

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM DAVID BETTS and
HEATHER BETTS, husband and wife,

Plaintiffs,

vs.

PIER POINTE HOMEOWNERS
ASSOCIATION, INC., an Idaho
non-profit corporation,

Defendant.

Case No. CV01-22-09847

**DECISION GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

Background

Plaintiffs William and Heather Betts (“the Bettses”) bring suit against the Pier Pointe Homeowners Association, Inc., (“the HOA”) to quiet title to a disputed strip of land. The Bettses own a parcel of real property that borders a parcel owned by the HOA. The border is the northern boundary of the Bettses’ parcel and the southern boundary of the HOA’s parcel. A round-rail fence located atop a berm was built, likely by a predecessor of the Bettses’, at an indeterminate point in the mid-1970s. That fence was not located on the properties’ shared boundary, but rather was located north of the boundary and encroached onto the HOA’s parcel. A dispute between the Bettses and the HOA over who owns the strip of land located north of the actual boundary line and south of the round-rail fence arose in 2021-2022, while the Bettses were in the midst of a series of projects to re-landscape that area. In their complaint, the Bettses advanced the alternate theories of boundary by agreement, adverse possession, and easement by prescription. The Bettses now move for summary judgment.

Facts

The following facts cannot be disputed. The Bettses purchased a parcel of real property in 2009 identified as Ada County Parcel No. S1024438620 (“Betts Property”). The Betts Property’s

street address is 1777 East Holden Lane, Boise, Ada County, Idaho. The northern boundary of the Betts Property abuts Lot 1, Block 10, of the Pier Pointe No. 6 Subdivision (“Lot 1 Property”).¹ The Lot 1 Property is owned by the HOA. The Betts Property is not located within Pier Pointe No. 6 Subdivision, and the Bettses are not members of the HOA. The Betts Property is shaded in blue, and the Lot 1 Property is shaded in green in the illustration created by the Court below:



From July 1970 to September 1998, the Betts Property was owned by Raleigh and Linda Jensen. Janet Kell, who lived nearby to the west of the Betts Property on East Holden Lane, averred that the Jensens built a round-rail fence in the mid-1970s. Neither party, however, has gone so far as to assert without qualification that it was in fact the Jensens who built the fence. Ralph Swords, who moved onto East Holden Lane in 1980, observed that same round-rail fence then. Neither Kell nor Swords had knowledge of why the fence was built; both presumed that it was to delineate the boundary between the Betts Property and the Lot 1 Property. There is no evidence available from the Jensens.

Nothing in the record demonstrates what entity owned the land that would become the Lot 1 Property prior to 1988. In 1988, Max A. Boesiger, Inc. (“the Corporation”) developed and platted

¹ Page 5166, Book 56.

Pier Pointe No. 6 Subdivision. Max Boesiger, one of the owners of the eponymous corporation, averred that the fence was present in 1988. He personally did not believe the fence to be the boundary line, and instead believed that the fence was a part of the irrigation and drainage infrastructure. The Corporation did not alter, move, or remove the fence.

The Jensens conveyed the Betts Property to Michael Schumacher and Helen Appleton in September 1998. The round-rail fence was present when Schumacher and Appleton purchased the Betts Property. Schumacher averred that he did not know who installed the fence or when or why the fence was installed, but he understood it to demarcate the boundary between the Betts Property and the Lot 1 Property. Schumacher also averred that he and Appleton maintained the land south of the fence. According to Schumacher, the HOA never conducted any maintenance upon or made any claim to the land south of the fence.

Schumacher conveyed the Betts Property to Diana Humphrey Paul and Bret Humphrey in March 2004. The round-rail fence was still present at the time of that conveyance. Diana had also lived north of the Betts Property, on the other side of East Monterrey Drive, from 1988-1991 and had observed the fence then. Diana averred that, like Schumacher, she had no knowledge of who installed the fence or why, but assumed that it was intended to mark the property boundary. Diana similarly averred that she exclusively maintained the land located south of the fence, and the HOA never made any claim to that land.

In 2009, William and Heather Betts purchased the Betts Property. The round-rail fence was still present then. The Bettses, like their predecessors, understood the round-rail fence to demarcate the boundary between the Betts Property and the Lot 1 Property. Like their predecessors, the Bettses averred that they were the only ones to maintain the land south of the fence, and until recently, the HOA raised no issue or claim regarding that land. The HOA provided an affidavit from Robert Yoshida, who has lived in the Pier Pointe Subdivision since 1992 and was a member of the board of the HOA from 2013 to 2018. In that affidavit, Yoshida disputes that the Bettses and their predecessors in interest have maintained the land south of the fence, stating that on the course of his “regular” walks, that land has never been well maintained and he has never observed anyone maintaining or improving the area until the past few years.

In mid-2020, the Bettses were contacted by Shane Jibben, the maintenance director of the HOA, about a tree located south of the fence that had begun to uproot and lean out over East Monterrey Drive. The Bettses hired an arborist to remove that tree. Thereafter, from 2020 to early

2022, Jibben coordinated with the Bettises on a number of projects. Throughout the course of these projects, Jibben referred to the land north of the round-rail fence as belonging to the HOA, and the land south of the fence as belonging to the Bettises. The overarching purpose of these projects were to clear and re-landscape the land both north and south of the fence. The Bettises undertook the work south of the fence, which resulted in a cost to the Bettises of thousands of dollars. Jibben resigned from the HOA in March 2022.

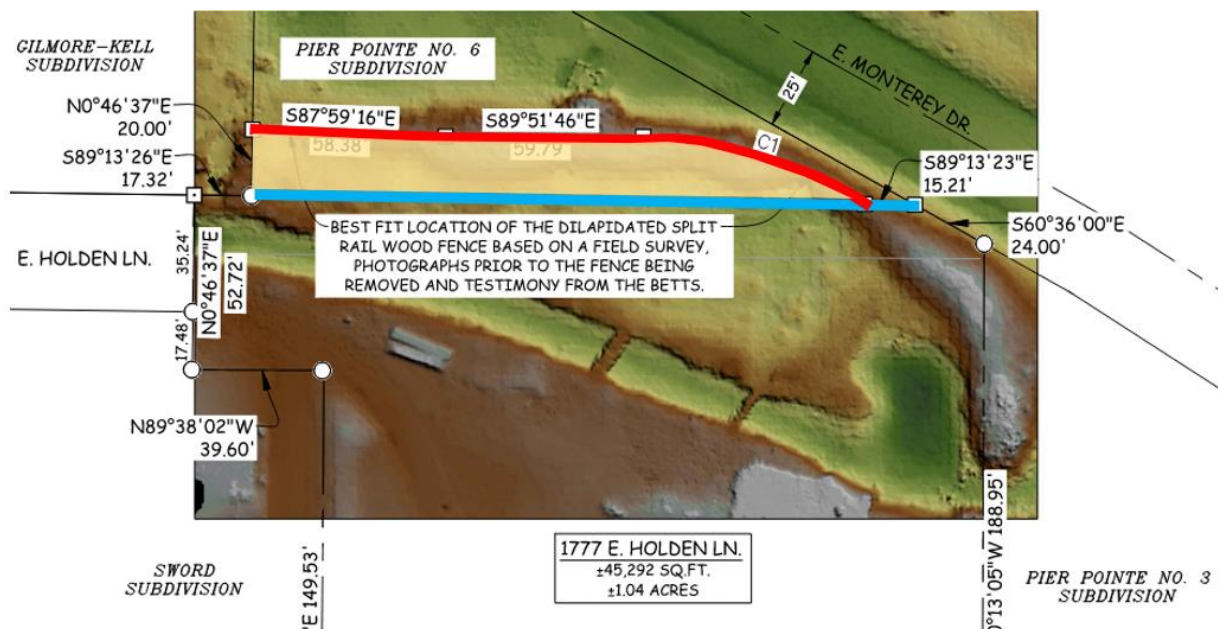
In 2021, a dispute arose between the Bettises and the HOA regarding the boundary between each party's respective property. The details of that dispute are not entirely clear from the record; however, the evidence demonstrates that in May 2021, the HOA became interested in surveying the area to determine where the property lines were located. Even so, the Bettises and Jibben continued to coordinate on projects to re-landscape the area around the fence. After Jibben resigned in March 2022, the Bettises continued to contact the HOA about their plans to re-landscape the land south of the fence. In April 2022, during one such email exchange, the HOA informed the Bettises that it would be surveying the property. It does not appear that such a survey was carried out until July of that year.

The Bettises removed the round-rail fence in February 2022 as part of the projects to re-landscape the surrounding area. Prior to its removal, the fence had been present since the mid-1970s in the same location, on the top of a berm. Danny Rowell, who served on the board of the HOA from May 2022 to March 2023, testified that irrigation equipment belonging to the HOA, including a pump, control boxes, and a sprinkler line runs along the top of the berm. The fence did as well. The Gallagher canal itself runs through the Betts Property. However, the record is absent of evidence that sheds light on the purpose of the fence.

The round-rail fence was not located on the legal boundary line between the Betts Property and the Lot 1 Property. The fence originated from a point near the northeastern corner of the Betts Property and arced northwest before running roughly parallel with the actual property line. The fence followed along the top of a small (3' to 4') tall berm that appears to form a natural boundary between the parcels. The disputed parcel consists of the land north of the Betts Property's true northern boundary line and south of where the round-rail fence was located.

In the illustration created by the Court below, the actual property line between the Betts Property and the Lot 1 Property is highlighted in blue, where the fence was located is highlighted

in red, the disputed parcel is highlighted in yellow, the canal and small pond are the areas in green. The two lines that cross the canal are wooden footbridges on the Betts Property.



Summary Judgment Standard

Summary judgment is appropriate if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” I.R.C.P. 56(a). The party initially bringing a motion for summary judgment has the burden to prove that no genuine issues of material fact exist, and the party is entitled to judgment as a matter of law. *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 103-04, 294 P.3d 1111, 1115-16 (2013). The moving party may meet its burden by establishing the absence of evidence on an element that the non-moving party would be required to prove at trial. *R Homes Corp. v. Herr*, 142 Idaho 87, 90, 123 P.3d 720, 723 (Ct. App. 2005). After the moving party meets this burden, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact. *Boise Mode, LLC*, 154 at 104, 294 P.3d at 1116. However, “the adverse party may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial.” *Id.*

When considering a motion for summary judgment, the court must liberally construe the record in a light most favorable to the party opposing the motion and draw all reasonable inferences in that party’s favor. *King v. Lang*, 136 Idaho 905, 909, 42 P.3d 698, 702 (2002). If “reasonable

people could reach different conclusions or inferences from the evidence,” then summary judgment is inappropriate. *Nix v. Elmore County*, 158 Idaho 310, 314, 346 P.3d 1045, 1049 (2015).

Discussion

Boundary by agreement has two elements: (1) an uncertain or disputed boundary and (2) a subsequent agreement fixing the boundary. *Luce v. Marble*, 142 Idaho 264, 271, 127 P.3d 167, 174 (2005). A boundary fixed by agreement is binding upon successors in interest who purchase with notice of the agreement. *Id.* Generally, one purchasing property is put on notice as to any claim of title or right of possession which a reasonable investigation would reveal. *Id.* “Which party pays tax on the disputed land is irrelevant to determining a claim based on boundary by agreement.” *Neider v. Shaw*, 138 Idaho 503, 506, 65 P.3d 525, 528 (2003).

I. There is an Uncertain or Disputed Boundary Between the Properties

An uncertain or disputed boundary does not require there to be a dispute about a boundary, but rather uncertainty or dispute as to the location of the true boundary. *Johnson v. Newport*, 131 Idaho 521, 523, 960 P.2d 742, 744 (1998). “Ignorance of what is later deemed to be the true boundary suffices to show uncertainty.” *Luce*, 142 Idaho at 271, 127 P.3d at 174.

The HOA argues that the 1988 plat imputed knowledge of the true boundary line to the owners of both properties and, therefore, the first element cannot be met. The HOA cites to *Gameson v. Remer*, 96 Idaho 789, 537 P.2d 631 (1975). In *Gameson*, Andrews owned three subsequent lots: Lots 27, 28, and 29. The Gamesons were tenants occupying Lot 27. Andrews and the Gamesons worked together to build a fence that bisected the middle lot, Lot 28. Two years later, the Gamesons purchased Lot 27. Although the deed was only for Lot 27, the Gamesons believed that they bought Lot 27 and the adjacent half of Lot 28. The Gamesons maintained the half of Lot 28 that they believed they owned and reconstructed the fence approximately seven years later. Shortly after the Gamesons rebuilt the fence, Andrews sold Lots 28 and 29 to the Remers, which precipitated a dispute over the location of the boundary. The Supreme Court found that, based on testimony that Andrews told the Gamesons that the fence was to be built bisecting Lot 28, and because the disputed property was located in a recorded subdivision, the true boundaries were known. The Supreme Court ruled that because the true boundaries were known, there was no dispute or uncertainty as to the boundary.

However, the facts of *Gameson* make it largely inapplicable to this case. In *Gameson*, the subdivision was platted prior to construction of the fence at issue. Testimony given by one of the Gamesons at trial and quoted by the Supreme Court makes it clear that the Gamesons were informed that the fence was not located on a boundary line, but rather was situated on Lot 28. In the present case, there was a thirteen-year period between the construction of the fence and the plat commissioned by the Corporation. There is no evidence in this case that the builder of the fence had any knowledge of the boundary lines. Idaho appellate courts “have clearly ruled that whether the correct boundary line is ascertainable elsewhere, via surveys or subdivision plats, is irrelevant; the proper inquiry revolves about what the parties, at the time of their agreement, actually knew.” *Morrissey v. Haley*, 124 Idaho 870, 873, 865 P.2d 961, 964 (1993).

Additionally, knowledge of the true boundary cannot be imputed onto the owners of the Betts Property subsequent to the Jensens. There is no evidence that the Bettses or their predecessors would have any knowledge, actual or constructive, of the 1988 plat. “One claiming title to lands is chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an essential link in his chain of title” *Kalange v. Rencher*, 136 Idaho 192, 196, 30 P.3d 970, 974 (2001). There is no evidence here that the 1988 plat forms an essential link in the chain of the Betts Property’s title. The Betts Property is not part of Pier Pointe No. 6 subdivision and was not platted in 1988. The record contains deeds conveying the Betts Property to the Jensens in 1970, Schumacher and Appleton in 1998, Humphrey Paul in 2004, HSBC in March 2009, and the Bettses in May 2009. None of those deeds include the plat. Accordingly, the Court has no basis from which it can determine that knowledge that the disputed parcel was not part of the Betts Property was imputed onto the owners of the Betts Property.

The first element is satisfied in this case. There was clearly an uncertain or disputed boundary. Here, the fence was built in the mid-1970s. The evidence demonstrates that the fence stood in the same location from the mid-1970s until February 2022, a period of approximately four and a half decades. The Bettses and their predecessors, the Humphreys, Schumacher, and Appleton, were all obviously uncertain about the location of the true boundary because they incorrectly believed the fence to demark the boundary line. Others in the neighborhood, Swords and Kell, were equally ignorant of the boundary’s true location, as was Jibben when he was acting as an agent of the HOA. Ignorance of the true location of the boundary was widespread and persistent, including among the members of the HOA. Danny Rowell, a member of the HOA board

from 2022 to 2023, stated that he never observed or learned anything during his tenure to suggest that the HOA considered the fence to be the boundary line. That statement is as meaningful for what it doesn't say as for what it does. It is certainly not an assertion that the HOA knew where the legal boundary actually lay. Rowell testified that the HOA has an insurance policy and has paid taxes on the entirety of the Lot 1 Property. The Court infers this is because the insurance policy and tax (if any) were determined by the legal description. Missing from Rowell's declaration is any statement that he, or any other member of the HOA, actually knew where the legal boundary was before this dispute arose. There is no evidence that the HOA or a predecessor in interest ever raised issue with the location of the fence or made any effort to inform the owners of the Betts Property that the fence was not in fact the border between the Betts Property and the Lot 1 Property. The HOA only began to raise the issue of the actual location of the boundary between the properties in 2021, and had the property surveyed in 2022. That survey demonstrated that the fence had in fact not been located on the actual boundary. Here, there was decades-long ignorance of what was later deemed to be the true boundary dating back to the construction of the fence in the 1970s. This suffices to show uncertainty.

The evidence demonstrates that the earliest any owner of the Betts Property would have been aware that the fence was not located on the true boundary was in 2021. This does not countervail the prior uncertainty regarding the boundary. Even if the Jensens, the owners of the Betts Property in 1988, had been made aware of the plat, it would not negate the uncertainty regarding the boundary that existed for slightly over a decade at that point. *See Teton Peaks Inv. Co., LLC v. Ohme*, 146 Idaho 394, 397, 195 P.3d 1207, 1210 (2008) ("Although Teton Peaks presented evidence that Smith may have been informed of an uncertain boundary in 1996, this fact does not negate the use of the fence and the presumed uncertainty of the boundary line prior to 1996.").

II. The Evidence Creates a Presumption that there was an Agreement to Fix the Boundary

The second element of boundary by agreement is a subsequent agreement fixing the boundary. An agreement can be expressed or implied through the conduct of the parties. *Teton Peaks Inv. Co., LLC*, 146 Idaho at 397, 195 P.3d at 1210. A long period of acquiescence is presumptive, but not conclusive, evidence of an agreement. *Downey v. Vavold*, 144 Idaho 592, 596, 166 P.3d 382, 386 (2007).

Here, there is evidence showing that the HOA acquiesced to the Bettses', and their predecessors', use. The affidavits provided by the owners of the Betts Property from 1998 to present uniformly state that each respective owner has exclusively used and maintained the disputed parcel from 1998 until 2021. Affidavits provided by the HOA tacitly support that testimony. Rowell also testified that the HOA's sprinkler lines were run along the top of the berm, along the fence, consistent with that being the boundary between the parcels. There is grass in the HOA's common area north of the fence/berm, but not in the disputed parcel to the south. It appears the sprinkler line was installed to water this grass. This is consistent with the HOA, at least at the time the sprinkler line was installed, believing the boundary to be the fence line along the top of the berm.

The record is absent of any evidence that the HOA ever challenged the location of the fence and the use of the disputed parcel at any point between the construction of the fence in the mid-1970s and 2021. Robert Yoshida, who has lived in Pier Pointe No. 6 subdivision since 1992 and served on the HOA board from 2013-2018, stated that "use or ownership of the [disputed parcel] was never raised as a question." Rowell's and Yoshida's affidavits indicate that the HOA was acquiescent to the use of the disputed parcel by the Bettses and their predecessors, at least for the past decade. The HOA has not provided any evidence that it ever challenged the use of the disputed parcel by the Betts Property owners or attempted to enforce its exclusive right to the disputed parcel. It is, therefore, an undisputed fact that the Betts Property owners have maintained use and control over the disputed parcel, which the HOA acquiesced upon.

The HOA provided testimony by Boesiger that irrigation equipment was present on the disputed property in 1988 and testimony by Rowell that the still-present irrigation equipment belongs to the HOA. However, there is no evidence demonstrating that the HOA used or maintained that equipment—and there is only scant evidence as to what this equipment is. The irrigation canal does not run along the legal boundary between Lot 1 and the Betts' parcel. The canal runs through the Betts Parcel. The HOA would have to run its equipment across the Betts' Property to access the water in the canal from the disputed area. Therefore, if there is irrigation equipment on the disputed parcel, it cannot be for the purpose of accessing or pumping water from the irrigation canal for the benefit of the HOA. There is also no evidence that the Betts or their predecessors knew the equipment belonged to the HOA. On this record no juror could reach any

conclusion other than that the owners of the Betts Property's have historically used the disputed parcel as their own and the HOA and its predecessors have acquiesced to that use.

The HOA has also provided testimony from Yoshida that the disputed parcel "has not been manicured or well-maintained by anyone" since he moved nearby in 1992. In the course of his "regular" walks, he has not observed anyone working, improving, or otherwise putting the disputed parcel to use. The Court can only give such testimony limited weight. It is unclear how frequently Yoshida observes the disputed parcel. Yoshida may simply not walk by regularly enough, or at the right time of day, to see any work on the disputed parcel. "Regular" is undefined. Further, there is an element of subjectivity in Yoshida's testimony that the disputed parcel is not manicured or well-maintained. Photographs provided by the Bettses showing the disputed parcel and the fence "throughout the years" the Bettses have lived on the Betts Property depict the disputed parcel as a copse with limited grass coverage and growth upon the berm, near the fence. Considering the vaguely-dated photographs, the Court does not have any concrete depictions to illustrate or detail what Yoshida means when he asserts that the disputed parcel is not manicured or well-maintained. Yoshida's testimony is a mere scintilla regarding whether the Bettses maintained the disputed parcel. It is insufficient to raise a material issue on that question. The Court cannot find that Yoshida's observations are enough to rebut evidence of the HOA's acquiescence to the owners of the Betts Property.²

The Court, therefore, finds that there is presumptive evidence of an agreement fixing the boundary.

III. The Long-Established Fence Creates Presumptions that, Coupled with the Presumption of an Agreement to Fix the Boundary, are Sufficient to Satisfy the Second Element

Evidence of a long-established fence creates two presumptions. First, when a fence is treated by coterminous landowners as fixing the boundary between their properties "for such a length of time that neither ought to be allowed to deny the correctness of its location," a presumption is created that there is an agreement fixing the fence as the boundary. *Luce*, 142 Idaho at 271, 127 P.3d at 174 (quoting *Jonson v. Newport*, 131 Idaho 521, 523, 960 P.2d 742, 744

² One of the photographs depicts a tree leaning out towards the road. The Court infers that this is the tree that the Bettses coordinated with Jibben to have removed. While this picture would lend credence to Yoshida's testimony that the disputed parcel was not well-maintained, the Court will not give surfeit weight to Yoshida's affidavit based upon this photograph, as the Bettses have provided ample evidence that they removed this tree.

(1998)). Second, where there is the long existence and recognition of a fence as a boundary, a lack of evidence “as to the manner or circumstances of its original location” gives rise to a presumption that the fence was originally located as a boundary by agreement. *Id.* (quoting *Beneficial Life Ins. Co. v. Wakamatsu*, 75 Idaho 232, 241, 270 P.2d 830, 835 (1954)).

In this case, the two presumptions stemming from the existence of the fence can be drawn. There is evidence that the fence has been treated by coterminous landowners, the Bettises and their predecessors and the HOA, as fixing the boundary between the properties for decades. The evidence provided to the Court shows that the HOA did not interfere with the Betts Property’s owners’ exclusive use. The fence has been present for nearly four and a half decades. The fence ran along the top of a small berm which appears to form a natural boundary between the two properties. It would be a logical place to fix the boundary by agreement in the face of uncertainty of the boundaries’ legal location. Based on this evidence, the Court finds that a presumption has been created that there is an agreement fixing the boundary. *See Johnson v. Newport*, 131 Idaho 521, 523, 960 P.2d 742, 745 (1998) (“[T]he existence of the fence and maintenance of it for sixty years as well as the exclusive use and possession of the property by [the parties] on their respective sides of the old fence is sufficient to find an implied agreement that the old fence was to act as a boundary.”)

There is no evidence as to the manner or circumstances of the fence’s original location. Neither party has provided evidence that explains why the fence was built; it seems likely that such evidence is now simply unobtainable. Although neither side can assert that the Jensens built the fence with complete certainty, the evidence strongly suggests so. The Jensens have never provided any explanation for the location and purpose of the fence.³ The HOA suggests an inference that the fence may have had something to do with the irrigation infrastructure, based on the fence’s proximity to the canal and other irrigation equipment. The admissible evidence submitted to support this inference is sparse. While the Court must draw inferences in light most favorable to the non-moving party when deciding this motion, the inference must be a reasonable one based on the record. This possible inference about the purpose of the fence being related to the canal is insufficient, as a matter of law, to overcome the legal presumption that the fence was originally located as a boundary by agreement.

³ Counsel represented at oral argument that the Jensens are of an advanced age and suffer from dementia.

Here, the conduct of the parties and the acquiescence of the HOA is strong evidence of an implied agreement. This, coupled with the presumptions that the fence was originally located by a boundary by agreement, leads the Court to conclude that there was a subsequent agreement to fix the boundary as the fence line.

Conclusion

The Court finds that there are no issues of material fact and, as a matter of law, there is a boundary by agreement. Accordingly, the Court need not address the Bettises' theories of adverse possession and easement by prescription.

The motion is GRANTED.

 7/28/2023 10:14:38 AM

JONATHAN MEDEMA
District Judge

CERTIFICATE OF MAILING

I hereby certify that on 7/28/2023 11:02:49 AM, I mailed (served) a true and correct copy of the within instrument to:

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TRENT TRIPPLE
Clerk of the Court

By: E. Child
Deputy Clerk

