IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 10, 2004 Session

JOHNNY KING, ET AL. v. STEVE LANTER, ET AL.

Appeal from the Chancery Court for Scott County
No. 8753 Billy Joe White, Chancellor

No. E2003-00704-COA-R3-CV - FILED AUGUST 26, 2004

This is a boundary line dispute with ancillary issues. Following a bench trial, the court resolved the location of the parties' common north-south boundary line and the other issues. Both parties raise issues on appeal. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Andrew N. Hall, Wartburg, Tennessee, for the appellants, Steve Lanter, Dessell Lanter, and Carol Stigall.

Janette L. Taylor, Oneida, Tennessee, for the appellees, Johnny King and Dorothy King.

MEMORANDUM OPINION

The matters before us pertain to the trial court's findings of fact underpinning its conclusions of law. Because a formal opinion in this case would have no precedential value, we affirm the trial court's judgment by memorandum opinion.[1]

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[1]Rule 10 of the Rules of the Court of Appeals of Tennessee provides as follows:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

The parties each own a multi-acre tract of land fronting on the south side of New Light Road in a wooded area of Scott County. The parties' properties are in the Winfield community off U.S. Highway 27.

The boundary line in dispute runs generally north and south, with its north point ending at New Light Road. The location of this line was in sharp dispute at trial. Each side presented the testimony and formal survey of a registered land surveyor. A non-public gravel road – called Haul Road – runs generally north and south from New Light Road. The road is in the disputed area and both sides claim ownership to it and/or the right to use it. The survey presented by Johnny King and wife, Dorothy King ("the Kings"), reflects that Haul Road is entirely on their property. The survey offered into evidence during the testimony of the registered land surveyor who was called to the stand by the other landowners, Steve Lanter and wife, Dessell Lanter ("the Lanters"), reflects that Haul Road is partially on the west side of the common boundary, *i.e.*, the Kings' side, and partially on the east side, *i.e.*, the Lanters' side.

The record reflects that Mr. Lanter, in 1998, purported to transfer 3.89 acres in the disputed area to his sister-in-law, the defendant Carol Stigall. A short time later, Ms. Stigall re-conveyed the property to Mr. Lanter. The Lanters' claim in this case is based, at least in part, on the latter deed. The Kings contend that the deeds are void because, according to them, the property described in the deeds was never owned by Mr. Lanter or Ms. Stigall.

The trial court rendered its opinion from the bench. The court's recitation of its findings gives a "flavor" of the difficulty presented to the trial court by the deeds in the record, the surveys of the parties' experts, and the earlier surveys referred to during the course of the testimony. The court's opinion, in part, is as follows:

> THE COURT: I just wanted to be sure I was interpreting his survey correct. This is one of the most confusing surveys I've ever tried to try. We have two very good surveyors in this matter. Both have done an honest job, tried to do what's right. Very difficult situation because of some other surveys that obviously were very wrong at times. We've got a bad closure in the 1946 deed that creates some problem. We have Sterling Jones' survey in particular that creates a problem. He's all over the country. Mr. Moore's survey is closer. And of course Crutchfield is in the ballpark. But the Court has to decide these matters. I can't leave these parties in a dispute. Whether or not I can settle it completely – I certainly can't satisfy everybody, but I have to do something to resolve this dispute that's been going on. And the way I see it, every time a surveyor came out there it created more problems. Deeds were made that were not correct off of surveys that were not correct.

> So, I'm going to make two findings. One is that the Haul Road in question, that both parties hereto have an easement over that road for ingress and egress. They have a right to maintain it.
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> On that issue of damages on that dam, very, very close question, but at the point this damage was done may be the Plaintiff[s'] property. Certainly under Crutchfield's survey part of the toe of the dam is across the line drawn by him. The Court's not going to award any damages.
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> But I'm going to modify and not accept either survey totally. I'm going to manufacture, for lack of a better term, some sort of resolution of this matter. Hopefully with common sense. But in the survey, one of the most important things that I thought was the finding of the Grant corner. I think that Grant corner is well established. I think that was one of the original corners and I don't think we can leave that. The Court is going to establish Mr. Reed's survey beginning at a point on the main road. I'm going to accept Chris Sexton's corner, for lack of a better term, and his first line and base that upon adverse possession. That line there is highly contested I'm sure by Mr. Lanter because it's very close to his buildings, and just trying to resolve this matter I'm going to accept the Chris Sexton line there to a point I've marked on Mr. Reed's survey. And then I'm going to go straight across and pick up Mr. Reed's survey on the red painted line and follow his survey the rest of the way around to the beginning corner. And I'll show Counsel what I'm talking about. I'm giving Mr. Lanter this property here based on this Chris Sexton survey. Then I'm going to corner it right here and go across and pick up this survey the rest of the way. This gets this line away from his building.

The trial court directed the Lanters' surveyor to prepare a new survey in accordance with the court's directive as found later in the court's memorandum opinion. The surveyor complied and his survey is attached as Appendix A to this opinion. In its judgment, the trial court decreed that the Lanter to Stigall deed and the Stigall to Lanter deed were both void as neither party "owned the property at the time of the conveyances."

Each of the parties takes issue with the factual findings of the trial court that are adverse to their side.

In this non-jury case, our review is *de novo*; that review, however, is limited to the record of the proceedings below. Tenn. R. App. P. 13(d); ***Wright v. City of Knoxville***, 898 S.W.2d 177, 181 (Tenn. 1995). The record comes to us with a presumption of correctness as to the trial court's factual

findings – a presumption we must honor unless the preponderance of the evidence is contrary to those findings. Tenn. R. App. P. 13(d).

We share the frustration of the trial court. Our task is further complicated by the fact that we are dealing with a "cold" transcript, one that is particularly difficult to decipher in this case because of the numerous statements by the witnesses which could only be understood if one were present for the testimony. The following are but a few of the many, many impossible-to-decipher pieces of testimony:

> the original calls on the deed went like this
>
> [f]ound this one and this one and we set that one and we set this one
>
> [e]vidently that's up in this area here. See, we're down in here. And Jim's survey is up in here. So naturally we wouldn't be finding anything up there.

The record is replete with such references which are unintelligible to us since they are not identified with respect to a specific exhibit or are otherwise so general and vague in nature as to defy comprehension. The trial court observed these witnesses; watched as they pointed to marks, monuments, and lines on the surveys; and was in a much better position than are we to understand what the witnesses were trying to convey. This is the very reason we defer to trial courts when it comes to the question of witness credibility. *See* ***Galbreath v. Harris***, 811 S.W.2d 88, 91 (Tenn. Ct. App. 1990).

We have reviewed the record as best we can. Before we can place a trial court in error on the facts, we must be prepared to say that the evidence preponderates against what it found. A party who seeks to cast a trial court in error must present us with a record reflecting such errors. Our review of the record does not persuade us that the evidence preponderates against any of the trial court's multiple factual findings. *See* Tenn. R. App. P. 13(d).

The judgment of the trial court is affirmed. Costs on appeal are taxed 50% to the Kings and 50% to the Lanters. This case is remanded to the trial court for enforcement of the trial court's judgment and collection of costs assessed below, all pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE