

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CA06-266

October 11, 2006

LINDA S. BYARS

APPELLANT

V.

BAYWOOD COLONY HORIZONTAL
PROPERTY REGIME

APPELLEE

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[CV-2004-574 III]

HON. DAVID B. SWITZER,
CIRCUIT JUDGE

AFFIRMED

In this boundary-line dispute, appellant Linda Byars argues that the trial court erroneously relied on a survey conducted on behalf of appellee Baywood Colony Horizontal Property Regime in establishing the property line between Byars's tract and Baywood's tract. We affirm.

Byars inherited a tract of lakefront property in Hot Springs from her parents, who had owned the land since 1956. While living there, Byars's parents had built a seawall and a driveway around the house. The property adjoined land owned by Baywood, which operated a condominium development.

After inheriting the property, Byars decided to remodel the house and make it substantially larger. During this remodeling, Baywood surveyed its property and placed a

fence along its representation of the boundary line—coming within a few feet of the corner of Byars’s new home. Byars did not believe this to be the actual property line and maintained that the actual boundary was adjacent to a concrete wall that Baywood had built to support its condos. She testified that an old fence established that boundary and that the main road accessing both properties had been altered and widened over the years, creating confusion regarding the property line. Jack Henthorn testified that he had worked for Byars and her family for years, clearing trees and brush within the disputed area. Byars also tendered a survey done by Lamar Kelley establishing the boundary line as running along the concrete wall, not where Baywood had constructed its fence line.

Lamar Kelley testified that he had over thirty years experience as a registered surveyor. He stated that he used the deeds to Byars’s property, two older surveys (depicting Byars’s property and the property of an adjoining neighbor, the Pattys), and Baywood’s survey in affixing his boundary lines. In describing how he conducted his survey, Kelley testified that he began with the northeast boundary corner between Byars’s property and the land owned by the Pattys; he then proceeded to the northwest corner of Byars’s property—the corner where her property abutted Baywood’s property; next, he found old fence posts and advanced southwesterly until he found a “sucker rod”¹ on the edge of a hill next to the

¹A “sucker rod” is an oilfield term defined as “[a] steel rod that is used to make up the mechanical assembly between the surface and downhole components of a rod pumping system.” Schlumberger, *Oilfield Glossary*, <http://www.glossary.oilfield.slb.com/Display.cfm?Term=sucker%20rod> (last visited Oct. 4, 2006).

concrete wall built by Baywood. He was unable to find any additional fence posts. Using contour lines and estimation, Kelley then determined where he thought the boundary lines to be.

Relatives of Byars testified that a fence had run along the boundary of the two properties and that the fence Baywood had put up following the survey did not accurately represent the old fence line.

Baywood presented the testimony of several residents of the condos, who testified that the old fence line went straight down from the road through the draw² or gully between the two properties, an area that was filled with water and debris until the seawall was constructed. No resident recalled seeing Byars's family maintaining the disputed area. However, at least two residents did acknowledge that a fence line had run within a few feet of the Baywood's concrete wall.

Wade Spainhour also testified regarding the survey he conducted of the property on behalf of Baywood. He stated that he had done thousands of surveys on property surrounding Lake Hamilton; that his goal was to follow in the footsteps of the original surveyor and reestablish the property boundaries of the deed; that he used a survey of the land from 1947 as well as the Byars's deed to determine the property lines; and that he utilized natural monuments like the old fence line and the well-defined draw to assist his work. According to Spainhour, the new fence Baywood constructed was along the actual boundary line.

²The term "draw" appears to refer to the lowest point between the two properties.

Although he admitted that it was impossible to know where the edge of the road was in 1947, he maintained that one of the surveys Kelley relied on was inaccurate with regard to an angle.

Another surveyor, William Malone, testified that Byars had initially hired him to survey her property but that she did not like what he told her, so she fired him. He stated that he did two days of field work on the survey but never compiled the plat.

Although boundary-line-dispute cases are reviewed de novo on appeal, we will affirm a trial court's finding of fact with regard to the location of a boundary line unless the finding is clearly erroneous. A finding is clearly erroneous when, although there is evidence to support it, we are left, after considering all of the evidence, with the definite and firm conviction that a mistake has been committed. *Hattabaugh v. Housley*, 93 Ark. App. 167, ___ S.W.3d ___ (2005). Moreover, we do not attempt to weigh evidence or assess the credibility of witnesses, as that responsibility lies with the trier of fact. *Bobo v. Jones*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 12, 2006).

In the present case, both parties admitted into evidence surveys and photographs to establish the existence of the boundary line between the properties; presented testimony from people familiar with the properties; and offered testimony of reputable surveyors that had evaluated the property and submitted expert opinions as to the location of the property line. The evidence presented was in clear conflict. Therefore, it was up to the trial judge to make determinations of credibility and weigh the evidence.

We are satisfied that there is evidence to support the trial court's decision to resolve the boundary-line debate in Baywood's favor. The court believed the testimony of Spainhour regarding his survey of the property and the statements of several area residents that, at one time, a fence existed along the middle of the draw. Although there was testimony to support Byars's position, we hold that it was not clearly erroneous for the court to find Baywood's presentation more credible.

Affirmed.

GRIFFEN and ROAF, JJ., agree.