

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION - LAW**

KAREN L. PFEIFFER

Plaintiff

vs.

**LOUIS B. RIVERA AND DENISE
RIVERA,**

Defendants.

No.: C-48-CV-2012-06486

**PENNSYLVANIA RULE OF APPELLATE PROCEDURE
1925(a) STATEMENT**

AND NOW, this 9th day of June, 2015, the court issues the following statement:

On March 23, 2015, Plaintiff Karen L. Pfeiffer ("Pfeiffer") filed a timely Notice of Appeal to the Superior Court of Pennsylvania from the judgment entered in favor of Louis B. Rivera ("Louis Rivera") and Denise Rivera (collectively the "Riveras") on October 23, 2014. On April 14, 2015, pursuant to our request under Pennsylvania Rule of Appellate Procedure 1925(b), we received Pfeiffer's Concise Statement of Matters Complained of on Appeal. For the reasons that follow, we respectfully suggest that Pfeiffer's appeal lacks merit and should be dismissed.

BACKGROUND

I. Pfeiffer's Quiet Title Action

On July 5, 2012, Pfeiffer commenced this action by filing a complaint. See Complaint, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Jul. 5, 2012) ("Pfeiffer Complaint"). Through her complaint, Pfeiffer brought two actions for quiet title, one under the traditional theory in which Pfeiffer claimed that she is the rightful owner of a disputed tract of land with the Northampton County Uniform Tax Parcel Identifier of B11SE3C-6-6 and one under the doctrine of consentable boundary lines averring that the disputed property has been recognized as her property for more than twenty-one years. See generally Pfeiffer Complaint.

The Riveras responded to Pfeiffer's complaint by averring that Pfeiffer does not have any right to the disputed tract of land through either the traditional theory of quiet title, or through quiet title under the doctrine of consentable boundary lines. See Defendants' Answer to Complaint with New Matter and Counterclaim at ¶¶ 10-19, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Jul. 20, 2012) ("Riveras' Counterclaim"). Additionally, the Riveras denied that Pfeiffer correctly described the disputed tract of land. See Riveras' Counterclaim at ¶ 4. Further, through their answer to Pfeiffer's complaint, the Riveras asserted a counterclaim, averring that the they are the rightful owners of the disputed property, are in

possession of the disputed tract of land, and therefore should be granted quiet title to the disputed tract of land through the doctrines of quiet title, quiet title consentable boundary lines, and adverse possession. See *generally* Riveras' Counterclaim.

II. Non-Jury Trial

On July 28, 2014, this matter was assigned to the Honorable Michael J. Koury, Jr. from the Non-Jury Trial List. See Notes of Testimony, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Jul. 28, 2014) ("N.T."). Pfeiffer testified and presented the testimony of an expert, Richard T. Rutt ("Rutt"), while both Louis and Denise Rivera testified and presented the testimony of an expert, Reynold Petre ("Petre"). See *generally* N.T.

A. *Pfeiffer's Testimony*

Pfeiffer testified that she was the owner of a property located at 521 Delaware Avenue, Portland, Northampton County, Pennsylvania ("Pfeiffer Property"). See *id.* at 3. Pfeiffer purchased the property from Sidney and Erving Effross on July 14, 1980, and took title to the property through a deed recorded in Record Book Volume 616 at page 311 ("Pfeiffer Deed"). See N.T. at 5-6, Plaintiff's Ex. 4, Deed dated Jul. 14, 1980 ("Pfeiffer Deed"). Additionally, Pfeiffer testified regarding several other deeds prepared in relation to Pfeiffer's ownership of the disputed property. See N.T. at 4, Plaintiff's Ex. 1, Deed dated Oct. 26, 1990; N.T. at 4, Plaintiff's Ex. 2, Deed dated Dec. 12, 1988; N.T. at 5, Plaintiff's Ex. 3, Deed dated Sept. 11, 1986.

Pfeiffer stated that the Pfeiffer Deed shows that she owns two tracts of land, one tract consisting of the land upon which her house is situated ("Tract One") and one tract that is located behind and separate from Tract One ("Tract Two"). See N.T. at 5-6; Pfeiffer Deed.

The Pfeiffer Deed refers to Tract Two being located within a certain distance of a barn ("Barn"). See N.T. at 8. The Barn was originally built behind the house located on Tract One in the late 1800s or early 1900s. See *id.* at 9-10. Specifically, the Pfeiffer Deed provides that Tract Two is located:

BEGINNING at a point thirty-nine and thirty-five hundredths (39.35) feet from the northwest corner of the Barn; thence along land now or late of Nellie A. Allen and A.O. Allen, South fifteen degrees thirty minutes East thirty-six (36) feet to a point which is forty-one and ninety-five hundredths (41.95) feet from the southwest corner of the Barn; thence South seventy-four degrees thirty minutes West fifty-five (55) feet to a point; thence by the same, North fifteen degrees thirty minutes West, thirty-six (36) feet to a point; thence by the same, North seventy-four degrees thirty minutes East, fifty-five (55) feet to the place of BEGINNING.

Pfeiffer Deed at 2. Pfeiffer testified that the Barn was not in existence when she bought the property, but believed that she located the foundation of the Barn when she excavated her property in an attempt to gain parking spaces. See N.T. at 8-9; see *also* N.T. at 9, Plaintiff's Ex. 24-27, Series of Photographs. Pfeiffer described the foundation she found as brick and located on the southwest corner of Tract One. See N.T. at 9-10. Because Pfeiffer only excavated at one corner of the foundation, about the size of a

“car width,” she could not identify the dimensions of the alleged Barn. See *id.* at 29-30. Therefore, Pfeiffer admitted that she was not certain that the foundation she excavated belonged to the Barn. See *id.* at 34. Additionally, Pfeiffer testified that the original foundation for the house located on Tract One was made of stone. See *id.* at 12.

In April of 2010, following her discovery of the foundation, Pfeiffer engaged the services of Rutt to perform a survey of her property in order to locate Tract Two. See *id.* at 16. Pfeiffer testified that her property is surrounded by the Riveras’ property, and that although she resided peacefully and shared the entire area with the Riveras’ predecessors in interest, Pfeiffer admitted that she felt compelled to locate Tract Two because of certain difficulties she had with the Riveras. See *id.* at 18-19. Specifically, Pfeiffer recounted an incident in 1998 when her tenant residing at the Pfeiffer Property informed her that the Riveras planned to install a swimming pool. See *id.* at 20. Pfeiffer testified that she informed the Riveras that they should not place the swimming pool on her property, which she believed consisted of an area subsuming an old garage. See *id.* at 20. Pfeiffer testified that she ceased residing at the property in 1991, was not living at the property at the time the Riveras purchased their property in 1995, and did not move back to the property until 2007. See *id.* at 18-19, 41-42.

On cross examination, Pfeiffer admitted that if the foundation she excavated did not belong to the Barn, then the property lines assigned in Rutt's survey are incorrect. *See id.* at 35. Pfeiffer clarified that the area in dispute consists of a cement slab (the "Cement Slab"), which was a garage (the "Garage") until it was damaged by Hurricane Ivan in 2004 (the "Disputed Property"). *See id.* at 26. Until Pfeiffer moved from the Pfeiffer Property in 1991, she testified that she and the Riveras' predecessors in interest used the Garage to store tools. *See id.* at 46. However, Pfeiffer admitted that the Riveras exclusively used the Garage from the time they purchased the home in 1995 until the hurricane in 2004, and that the Riveras now use the Cement Slab that replaced the Garage to park their vehicles. *See id.* at 37-38, 45. Further, Pfeiffer testified that the Riveras maintain the grass around the Cement Slab, and that she does not use the area of the Cement Slab. *See id.* at 45. Finally, Pfeiffer testified that there have never been any fence rows, stone rows, or other demarcation of the property lines relative to her and the Riveras, and that she believes that this lawsuit is the first time property lines between these two properties have been contested. *See id.* at 44, 49.

B. *Richard T. Rutt's Testimony*

Pfeiffer called Richard T. Rutt, a professional engineer and land surveyor to testify. *See id.* at 53. Rutt began his engineering and surveying business in the late 1960s and was the engineer for the Borough of Portland.

See id. at 53-54. Rutt testified that Pfeiffer engaged him to perform a survey, and before he began the field survey work, he viewed the Pfeiffer Property and researched the deeds and records related to the Pfeiffer Property at the Northampton County Courthouse. *See id.* at 56. Rutt testified that Tract Two is separate from, and west of, Tract One and can only be definitively located in relation to the Barn. *See id.* at 59.

In order to place the Barn and determine where Tract Two was located, Rutt examined the chain of title and found that both of Pfeiffer's parcels originated from the same parent tract. *See id.* at 62. Rutt also examined a survey completed by another engineer, Herbert Dilliard. *See id.* From his research, Rutt determined that the geometry of Tract Two restricted the location of the Barn to twelve feet from the back property line of Tract One. *See id.* at 58, 61. Though Rutt stated that he could not say with certainty whether the Barn was located on the right or left side of Tract One's back property line, he believed that the Barn was originally located on the right side of the property line based upon the way other structures described in the deed. *See id.* at 62-63, 77-78. Based upon his assumption that the Barn was located on the right side of the property line, Rutt determined that the location of Tract Two could not vary to the east or west due to the presence of a ten foot cliff over which he did not believe the property line would extend. *See id.* at 72. Finally, Rutt concluded that the

location of Tract Two could only vary three feet to the north and south, depending on the top and bottom corners of the Barn. *See id.* at 77.

After discussing his findings with Pfeiffer, Rutt testified that he was contacted by Pfeiffer to further examine the property. *See id.* at 65. Upon his arrival, he observed that Pfeiffer had uncovered a foundation line exactly twelve feet from the back property line, which supported his theory about the location of Tract Two. *See id.* at 65. However, Rutt testified that he was not certain that the foundation Pfeiffer recovered was the foundation of the Barn. *See id.* at 85. Following this discussion with Pfeiffer, Rutt drew up a survey that “made [his] solution work within the confines of [Pfeiffer’s] discovery,” and concluded that Pfeiffer was the rightful owner of the Disputed Property. *See id.* at 80; *see also* N.T. at 56, Plaintiff’s Ex. 35, N.T. at 56, Plaintiff’s Ex. 36.

C. Denise Rivera’s Testimony

Denise Rivera testified that she and Louis Rivera reside at 523 Delaware Avenue, Portland, Northampton County, Pennsylvania (“Rivera Property”). *See id.* at 98. The Riveras purchased the Rivera Property from Joyce Karr on November 3, 1995, as evidenced by a deed (“Rivera Deed”). *See N.T.* at 98, Defendant’s Ex. 3, Deed dated Nov. 3, 1995. Denise Rivera testified that her children park their vehicles and play basketball on the Concrete Slab located in the Disputed Property, and that her husband maintains the grass in the Disputed Property. *See id.* at 99, 108. Denise

Rivera confirmed Pfeiffer's recollection that the Garage was located on the spot where the Concrete Slab now sits, and that the Garage was destroyed by a hurricane in 2004. *See id.* at 102. Denise Rivera testified that the Garage was exclusively used by the Riveras from 1995 until 2004, and that the Riveras' predecessors in interest, utilized and maintained the Garage from the time it was built in 1986 until 1995. *See id.* at 104. Further, Denise Rivera testified and submitted photographs to show that there is a stone foundation for the Barn underneath the Concrete Slab, which she observed at the time the Riveras purchased the property. *See id.* at 106; *see also* N.T. at 107, Defendants' Ex. 5.

Denise Rivera stated that she was not aware of any ten foot cliffs on her property, as testified to by Rutt. *See id.* at 111. Further, Denise Rivera recalled the discussion with Pfeiffer regarding the swimming pool, and confirmed that Pfeiffer was concerned that the Riveras would place the swimming pool on the Pfeiffer Property. However, Denise Rivera testified that Pfeiffer believed that Tract Two was located behind the Garage, behind the confines of the Disputed Property, and that the Riveras did not place the swimming pool behind the Garage. *See id.* at 112. Finally, Denise Rivera testified that the Riveras hired Ott Consulting to perform survey work in 2005, following the flood of September 2004. *See id.* at 110.

D. Reynold Petre's Testimony

Reynold Petre, a licensed land surveyor, testified as the Riveras' expert witness. *See id.* at 116-17. Petre began surveying in 1986, and has previously been accepted in Northampton County Court as an expert witness in the field of surveying. *See id.* at 118. Petre testified that in preparing to perform the survey, he researched previous deeds, maps and records related to the property. *See id.* at 119. Although Petre did not research deeds as far in the past as Rutt, Petre testified that it is not his typical practice to research that far in the past unless he finds a discrepancy. *See id.* at 119. Nonetheless, Petre testified that he met with Rutt in 2011 and reviewed the deeds Rutt found, and determined that both experts were deriving their conclusions from "pretty much . . . the exact same evidence." *Id.* at 120.

Petre performed his survey in 2005. *See id.* at 122. During this survey, Petre had an opportunity to observe a heavy stone foundation at the Disputed Property, which he testified was consistent with his general knowledge concerning farms and structures which were built 100 years ago. *See id.* at 123-24. Based on this finding, Petre concluded that the foundation he observed belonged to the Barn. *See id.* at 124. After discovering the location of the Barn, Petre uncovered a corner of the foundation and coordinated geometry of the Rivera Property from the location of the Barn. *See id.* at 125. Petre testified that after coordinating

the geometry of the Rivera Property, he located all the other features described in the Riveras' deed in order to draw his final survey. *See id.* Petre's final survey placed Pfeiffer's Tract Two behind the Disputed Property. *See id.* at 126.

Petre explained that his survey differs from Rutt's survey because they placed the Barn in different locations. *See id.* Petre determined that Rutt made the decision to draw the line east in his survey, while Petre decided to draw the line west. *See id.* at 127. Petre specified that neither the Rivera Deed or the Pfeiffer Deed states whether Tract Two is located to the east or the west, and that he choose west based upon finding the Barn. *See id.* at 128. Additionally, Petre testified that in his experience, a smaller brick wall would not delineate a barn, as assumed in Rutt's survey, and that he did not typically see barns immediately adjacent to a dwelling where Rutt assumed the Barn was placed. *See id.* at 129, 131. Finally, Petre testified that he believed that the ten foot cliff Rutt described was an area that is steep, but is not a cliff and would be drivable. *See id.* at 131.

E. *Post-Trial*

Following the close of testimony, we directed the parties to submit proposed findings of fact and legal briefs. *See* Order of Court dated July 29, 2014, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Jul. 29, 2014). Both parties submitted proposed findings of fact and legal briefs as directed, and oral argument on the proposed findings of fact and legal

briefs occurred on September 26, 2015. See Proposed Findings of Fact and Conclusions of Law of Defendants, Louis B. Rivera and Denise Rivera, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Sept. 14, 2014); Post-Trial Brief of the Defendant Louis B. Rivera and Denise Rivera, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Sept. 15, 2014); Post Trial Memorandum with Findings of Fact, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Sept. 16, 2014).

III. Post-Trial Motions

On October 23, 2014, the court entered judgment in favor of the Riveras and against Pfeiffer on the counts of quiet title and quiet title under the doctrine of consentable boundary lines, and in favor of Pfeiffer and against the Riveras on the Riveras' count for adverse possession. See Order of Court dated Oct. 23, 2014, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Oct. 23, 2014) ("October 2014 Order"). On November 3, 2014, Pfeiffer filed a timely Motion for Post-Trial Relief from the October 2014 Order. See Plaintiff's Motion for Post-Trial Relief, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Nov. 3, 2014). Pfeiffer filed a brief in support of her Post-Trial Motion on January 26, 2015. See Plaintiff's Brief in Support of Post Trial [sic] Motions, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Jan. 26, 2015). The court denied Pfeiffer's Post-Trial Motion on February 23, 2015. See Order of Court

dated Feb. 23, 2015, *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Feb. 23, 2015).

IV. Pfeiffer's Appeal

On March 23, 2015, Pfeiffer filed a Notice of Appeal to the Superior Court of Pennsylvania.

On appeal, Pfeiffer contends that:

1. The Trial Court erred in finding in favor and entering judgment for the Defendants, Louis B. Rivera and Denise Rivera, hereinafter referred to as "Riveras", [sic] in regard to the Action for Quiet Title of the Plaintiff, Karen Pfeiffer, hereinafter referred to as "Pfeiffer". [sic]

2. The Trial Court erred in entering judgment in favor of the Riveras, in regard to Pfeiffers' [sic] Action of Quiet Title pursuant to the doctrine of consentable boundary lines and entering judgment in favor of the Riveras.

3. The Trial Court erred in entering judgment in finding in favor of the Riveras, on the Riveras' Quiet Title action.

4. The Trial Court erred with respect to Riveras' Action For Quiet Title pursuant to the doctrine of consentable boundary lines by entering judgment in favor of the Riveras.

5. The Trial Court erred in finding in favor of the Riveras are [sic] the owners in fee simple and entitled to the possession of certain real properties situate [sic] in the Borough of Portland, County of Northampton, Commonwealth of Pennsylvania, described in the Riveras' deed, Answer and Counterclaim and as shown on the survey generated by Reynold Petre.

6. The Trial Court erred in finding that Pfeiffer's claim to the property and that all who claimed titled under her are without any right whatsoever and have no estate, right, title, lien or interest in or to the property or any part thereof.

7. The Trial Court erred in its finding that Pfeiffer and all persons claiming under her are permanently enjoined from

asserting any estate, right, lien or interest in or [sic] the property or any part thereof.

8. The Trial Court erred in not finding in favor of Pfeiffer and entering a judgment in favor of Pfeiffer in regard to Pfeiffer's Quiet Title Action based on the testimony and evidence presented by Pfeiffer's Professional Licensed Surveyor and Civil Engineer, Richard T. Rutt. Rutt's testimony was clear and convincing in regard to surveying Pfeiffer's tract 2 that is referenced in Pfeiffer's deed designated by Northampton County Uniform Tax Parcel Identifier Number B11SE3C-6-6.

9. The Trial Court erred in not entering an Order that Pfeiffer owns the property as set forth by Richard T. Rutt, P.E., PLS.¹

10. The Trial Court erred in not considering the extensive research that Rutt did concerning the chain of title and the ownership of the property by predecessors in title to both Pfeiffer and Rivera.²

11. The Trial Court erred in not accepting the proposed findings of fact as set forth in the Trial Memorandum with accompanying Findings of Fact of Pfeiffer.

12. Pfeiffer preserved all issues set forth in the Post Trial [sic] Motion, Post Trial Memorandum and accompanying Findings of Fact.

Plaintiff's Concise Statement of Errors Complained of on Appeal

Pursuant to Pa.R.A.P. 1925(b), *Pfeiffer v. Rivera*, No. C-48-CV-2012-6486 (C.P. Northampton Co. Apr. 14, 2015) ("Pfeiffer's Statement of Errors").

¹ Pfeiffer did not raise this issue in her Post-Trial Motion. Therefore, pursuant to Pa.R.A.P. 302(a), Pfeiffer waived her right to raise this issue, and we will not consider it. See Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

² Pfeiffer did not raise this issue in her Post-Trial Motion. Therefore, pursuant to Pa.R.A.P. 302(a), Pfeiffer waived her right to raise this issue, and we will not consider it. See Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

DISCUSSION

I. Standard of Review

In reviewing a grant of quiet title under the doctrine of consentable boundary lines, the Pennsylvania Superior Court's "scope [and standard] of review in matters of equity [are] narrow and limited to determining whether the findings of fact are supported by competent evidence, whether an error of law has been committed or whether there has been a manifest abuse of discretion." *Zeglin v. Gahagen*, 774 A.2d 781, 783 (Pa. Super. 2001). Similarly, "[w]hen reviewing a trial court's decision regarding an action to quiet title, [the Pennsylvania Superior Court is] limited to determining whether the findings of fact that led to the trial court's conclusions of law are supported by competent evidence," and "will not reverse a determination of the trial court in a quiet title action absent an error of law or capricious disregard of the evidence." See *Moore v. Duran*, 687 A.2d 822, 827 (Pa. Super. 1996) (citing *Thompson v. R.R. Preservation Society*, 612 A.2d 450, 452 (Pa. Super. 1992)). Additionally, "[t]he question of what constitutes a boundary line is a matter of law while the location of that boundary line is a matter for the trier of fact." See *Plauchak v. Boling*, 653 A.2d 671, 675 (Pa. Super. 1995) (citing *Plott v. Cole*, 547 A.2d 1216, 1219 (Pa. Super. 1988)). Further, the matter of credibility of witnesses is for the trial judge, and where the evidentiary record supports the trial court's credibility

determinations, the appellate court is bound to accept them. See *In re R.J.T.*, 9 A.3d 1179, 1190 (Pa. 2010).

II. Quiet Title - Doctrine of Consentable Boundary Lines

“The doctrine of consentable line is a rule of repose for the purpose of quieting title and discouraging confusing and vexatious litigation.” *Plauchak*, 653 A.2d at 675 (citing *Plott*, 547 A.2d at 1220). Although the doctrine of consentable boundary lines can arise at the same time as a claim for adverse possession, it “has emerged as a separate and distinct theory from that of traditional adverse possession.” *Niles v. Fall Creek Hunting Club*, 545 A.2d 926, 930 (Pa. Super. 1988). In particular, while courts strictly apply the elements necessary to prove ownership under the doctrine of adverse possession, “more flexible rules [are applied] in the acquiescence paradigm.” *Zeglin v. Gahagen*, 812 A.2d 558, 565 (Pa. 2001). Additionally, unlike a traditional claim for adverse possession, the doctrine of consentable boundary lines “does not require proof of actual possession of the entire parcel of land claimed.” *Sorg. v. Cunningham*, 687 A.2d 846, 850 (Pa. Super. 1997).

A boundary can be established through the doctrine of consentable boundary lines in two ways, either by: (1) dispute and compromise, or (2) by recognition and acquiescence. See *Niles*, 545 A.2d at 930.

“Acquiescence,’ in the context of a dispute over real property, ‘denotes passive conduct on the part of the lawful owner consisting of failure on his

part to assert his paramount rights or interests against the hostile claims of the adverse user.” *Moore v. Moore*, 921 A.2d 1, 5 (Pa. Super. 2007) (quoting *Zeglin*, 812 A.2d at 562, n.5). “The requirements for establishing a binding consentable line by recognition and acquiescence are: (1) a finding that each party has claimed the land on his side of the line as his own; and (2) a finding that this occupation has occurred for the statutory period of twenty-one years.” See *Plauchak v. Boling*, 653 A.2d 671, 675 (Pa. Super. 1995) (citing *Beals v. Allison*, 54 A.2d 84, 85 (Pa. Super. 1947)). Further, successive owners in privity to one another may tack the possessory rights of a prior owner which were established through a consentable line. See *id.* at 677. Finally, once a boundary is established under the doctrine of consentable boundary lines, “the line behind such a line becomes the property of each neighbor regardless of what the deed specifies. In essence, each neighbor gains marketable title to that land behind the line, some of which may not have been theirs under their deeds.” *Soderberg v. Weisel*, 687 A.2d 839, 843 (Pa. Super. 1997) (citations omitted).

A. *It was not an error of law to enter judgment in favor of the Riveras under the doctrine of consentable boundary lines.*

In Pfeiffer’s Statement of Errors, two and four, Pfeiffer argues that the court erred by entering judgment in favor of the Riveras and against Pfeiffer under the doctrine of consentable boundary lines. Based on the record before the court, it is respectfully submitted that it was not an error of law to

grant the Riveras quiet title under the doctrine of consentable boundary lines.

It is clear from the record before the court that Pfeiffer cannot show that she should be granted quiet title to the Disputed Property under the doctrine of consentable boundary lines. Pfeiffer testified that the instant matter was the first time there was a dispute over the boundary lines related to the Disputed Property, and she did not produce any documentation relating to agreements with the Riveras or the previous owners to the Rivera property relating to the property lines. Therefore, Pfeiffer cannot establish a boundary line by dispute and compromise.

Further, Pfeiffer cannot establish a boundary line under the doctrine of consentable boundary lines through the theory of recognition and acquiescence, and her testimony in fact bolsters the Riveras' claim for quiet title under this theory. Pfeiffer testified that the Disputed Property housed the Garage from 1986 until it was destroyed in 2004. Pfeiffer confirmed that the Garage was used by the Riveras' predecessors in interest, and then the Riveras until the Garage was destroyed in 2004. Additionally, Pfeiffer testified that the Riveras replaced the Garage on the Disputed Property with the Cement Slab. Pfeiffer admitted that the Cement Slab has been used solely by the Riveras for parking since it was installed, that the Riveras care for the grass surrounding the Cement Slab, and that she does not enter upon the Cement Slab or reside in the Disputed Property. While Pfeiffer

claimed that she informed the Riveras in 1998 that she believed the Disputed Property belonged to her, we did not find this testimony credible.

Denise Rivera testified that Pfeiffer claimed that the land located *behind* the Disputed Property belonged to her. This testimony is bolstered by the fact that after this conversation the Riveras did not place the swimming pool behind the Disputed Property. Further, we did not find this testimony credible because for more than fourteen years after Pfeiffer claims she informed the Riveras that the Disputed Property belonged to her, she made no attempt, until this lawsuit, to strip the Riveras of possession of the Disputed Property. Thus, because there is no credible evidence of record that Pfeiffer ever claimed the Disputed Property as her own, her action for quiet title under the doctrine of consentable boundary lines must fail. See *Plauchak*, 653 A.2d at 675.

Alternatively, the Riveras have proven their right to quiet title under the doctrine of consentable boundary lines through the theory of recognition and acquiescence. First, the Riveras have proven the first element, *i.e.*, that “each party has claimed the land on his side of the line as his own.” See *id.* There is no credible evidence that Pfeiffer, or her predecessors in interest, have made any attempt to possess the Disputed Property. While Pfeiffer claims that she used the Garage on the Disputed Property with the Riveras’ predecessors in interest, she does not present evidence that at any time she tried to *possess* the Disputed Property. Pfeiffer only claims that she stored

tools in the Garage. Pfeiffer does not present any evidence that she, at any time, maintained the Disputed Property or used the Disputed Property exclusively. As discussed above, we did not find Pfeiffer's testimony that she attempted to claim the Disputed Property credible.

As to the Riveras use of the Disputed Property, we note that Pfeiffer admits that the Disputed Property had been used as a Garage, and then a Cement Slab, by both the Riveras and their predecessors in interest. Further, Denise Rivera testified that the Riveras occupy the area of the Disputed Property. Denise Rivera testified that prior to its destruction in 2004, the Garage on the Disputed Property had been used solely by the Riveras and contained the personal items of the Riveras. Additionally, Denise Rivera testified that the Cement Slab has been used solely by the Riveras for their vehicles and a basketball hoop. Further, Denise Rivera testified that Louis Rivera maintains the property surrounding the Cement Slab and that their children park and play on the Cement Slab. It is clear from the testimony that the Riveras have treated the Garage and the Disputed Property as their property.

The Riveras have also established the second element, *i.e.*, that the "occupation has occurred for the statutory period of twenty-one years." *Id.* The parties have treated the Garage as the property of the Riveras, and their predecessors in interest, for at least twenty-one years. Again, we note that Pfeiffer admitted that the Disputed Property had been used by the

Riveras and their predecessors in interest since the Garage was built on the Disputed Property in 1986. In fact, there is no credible evidence of record that there was a time when the Riveras, or their predecessors in interest, did not occupy the Disputed Property. Further, even though Pfeiffer claims that she shared possession of the Disputed Property with the Riveras' predecessors in interest, Pfeiffer admitted that she moved from her property in 1991, and did not return until 2007. Moreover, following Pfeiffer's move in 2007 she never entered upon the Disputed Property. As Pfeiffer did not testify that anyone occupying her property during this time period used the Disputed Property, by the time Pfeiffer filed her action in 2012, twenty-one years had elapsed from the time that Pfeiffer could have possibly had possession of the Disputed Property. Thus, the Riveras have successfully tacked their own use of the Disputed Property to that of their predecessors, because both parties testified that the Riveras' predecessors in interest used the Disputed Property for the Garage from 1986 until the time that the Riveras bought the property in 1995.

Further, Pfeiffer testified that she did not become aware of her possible right to the Disputed Property until 2010, thirty years after she took title under the Pfeiffer Deed. Six years after she purchased the property, the Garage was built on the Disputed Property. Because Pfeiffer took no steps to ascertain the true property lines for twenty-four years following the

construction of the Garage, one can only conclude that Pfeiffer was satisfied to leave the Disputed Property to the Riveras.

For all the reasons listed above, we believe that Pfeiffer did not prove, and that the Riveras have proven, the elements necessary to establish a consentable boundary line.

III. Quiet Title

An action to quiet title is an action at law, created by statute, in order to allow people to establish or clear title to lands or their interests therein. *See Kistler v. Com., By and Through Pennsylvania Fish Com'n*, 465 A.2d 1333, 1335 (Pa. Commw. 1983). However, in order to avoid piecemeal litigation where the remedy at law is inadequate, equitable relief, including specific performance, can be granted. *See White v. Young*, 186 A.2d 919, 921-22 (Pa. 1963).

A litigant may bring an action to quiet title "where an action of ejectment will not lie, to determine any right, lien, title or interest in land or determine the validity or discharge of any document, obligation or deed affecting any right, lien, title or interest in land." Pa.R.C.P. 1061(b)(2). The burden of proof in an action to quiet title is on the Plaintiff, who must recover solely on the strength of his or her title and not upon the weaknesses of the Defendant's title. *See Cox's Inc. v. Snodgrass*, 92 A.2d 540, 542 (Pa. 1952); *Albert v. Lehigh Coal & Navy Co.*, 246 A.2d 840 843 (Pa. 1968). Further, the Plaintiff must establish title by a fair preponderance

of the evidence, thus establishing a *prima facie* title, which is sufficient until a better title is shown by an adverse party. *See Poffenberger v. Goldstein*, 776 A.2d 1037, 1041 (Pa. Commw. 2001). Finally, though the trial court must accept evidence that is relevant and necessary to resolve the conflict over the property at issue, it is within its discretion to reject a map or plat if it adds nothing by way of illustration to the witness's testimony. *See Pencil v. Buchart*, 551 A.2d 302, 307 (Pa. Super. 1988).

"[U]pon granting relief to the plaintiff, the court shall order that the defendant be forever barred from asserting any right, lien, title or interest in the land inconsistent with the interest or claim of the plaintiff set forth in the complaint. . . ." Pa.R.C.P. 1066(b)(1). Additionally, where appropriate, the court "shall enter a final judgment that a document, obligation or deed affecting a right, lien, title or interest in the land is cancelled or is valid, invalid or discharged or that a copy of a lost plan, document, obligation or deed is an authentic copy." Pa.R.C.P. 1066(b)(2).

A. It was not an error of law to enter judgment in favor of the Riveras on Pfeiffer's quiet title action.

In Pfeiffer's Statement of Errors, one and eight, Pfeiffer argues that the court should have ruled in favor of Pfeiffer on Pfeiffer's quiet title action. Based upon the record before the court, it is respectfully submitted that it was not an error of law to enter judgment in favor of the Riveras on Pfeiffer's Quiet Title Action.

The burden of proof in a quiet title action is on the Plaintiff, who must recover solely on the strength of her title and not upon the weaknesses of the Defendant's title. See *Cox's Inc*, 92 A.2d at 542; *Albert*, 246 A.2d at 843. Further, in order to prevail in an action to quiet title, the Plaintiff must establish title by a fair preponderance of the evidence. See *Poffenberger*, 776 A.2d at 1041.

Here, we have found that Pfeiffer has failed to meet the burden of proof necessary to establish her right to quiet title of the Disputed Property. While Pfeiffer contends that she should succeed on her quiet title action because she believes that her expert, Rutt, presented clear and convincing evidence that the Disputed Property belonged to Pfeiffer, we disagree. We note that as fact-finder, we are "free to accept or reject the credibility of both expert and lay witnesses, and to believe all, part or none of the evidence." *Casselli v. Powlen*, 937 A.2d 1137, 1139 (Pa. Super. 2007). Further, if the evidentiary record supports our determinations, the appellate court must defer to our credibility determinations. See *In re R.J.T.*, 9 A.3d 1179, 1190 (Pa. 2010). Here, we do not find the testimony of Rutt credible and reject the entirety of Rutt's testimony.

Despite Rutt's exhaustive search of the prior deeds and testimony as to his methods of surveying, it is clear from the Pfeiffer Deed that the actual location of Tract Two is completely dependent upon the location of the Barn. Further, both Pfeiffer and Rutt admit that the location of Tract Two and

consequently the ownership of the Disputed Property depends on the location of the Barn. We do not find that either Pfeiffer or Rutt were able to show by a "fair preponderance of the evidence" where the Barn was located, and consequently were not able to meet their burden concerning ownership of the Disputed Property.

Pfeiffer admits that the Barn was not standing at the time she purchased her property. After contacting Rutt to survey the property in order to determine where Tract Two was located, Pfeiffer excavated an area and testified that she located what she assumed was the foundation of the "Barn" described in the Pfeiffer Deed. The foundation Pfeiffer uncovered was comprised of brick, unlike the foundation of Pfeiffer's home, which she testified was comprised of stone. Pfeiffer further testified that she did not locate, or attempt to locate the four corners of the foundation of the "Barn," and that she was not certain that the area she excavated was actually the Barn.

Rutt also admitted that he was not certain where the Barn was located. Rutt testified that he initially could not determine on which side of Tract One's property line the Barn would have been located. Despite this uncertainty, Rutt testified that he made a determination concerning the location of Tract Two. Rutt informed Pfeiffer of his beliefs about the location of Tract Two, and informed her about his uncertainty of the location of the Barn. Following this discussion, Pfeiffer allegedly found the "Barn"

foundation, and Rutt accepted that the foundation Pfeiffer uncovered was the Barn. Rutt then made his solutions for his survey work within the confines of Pfeiffer's discovery. Without Rutt being certain as the location of the Barn, his testimony about the placement of the property lines and ownership of the Disputed Property is not credible. *See Casselli v. Powlen*, 937 A.2d 1137, 1139 (Pa. Super. 2007) (asserting that the fact-finder is "free to accept or reject the credibility of both expert and lay witnesses, and to believe all, part or none of the evidence"); *see also In re R.J.T.*, 9 A.3d 1179, 1190 (Pa. 2010) (stating that the appellate court must defer to the trial court's credibility determinations which are supported by the evidentiary record).

Further, the authenticity of the foundation Pfeiffer believes is the "Barn" is drawn into question by the Riveras' expert, Petre. Petre testified that his knowledge of barns built around the time the Barn was constructed led him to conclude that the foundation Pfeiffer uncovered was not the Barn. Petre opined that small brick walls, of the type found by Pfeiffer's excavation, would not delineate a barn built more than one hundred years ago. Further, Petre's knowledge of barns of that era led him to conclude that the placement of the Barn where Pfeiffer found the foundation would be highly suspect, as barns are not typically found directly next to dwellings, and Rutt's survey would place the "Barn" in the location of the ingress and egress to the homes.

Based upon this evidence, we did not find that Pfeiffer had proven by a “fair preponderance of the evidence” that she should be granted quiet title to the property. Therefore, because Pfeiffer has not met her burden of proof, it was not an error of law to find against Pfeiffer, and in favor of the Riveras on Pfeiffer’s quiet title action.

B. It was not an error of law to enter judgment in favor of the Riveras on the Riveras’ quiet title action.

In Pfeiffer’s Statement of Errors, three, five, six, and seven, Pfeiffer argues that the court should not have found that the Riveras are the rightful owners of the Disputed Property through quiet title. Further, Pfeiffer argues, because the Riveras should not have been found to be the rightful owners of the Disputed Property, Pfeiffer alleges that the court erred by prohibiting Pfeiffer from claiming any interest in the Disputed Property. Based upon the record before the court, it is respectfully submitted that it was not an error of law to enter judgment in favor of the Riveras on the Riveras’ quiet title action.

As stated above, the burden of proof in a quiet title action is on the Plaintiff, who must recover solely on the strength of his or her title and not upon the weaknesses of the Defendant’s title. *See Cox’s Inc.*, 92 A.2d at 542; *Albert*, 246 A.2d at 843. Further, in order to prevail in an action to quiet title, the Plaintiff must establish title by a fair preponderance of the evidence. *See Poffenberger*, 776 A.2d at 1041. Based upon the record before the court, we found that the Riveras established title by a “fair

preponderance of the evidence,” and should therefore succeed on their quiet title action.

As described above, the location of Pfeiffer’s Tract Two is completely dependent upon the location of the Barn. While we could not find that the evidence submitted by Pfeiffer showed that either Pfeiffer or her expert Rutt conclusively determined the location of the Barn, we find that the Riveras have submitted adequate evidence to prove that they have conclusively determined the location of the Barn and consequently the actual property lines in relation to the Disputed Property.

Denise Rivera testified that she had independent knowledge that the area comprising the Disputed Property was an old barn. Denise Rivera presented evidence to the court that she observed the old stone foundation of the Barn when she purchased the property. This stone foundation is consistent with the stone foundations found in the original structures built on the property.

Further, the testimony and survey of Petre confirms the location of the Barn, and clearly delineates the accurate property lines of the parties. Petre testified that he personally observed the heavy stone foundation that Denise Rivera discovered under the Cement Slab, and opined that it was consistent with his knowledge of barns built at the time the Barn was built. Petre testified that he concluded that the Barn was located where the Garage had been built based upon his observations of the characteristics of the

foundation. Petre testified that he used this stone foundation as the Barn, which is much more characteristic of a barn from that era than the foundation Pfeiffer uncovered. Finally, Petre testified that all of the measurements and plotting, and the survey plan itself, were made to a reasonable degree of surveying certainty.

As discussed above, we did not find that Pfeiffer or Rutt were able to credibly determine the location of the Barn. Because Petre was able to credibly determine the location of the Barn, we found Petre's survey to be accurate and correct. As such, the court accepts Petre's survey and rejects the survey submitted by Rutt. *See Casselli v. Powlen*, 937 A.2d 1137, 1139 (Pa. Super. 2007) (asserting that the fact-finder is "free to accept or reject the credibility of both expert and lay witnesses, and to believe all, part or none of the evidence"). Based upon this evidence, we found that the Riveras have proven by a "fair preponderance of the evidence" that they should be granted quiet title to the property. Therefore, we submit that it was not an error of law to find in favor of the Riveras, and against Pfeiffer, on Riveras' quiet title action.

CONCLUSION

For the reasons set forth above, we respectfully suggest that Pfeiffer's appeal lacks merit and should be dismissed.

BY THE COURT:

/s/ Michael J. Koury, Jr.

MICHAEL J. KOURY, JR., J.