiescence, a related doctrine that is widely used to settle boundary disputes. As background for this article, we have examined the 100 or so adverse possession and acquiescence cases that have made it to the Michigan Court of Appeals over the last few years. Our examination has revealed, first, that the Court of Appeals rarely disturbs the findings of the trial courts in these cases and, second, that in the vast majority of these cases, trial courts have applied the elastic rules of both adverse possession and acquiescence to achieve at least an arguably fair result.

We first discuss the rules and how they have been typically applied in recent years. We then discuss the decision in the one recent case that we believe would offend most property rights proponents and discuss various ways in which this result could have been avoided.

I. Adverse Possession

Michigan courts often state that, in order to prevail on an adverse possession claim, the claimant must show that he has used another's property in a manner that is "actual, visible, open, notorious, exclusive, continuous and uninterrupted for the statutory period of 15 years, hostile and under cover of claim of right."[2] The statute applicable to adverse possession claims does not set forth any of the requisite elements of an adverse possession claim, but simply provides:

> No person may bring or maintain any action for the recovery or possession of any lands or make entry upon any land unless, after the claim or right to make entry first accrued to himself or someone through whom he claims, he commences the action or makes entry within the period of time prescribed by this section [in the case of adverse possession, fifteen years].[3]

There is a common perception that, over the years, Michigan courts have not consistently applied the elements of an adverse possession claim, and that, accordingly, it is almost impossible to advise a client as to the likely outcome in any particular case. While we generally agree with this view, we also believe that the uncertainty is caused in significant part by the inherently subjective nature of the elements of such a claim. We argue that any effort by the legislature to impose strict requirements on adverse possession claims would be ill-advised and that the elements of an adverse possession claim must remain sufficiently "elastic" so that courts can apply them in such a manner as to reach an equitable result.

A. Visible, Open and Notorious

The courts have held that a claimant's use of another's property need not be such as to inform a passing stranger that someone is asserting title. Rather, all that is necessary is that the use be such as to notify and warn the owner, should he visit the premises.[4]

A recent case involved two adjacent parcels of commercial property, only one of which had a parking lot.[5] Plaintiff claimed that it had acquired a prescriptive easement to share Defendants' parking lot. It was uncontested that Plaintiff's shareholders, employees and customers had been parking on Defendants' parking lot for more than forty years. In addition, Plaintiff had maintained the parking lot and surrounding areas despite knowledge that it belonged to the Defendants, by mowing the grass, cutting weeds and picking up litter. Defendants, who were absentee landlords, claimed that Plaintiff's use of their parking lot and driveway was not sufficiently open and

* *Gail A. Anderson* and *Michael F. Matheson* are with the firm of McClelland & Anderson, L.L.P., a Lansing-based firm specializing in real estate development, financing, zoning, land use and commercial litigation. Ms. Anderson received her law and undergraduate degrees from the University of Illinois and is a former Chairperson of the Real Property Law Section. Mr. Matheson received his law degree, *magna cum laude*, from the University of Detroit Mercy School of Law in 1997 and joined the firm in 2003.

visible because, as absentee owners, Defendants had no way to receive notice of Plaintiff's use. The court held that the open and notorious element "obviates the need for actual notice." The court went on to find that Plaintiff's use had been inconsistent with the rights of Defendants and that such use had been sufficient to put the owner on notice had the owner chosen to visit the premises.

B. Exclusive

Where a claimant is seeking to acquire fee title via adverse possession, possession that does not amount to ouster of the owner is not sufficiently "exclusive" to establish such a claim. In other words, an adverse possessor cannot have shared the use of the disputed property with the true owner.[6]

If the claimant is only claiming a prescriptive easement, the use does not need to be "exclusive" in the sense that it is used only by the person claiming the prescriptive easement, but in the sense of "exclusive" as against the community at large. A recent claim to a prescriptive easement for lake access was denied, for example, where many people testified that they too believed that they had a right to use the route for access to the lake because they (mistakenly) thought it was a public access.[7]

C. Hostile

Many adverse possession cases turn on the issue of the "permissiveness" of the use:

> With respect to adverse possession, "hostility" is a term of art. Hostility as it relates to adverse possession refers not to ill will between the parties but rather, use of property by a claimant that is inconsistent with the right of the true owner, without permission asked or given, and use that would entitle the owner to a course of action against the intruder.[8]

Unfortunately, very few cases contain any detailed discussion of the specific findings of fact that the court relied upon in analyzing the "hostility" element. Typically, when the claimant prevails, the court simply announces that the use was sufficiently "hostile"; otherwise, the use is deemed to have been "permissive."

It is clear that "hostility" does require that the claimant have exercised sufficient control over the property such that the owner should have been put on notice of the claim. A recent case involved a disputed triangular parcel of land located between Plaintiff's and Defendant's residences.[9] The trial court found, and the Court of Appeals affirmed, that Plaintiff's occasional mowing of the disputed property was not enough to establish the requisite hostility element. Rather, the court found that it was not until years later, when Plaintiff put up a fence and began tilling the disputed parcel, that Plaintiff's use became sufficiently hostile to start the running of the 15-year statute of limitations.

Initially, the burden is on the claimant to establish that his use was not permissive–i.e., that the use was in fact "hostile." However, if the claimant can establish that he has used property adversely "far in excess of fifteen years, the burden of moving forward with evidence shifts to the land owner to establish that the claimant's use was permissive."[10]

Adverse possession claimants must be cautious when discussing their intent. Testimony that the claimant mistakenly thought the property was his own is not fatal to an adverse possession claim. However, testimony that the claimant never intended to possess anything other than what he legally owned will be fatal. This distinction was discussed in a recent case involving a dispute between two property owners who had owned property across the road from one another for over 30 years.[11] A road was constructed after both parties had purchased their respective parcels. For years, both parties believed that the road marked the property line, such that Plaintiffs owned all of the property south of the road and Defendants owned all of the property north of the road. At some point, the parties discovered that Defendants, who owned the property north of the road, also held fee title to a narrow strip of land south of the road. Plaintiffs, who had to cross this narrow strip of land to get to their property, filed suit claiming that they had acquired title to the narrow strip of land between their property and the road through adverse possession.

The trial court found for Plaintiffs, and the Court of Appeals affirmed. On appeal, Defendants argued that Plaintiffs' use of the disputed strip of land was not "hostile" because it was based upon Defendants' mistaken belief as to the location of their property line. The court rejected this claim, holding that a property owner who is mistaken about where a property line is located can establish title by adverse possession. The court relied upon an earlier decision that distinguished the present situation from one in which the claimant only intended to hold to the true boundary line. In this latter situation, Michigan courts have held the possession is not "hostile" and adverse possession cannot be established.[12]

Where the property is undeveloped, permissive use is presumed. According to the Michigan Supreme Court,

"[t]his distinction is in recognition of the general custom of owners of wild lands to permit the public to pass over them without hindrance."[13]

D. Claim of Right

Michigan courts often state that it is essential to a claim of adverse possession that the person who occupies or possesses the land do so with the intention to claim title.[14] Many other states do not impose a "claim of right" requirement and several commentators argue that this element is duplicative of the "hostility" element and thus is unnecessary. But, the element remains a critical part of adverse possession claims in Michigan. As stated in *Smith v Feneley*:

> Claim of title or claim of right is essential to adverse possession, but it is not necessary that an adverse claimant should believe in his title, or that he should have any title. He may have no shadow of title and be fully aware of the fact, but he must claim title.[15]

The Court of Appeals recently used this element to deny an adverse possession claim, stating that while Plaintiff had used the vacant lot located next to his property for 15 years, his use had been "without an intention to claim title or ownership" of that vacant land.[16] Accordingly, Plaintiff's claim to have adversely possessed such land was rejected. Unfortunately, as is with so many adverse possession cases, the written decision is devoid of a discussion of the facts upon which the court relied in reaching this conclusion.

E. Continuous and Uninterrupted

An adverse possession claimant must establish that he has used the property continuously for the 15-year period. If a property owner temporarily regains possession of the property before the 15-year period expires, this restarts the 15-year period necessary to establish ownership by adverse possession.[17]

Where the use started out as a permissive use, a claimant must show that he made a subsequent distinct and positive assertion of a right hostile to the rights of the property owner.[18] Conversely, when the use started out as hostile, but the actual property owner subsequently granted permission for the use to continue, such permission will be deemed to halt the running of the statutory period.[19]

Seasonal or periodic occupation of land is sufficient to establish adverse possession only where such use is consistent with the character of the property in question.[20] Seasonal use will not be sufficient when there is evidence of others' use of the property during other times of the year. In *Cramer v State of Michigan*,[21] for example, the Court of Appeals held that Plaintiffs' use of an unused rail line during deer hunting season each year was not enough to prevail on an adverse possession claim where the line was used by snowmobilers and small game hunters during other times of the year.

In the case of a prescriptive easement, "continuous" does not require that a person must have used the property every day. It simply means that he shall have exercised the right by using the property when needed. For example, it has been held that seasonal use of property to build a dock and moor a boat was sufficiently continuous because it kept with "the nature and the character of the right claimed."[22]

II. Acquiescence

The doctrine of acquiescence is used only to settle disputes between neighboring property owners over the location of the boundary line between their properties.[23] In recent years, the most common authority cited by the Michigan courts on the doctrine of acquiescence may be *Sackett v Atyeo*.[24] This case involved a shared driveway located wholly on Defendant's property, but which had been viewed for many years by both Defendants and their neighbors as straddling the property line equally.

The *Sackett* court noted first that there are three separate theories of acquiescence: (1) acquiescence for the statutory period; (2) acquiescence following a dispute and subsequent agreement; and (3) acquiescence arising from an intention to deed to a marked boundary.[25] The decision in *Sackett* focused upon the first theory: acquiescense for the statutory period. Under this theory, it does not matter whether there had been an actual controversy regarding the boundary line. All that is really involved in this type of case, the court held, is the application of the statute of limitations. Where one party possesses another party's land, the true property owner has a cause of action against the other property owner to recover possession of his land. After 15 years, that right expires. Moreover, once the property line has been established by the requisite 15-year period, the boundary is established, and the possessing party does not need to prove that the acquiescence continued beyond the 15-year period.[26]

There is language in *Sackett*, as well as language in the oft-cited *Kipka v Fountain*[27] and *Walters v Snyder*,[28]

that suggests that an acquiescence claim may be defeated by a showing that one or both property owners knew where the actual boundary line is located: "The law of acquiescence is concerned with the specific application of the statute of limitations to cases of adjoining property owners who are mistaken about where the line between the property is . . . [r]egardless of the innocent nature of this mistake . . . ."[29] While the issue of whether one or both parties need be "mistaken" as to the location of the boundary line was never directly addressed in any of these cases, the language in these cases has been cited as authority on the issue.

Interestingly, the Court of Appeals has not been consistent in its analysis of the rule of law for which these decisions stand. For example, one recent unpublished decision of the Court of Appeals cited these cases for the rule that "acquiescence is not defeated because one of the parties knows that the line treated as the boundary is not the actual boundary . . . ."[30] Another panel of the Court of Appeals, relying on this same line of cases in issuing another unpublished decision, stated that under any acquiescence theory, "the parties must been mutually mistaken about the location of the property line, at least initially."[31]

The vast majority of acquiescence cases involve the first theory identified in *Sackett*: acquiescence for the statutory period of 15 years. In a recent case in which this doctrine was applied, a parent parcel that had been divided into 2 parcels in 1962 was originally thought to measure 1,164 feet north to south.[32] Accordingly, two parcels described as each measuring 582 feet north to south were conveyed out. It was subsequently discovered that the parent parcel had only measured 1,041.62 feet north to south, resulting in a 122.38 foot shortfall.

The Court of Appeals upheld the trial court's decision quieting title to the disputed strip of land in Defendants. The court said that there was sufficient evidence that the parties had treated a particular tree line as the boundary line between the parcels for the statutory 15-year period. The court held that under this particular theory of acquiescence, there need not be evidence of an actual dispute, nor does there need to be any hostility. "Instead, the court merely determines whether a preponderance of the evidence demonstrates that the parties treated a particular boundary line as the property line."[33]

"Permission" is relevant in an acquiescence case to the extent that it tends to refute a claim that the parties were treating a particular line as a boundary line. That is, the fact that a property owner gave his neighbor permission to use a part of his property suggests that both parties recognized the actual boundary line.[34]

III. Addressing the Inequities

A. *Beauchamp v Yeo*

Of all of the recent decisions reviewed by the authors, only one appears to fit squarely within the popular perception that the doctrine of adverse possession is used to acquire the property of others through stealth: *Beauchamp v Yeo*.[35] That case involved a vacant lot that at one time had had a house on it that had been damaged during a storm and subsequently demolished. Mrs. Yeo, the property owner, moved out of state but continued to pay real estate taxes on the empty lot for 40 years until her death. After Yeo's death, her heirs attempted to sell the lot. The neighbors, the Beauchamps, then filed suit, alleging that they had acquired title to the lot via adverse possession.

The Beauchamps introduced testimony that, over the years, they had treated Yeo's lot as their own backyard by regularly cutting the grass, trimming and clearing trees, planting flower gardens and removing snow. They testified further that they had posted no-trespassing signs, parked cars and boats, constructed skating ponds, and erected a fence on Yeo's lot. The Beauchamps also testified that, over the years, they had held graduation parties and reunions on the lot. They admitted that they had never notified the out-of-state property owner of their use of her lot.

The trial court held that the Beauchamps had acquired title to Yeo's property via adverse possession. On appeal, the Court of Appeals affirmed that decision, finding that the use was of a nature "which would alert any diligent landowner of the Beauchamps' hostile intent."[36] It did not matter that the out-of-state property owner did not have actual knowledge of the neighbors' use of her lot. All that was required is that the use be "so open and notorious to the world that the record owner can be charged with constructive knowledge of the adverse use."[37]

Unfortunately, the situation in *Beauchamp* is exactly the type of situation that causes many people to conclude that the doctrine of adverse possession needs to be eliminated or at least significantly curtailed. Some would suggest that the Beauchamps should not have been able to prevail on their adverse possession claim for the simple reason that Yeo had paid real estate taxes on her property for over 40 years. In fact, there have been several bills introduced in the Michigan Legislature over the years

that would prevent an adverse possession claim where the fee title holder has paid the property taxes on the disputed property.[38] As discussed below, we believe that such legislation would be ill-advised.

We believe that the inequities of *Beauchamp* could have been avoided without adding a tax payment requirement or otherwise altering the law of adverse possession in Michigan. The court in *Beauchamp* had ample tools available to it under existing law to reach a more equitable result. The court could have easily found that the Beauchamps had simply taken advantage of the fact that their neighbor lived out of state and used their neighbor's land from time to time when it suited them. The court could have thus concluded that the Beauchamps' use of Yeo's land had not been sufficiently hostile or continuous. The court could have applied the analysis from an earlier case holding that a claimant's use of the vacant lot located next to his property had been "without an intention to claim title or ownership" and thus not sufficient to establish an adverse possession claim.[39] The court could also have relied upon existing Michigan case law holding that Yeo's payment of taxes for 40 years, while not controlling, was certainly a significant factor to be considered.[40] Any or all of these reasons for denying the Beauchamps' adverse possession claim would have been fully consistent with existing Michigan case law.

B. Adding a Tax Payment Requirement to Adverse Possession Claims

A relatively few states have adopted legislation that requires proof of tax payment in order to prevail on an adverse possession claim.[41] This requirement has created a number of issues for the courts in those states, who have recognized that because legal descriptions used in tax records are often abbreviated, inaccurate and/or incomplete, "the adverse possessor faces an almost impossible task in attempting to prove that he paid taxes on the land claimed when the facts show simply that he has mistakenly shifted his boundaries."[42] These decisions have correctly recognized that these tax descriptions were not intended to be used to establish the boundary lines of taxpayers' property and should not be used for that purpose.

Courts in several states have also recognized that a rule requiring tax payment is even more problematic in cases involving boundary disputes in platted subdivisions.[43] Suppose, for example, it was discovered that a house that was to have been constructed on Lot 1 in a subdivision actually encroached on the adjacent Lot 2 by one foot. The taxing authority's records would likely reflect that the owner of Lot 2 had paid all of the taxes on that property. In this case, the fee owner of Lot 1 (with a house encroaching onto Lot 2) would be unable to maintain a successful adverse possession claim because the taxes for Lot 2 were paid by the owner of Lot 2. The owner of Lot 1 could theoretically be required to either move or demolish the encroaching portion of the structure, regardless of the length of time the house encroached onto Lot 2.

In apparent recognition of these difficulties, the tax payment provision in Minnesota has an express exemption for those adverse possession cases "relating to the boundary lines of lands."[44] Despite this explicit exemption for boundary line disputes, the Minnesota courts have struggled with that state's tax payment requirement. For example, a dispute between neighbors in which the claimant sought to acquire 13 acres of his neighbor's 16-acre parcel was deemed to have been more than a boundary line dispute, and thus outside of the exemption.[45] The same court later held that a claim for approximately 9% of a neighbor's land was in fact a "boundary dispute," such that the exemption to the tax payment requirement did apply.[46]

Several courts in states without a statutory exemption have carved out their own "boundary line" exceptions to the property tax payment requirement. In Indiana, for example, the courts have held that "substantial compliance" will satisfy the tax payment requirement in cases involving boundary disputes where the adverse claimant had "a reasonable and good faith belief" that he had been paying the taxes on the disputed parcel.[47]

A California court has held that when adjoining lots are assessed by lot number and the claimant has constructed a fence or valuable improvements within the disputed strip, the "natural inference" is that the "assessor did not base the assessment on the record boundary, but valued the land and improvements visibly possessed by the parties."[48]

The Supreme Court of Idaho has similarly concluded that where taxes are assessed by lot number, payment of taxes on the lot within which the disputed tract is enclosed satisfies the tax payment requirement of the statute.[49] The court recognized that where taxes are assessed according to some generic description, it is impossible to determine from the tax records "the precise quantum of property being assessed."[50] The Supreme Court of Idaho has also held that the tax payment requirement is met if the adverse possessor occupies and claims the same amount of land upon which he was taxed.[51] Idaho courts have also

recognized that the tax payment requirement cannot be applied when the claimant is seeking only a prescriptive easement since the easement is merely appurtenant to the dominant estate and not separately taxable.[52]

These cases demonstrate the inherent difficulties caused by a statutory requirement of tax payment and make clear that a tax payment requirement for adverse possession claims is hardly a cure-all. The historical application of tax payment requirements in states that have adopted such legislation underscores the difficulties in applying such a rule. If Michigan were to adopt such a rule, at a minimum there would need to be an exception for those cases involving boundary disputes and those cases involving prescriptive easements. These two types of cases encompass the majority of the adverse possession cases decided each year. Under current Michigan common law, the payment of taxes is already a factor to be considered by the courts in reviewing claims for adverse possession;[53] it should not be the deciding factor.

IV. Conclusion

The doctrines of adverse possession and acquiescence are necessary tools for solving legitimate title issues. While Michigan courts have apparently confused the doctrines or the application of the elements of those doctrines in a number of cases, that fact is hardly a justification for eliminating the doctrines themselves. We have examined the cases that have made it to the Court of Appeals in the last few years and have concluded that, for the most part, the courts have reached at least an arguably fair result. We believe that proposals to abolish the doctrines, to impose a tax payment requirement, or to codify the common law requirements are ill-advised. While at first blush, the imposition of a tax payment requirement may appear to be a fair and objective standard by which courts can decide adverse possession claims, the experiences of other states are to the contrary. Adverse possession claims are just one of a number of types of claims where justice can and must be administered according to subjective concepts of fairness as opposed to strictly formulated rules.

Endnotes

1. *See, e.g.*, HB 4249 of 2007; HB 4523 of 2005; & SB 417 of 1998.

2. *Burns v Foster*, 348 Mich 8, 14; 81 NW2d 386 (1957).

3. MCL 600.5801.

4. *Merritt v Westerman*, 180 Mich 449; 147 NW 483 (1914).

5. *Faris Bros Realty, Inc v JP Partnership*, unpublished opinion per curiam of the Court of Appeals, issued November 15, 2005 (Docket No. 261644), 2005 Mich App LEXIS 2814.

6. *Cramer v State of Michigan*, unpublished opinion per curiam of the Court of Appeals, issued October 13, 2005 (Docket No. 255153).

7. *Chendes v Dolson*, unpublished opinion per curiam of the Court of Appeals, issued August 17, 2006 (Docket No. 259967), 2006 Mich App LEXIS 2553.

8. *Deutscher v Beuter*, unpublished opinion per curiam of the Court of Appeals, issued January 25, 2005 (Docket No. 251903), 2005 Mich App LEXIS 151, at *2, citing *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000).

9. *Deutscher v Beuter, supra* note 8, at *2.

10. *Faris Bros Realty, Inc v JP Partnership, supra* note 5 (over 40 years). *See also Anderson v Johnson*, unpublished opinion per curiam of the Court of Appeals, issued January 16, 2007 (Docket No. 263972), 2007 Mich App LEXIS 56 (over 40 years); *Schenden v Griffith*, unpublished opinion per curiam of the Court of Appeals, issued February 11, 2003 (Docket Nos. 234825 and 235237), 2003 Mich App LEXIS 320 (over 25 years).

11. *Amin v Heirs & Assigns of Walsh*, unpublished opinion per curiam of the Court of Appeals, issued December 9, 2004 (Docket No. 249581), 2004 Mich App LEXIS 3343.

12. *DeGroot v Barber*, 198 Mich App 48; 497 NW2d 530 (1993). *See also Roberts v Mitchell*, unpublished opinion per curiam of the Court of Appeals, issued May 9, 2006 (Docket No. 259930), 2006 Mich App LEXIS 1592.

13. *DuMez v Dykstra*, 257 Mich 449, 451; 251 NW 1821 (1932), *quoted in Becker v Thompson*, unpublished opinion per curiam of the Court of Appeals, issued May 23, 2006 (Docket No. 262214), 2006 Mich App LEXIS 1732, at *10-*11.

14. *Ennis v Stanley*, 346 Mich 296; 78 NW2d 114 (1956); *Arduino v Detroit*, 249 Mich 382; 228 NW 694 (1930).

15. *Smith v Feneley*, 240 Mich 439, 441; 215 NW 353 (1927).

16. *Larson v Preserve Co, Ltd*, unpublished opinion per curiam of the Court of Appeals, issued March 10, 2005 (Docket No. 252774), 2005 Mich App LEXIS 654, at *5.

17. R*oberts v Mitchell, supra* note 12.

18. *Beauchamp v Yeo*, unpublished opinion per curiam of the Court of Appeals, issued June 13, 2006 (Docket No. 259940). *See also Hopkins v Parker*, 296 Mich 375, 379; 296 NW 294 (1941) ("If the use was permissive at inception, such permissive character will continue of the same nature and no adverse use can arise until there is a distinct and positive assertion of a right hostile to the owner and brought home to him.").

19. *Hannah v Kaiser*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2005 (Docket No. 255880), 2005 Mich App LEXIS 3166.

20. *Arnold v Kemp*, unpublished opinion per curiam of the Court of Appeals, issued January 25, 2007 (Docket Nos. 262349, 264578, 263157 and 264126), 2007 Mich App LEXIS 154.

21. *Cramer v State of Michigan, supra* note 6.

22. *Dickinson v Walker*, unpublished opinion per curiam of the Court of Appeals, issued March 20, 2007 (Docket No. 266645), 2007 Mich App LEXIS 755, at *3. *See also von Meding v Strahl*, 319 Mich 598; 30 NW2d 363 (1948).

23. The Court of Appeals apparently lost sight of that fact in *Turner v Zimmerman*, unpublished opinion per curiam of the Court of Appeals, issued May 1, 2007 (Docket No. 265008), 2007 Mich App LEXIS 1209, where the court found when a park had been routinely used by members of a subdivision for a period in excess of 15 years, the lot owners had obtained rights of access to the park through the doctrine of acquiescence. Cf. *Chauvette v Owczarek*, unpublished opinion per curiam of the Court of Appeals, issued October 26, 2006 (Docket No. 262473), 2006 Mich App LEXIS 3209.

24. *Sackett v Atyeo*, 217 Mich App 676; 552 NW2d 536 (1996).

25. *Id*. at 681.

26. *Karpp v Lanski*, unpublished opinion per curiam of the Court of Appeals, issued October 11, 2005 (Docket No. 255192), 2005 Mich App LEXIS 2485 (affirming that the property line was established by an old fence line that no longer existed when Defendants bought the property).

27. *Kipka v Fountain*, 198 Mich App 435; 499 NW2d 363 (1993).

28. *Walters v Snyder*, 239 Mich App 453; 608 NW2d 97 (2000).

29. *Kipka*, 198 Mich App at 438.

30. *Parr v Serra*, unpublished opinion per curiam of the Court of Appeals, issued December 29, 2005 (Docket No. 254322), 2005 Mich App LEXIS 3294, at *6.

31. *Haefler v Winner*, unpublished opinion per curiam of the Court of Appeals, issued June 7, 2007 (Docket No. 266934), 2007 Mich App LEXIS 1484, at *4. *See also Schreiner v Francis*, unpublished opinion per curiam of the Court of Appeals, issued April 14, 2005 (Docket Nos. 252058 and 255783), 2005 Mich App LEXIS 926.

32. *Riehl v Sherman*, unpublished opinion per curiam of the Court of Appeals, issued January 25, 2005 (Docket No. 251112), 2005 Mich App LEXIS 148.

33. *Id*. at *8.

34. *Hannah v Kaiser, supra* note 19, and *Sovereign Properties, LLC v Beneteau*, unpublished opinion per curiam of the Court of Appeals, issued May 31, 2005 (Docket No. 260322), 2005 Mich App LEXIS 1369.

35. *Beauchamp v Yeo*, unpublished opinion per curiam of the Court of Appeals, issued June 13, 2006 (Docket No. 259940), 2006 Mich App LEXIS 1863.

36. *Id*. at *12.

37. *Id*. at *11.

38. *See* HB 4249 of 2007 and HB 4523 of 2005.

39. *Larson v Preserve Co, Ltd, supra* note 16.

40. *Satkowiak v City of Linden*, unpublished opinion per curiam of the Court of Appeals, issued February 1, 2007 (Docket No. 265243), 2007 Mich App LEXIS 208.

41. *See, e.g.*, Cal CCP § 325; Fla Stat § 95.18; Idaho Code Ann § 5.210; Ind Code § 32-21-7-1; Minn Stat Ann § 541.02.

42. *Wilson v Gladish*, 140 Idaho 861, 867; 103 P3d 474 (2004). *See also Sorenson v Costa*, 32 Cal 2d 453; 196 P2d 900 (1948); *Branch v Lee*, 373 Ill 333; 26 NE2d 88 (1940).

43. *See, e.g., Malouf v Fischer*, 108 Utah 355; 159 P2d 881 (1945).

44. Minn Stat Ann § 541.02.

45. *Grubb v State*, 433 NW2d 915 (Minn App, 1988).

46. *Ganje v Schuler*, 659 NW2d 261 (Minn App, 2003).

47. *Fraley v Minger*, 829 NE2d 476 (Ind, 2005).

48. *Gilardi v Hallam*, 30 Cal 3d 317, 327 (1981).

49. *Roark v Bentley*, 139 Idaho 793; 86 P3d 507 (2004).

50. *Id*. at 796.

51. *Wilson v Gladish*, 140 Idaho 861; 103 P3d 474 (2004).

52. *Sinnett v Werelus*, 83 Idaho 514; 365 P2d 952 (1961).

53. *Satkowiak v City of Linden, supra* note 40.