

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

January 14, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

NORMA C. TOLLIVER, et al)
Plaintiffs - Appellees)
v.)
CLEO CARICO, et al)
Defendant - Appellant)
v.)
BILLY E. CALL, et ux)
Defendants)
v.)
BETTY JO SEATS and)
JUNIOR PAUL HOLCOMB)
Defendants)
v.)
CLEO CARICO and husband,)
HARRY CARICO)
Plaintiffs)
v.)
BILLY E. CALL, BERNICE E.)
CALL, BETTY JO SEATS, and)
JUNIOR PAUL HOLCOMB)
Defendants)

SULLIVAN COUNTY
03A01-9606-CH-00200

HON. RICHARD E. LADD,
CHANCELLOR

AFFIRMED AND REMANDED

DAVID W BLANKENSHIP OF KINGSPORT FOR APPELLANT

TIMOTHY W HUDSON OF BRISTOL FOR APPELLEES

O P I N I O N

Goddard, P.J.

In this boundary line dispute the Trial Court essentially fixed the boundary line between property owned by Norma C. Tolliver-- widow of John Tolliver--and their two daughters, Johnnie Wilson and Vera Hockett, and property owned by Cleo Carico, as insisted by Ms. Tolliver and her daughters, which prompted Ms. Carico to appeal and raise as her single issue, which we re-state, that the evidence preponderates against the Trial Court's findings.

Two separate suits, which were consolidated at the trial level, seek a determination as to the boundary lines of properties owned by the various parties and are the basis of this appeal.

The first suit was filed on September 10, 1993, by Billy E. Call and wife Bernice E. Call against Betty Jo Seats and Junior Paul Holcolm. The second suit was filed on February 15, 1994, by Norma C. Tolliver, widow of John Tolliver, and their two daughters, Johnnie Wilson and Vera Hockett against Cleo Carico, after which Ms. Carico filed a counter-complaint against Ms. Tolliver and her daughters.

At the beginning of the trial, counsel for the Calls and M. Seats and M. Holcomb announced that they had arrived at an agreement as to the location of the boundary line between their clients, whereupon the case of Tolliver against Carico proceeded to a conclusion.

After a full evidentiary hearing the Trial Court, as already noted, fixed the boundary line between the parties in accordance with the insistence of Ms. Tolliver and her daughters.

It is patently clear from the testimony that, although the deeds from Jess Wdener, the common source of the disputed property, called for a total of 460 feet adjacent to the northwest side of Patty Branch Road, he in fact did not own that much frontage, resulting in his property being insufficient to grant to Tolliver the 210 feet frontage, which he did, and to Carico the 250 feet frontage, which he purported to do.

Because (1) the deed from the common source conveying the property to M. Tolliver was dated, executed and recorded prior to the deeds wherein Ms. Carico acquired the disputed property, (2) the deed to Ms. Carico, which was a quit claim deed, specifically excepts the property theretofore conveyed to M. Tolliver, (3) the Trial Court at the outset of his memorandum opinion found "some of the Carico testimony incredible," we

conclude this is an appropriate case for affirmance under Rule 10(a) of this Court.

The motion that we declare this a frivolous appeal pursuant to T. C. A. 27-1-122 is denied.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for such further proceedings as may be necessary and collection of costs below. Costs of appeal are adjudged against Ms. Carico and her surety.

Houston M Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Don T. McMirray, J.