

_____ This is a boundary line dispute involving the ownership and right of possession of a strip of land lying between the properties of Plaintiffs, Woodrow Davis and Sammie Mai Davis ("Plaintiffs" or "the Davises"), and Defendants, Paul W. Baker and Pamela M. Baker ("Defendants" or "the Bakers"). After a lengthy bench trial the Chancellor established the boundary at the fence line erected by the Defendants and entered judgment accordingly. The Davises appealed this decree. We affirm the decision of the trial court.

The Davises are the owners of a tract of land in Dyer County (the "Davis property"), which is described in a deed recorded in Deed Book 88, page 135, of the Register's Office of Dyer County, Tennessee. The Davises acquired title to the property in 1956. The Bakers own a tract of land in Dyer County (the "Baker property") that lies to the west of and adjacent to the Davises' property. The Baker property is described in a deed recorded in Deed Book 262, page 687, of the Register's Office of Dyer County, Tennessee. The Bakers acquired title to their property in 1989.

In 1990, Paul Baker built a fence on the area in dispute. The Davises then brought this suit, claiming that the fence encroached on their property. In their Complaint, the Davises asked the Chancery Court of Dyer County to establish the boundary line between the two properties in accordance with a survey conducted by Marty McClure ("McClure"), a licensed surveyor.

At trial, the Davises offered into evidence the survey prepared by McClure. McClure testified at length about the method utilized in conducting his survey. McClure concluded that the fence erected by Baker encroached approximately forty-three feet on the eastern boundary of the Davis property.

Defendant Paul Baker testified that prior to constructing the new fence he hired Bobby Claunch, a licensed surveyor, to survey the Baker property in order to determine the proper boundary line between it and the Davis property. Claunch was called as a witness and testified in detail about the methods he used in conducting his survey, and that the fence erected by Baker was on the true boundary line.

In addition to the testimony of Claunch, several witnesses testified on behalf of defendant Baker. These witnesses included former owners of the Baker property as well as others who had farmed the property or had owned adjacent property. All of these witnesses testified that the fence erected by the Bakers marked the boundary line that had been widely recognized for years.

After hearing lengthy testimony from both parties, the trial court ruled that the boundary line between the property of the parties was located on the fence line erected by the Bakers. The Davises have appealed the trial court's ruling. The relevant issues on appeal are whether the trial court erred in considering the testimony of former owners, tenants and adjacent landowners, and whether the evidence preponderates against the trial court's decision.

Our review of this case is governed by T.R.A.P. 13(d), which provides that review of findings of fact by the trial court shall be *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the evidence preponderates otherwise. T.R.A.P. 13(d); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). Where the evidence is conflicting, findings of the trial court are entitled to great weight on appeal because the trial judge had the opportunity to observe the manner and demeanor of the witnesses while testifying. On an issue which hinges on the credibility of witnesses, the trial court will not be reversed unless there is found on the record clear, concrete, and convincing evidence other than the oral testimony of witnesses which contradict the trial court's findings. *Galbreath v. Harris*, 811 S.W.2d 88, 91 (Tenn. App. 1990).

In determining disputed boundaries, "resort is to be had first to natural objects or landmarks, because of their very permanent character; next, to artificial monuments or marks, then to the boundary lines of adjacent landowners, and then to courses and distances." *Thornburg v. Chase*, 606 S.W.2d 672, 675 (Tenn. App. 1980). In the instant case, the trial court acknowledged this principle and considered the testimony and surveys of two licensed surveyors, who based their respective surveys on the deeds of the parties as well as existing artificial monumentation and the boundary lines of adjacent properties. The surveyors reached differing conclusions, and the trial court stated that it was "unable to determine the location of the boundary line from this testimony."

The trial court then considered the testimony of lay witnesses who were former owners or tenants of the Baker property or former owners of adjacent property. The Davises argue that this testimony should not have been permitted, citing *Norman v. Hoyt*, 667 S.W.2d 88 (Tenn. App. 1983). The Davises assert that the Court in *Norman* held that the declarations of former owners or proprietors are admissible only if the declarations took place during the period of ownership. We disagree. *Norman* involved the testimony of a third party regarding the declaration of a former owner made in the presence of the third party. *Norman* does not preclude the trial court in this case from considering the testimony of former owners or tenants or owners of adjacent property regarding their personal knowledge of the recognized boundary during the time they were in possession. This issue is without merit.

The Davises assert that the evidence preponderates against the trial court's decision. In its Memorandum Opinion, the trial court reviewed the testimony of McClure, the surveyor utilized by the Davises, and the testimony of Claunch, the surveyor utilized by the Bakers. The results of these surveys conflicted. The trial court then considered the testimony of both parties and the testimony of the other lay witnesses. The testimony of the other lay witnesses corroborated the testimony of the Bakers' surveyor, Claunch. The trial court assessed the credibility of all of the witnesses and indicated in its Memorandum Opinion that it found the testimony of several of the former owners, tenants and owners of adjacent land to be "extremely informative and helpful in determining this case." We give great weight to the credibility determinations of the trial court.

The Davises have failed to meet their burden to present clear and convincing evidence other than oral testimony that contradicts the trial court's finding regarding the credibility of the witnesses. *Galbreath v. Harris*, 811 S.W.2d 88, 91 (Tenn. App. 1990). After reviewing all of the proof presented, we find that the evidence preponderates in favor of the trial court's judgment and we concur with the findings of the trial court.

Accordingly, the judgment of the trial court is affirmed. Costs on appeal are taxed to the Appellant, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

ALAN E. HIGHERS, J.