IN THE COURT OF APPEALS OF IOWA

No. 1-658 / 10-1235
Filed September 21, 2011

WARREN LAND COMPANY, INC.,
Plaintiff-Appellee,

vs.

KENNETH W. TURNER,
Defendant-Appellant.

Appeal from the Iowa District Court for Davis County, Daniel P. Wilson, Judge.

A landowner contends that a stipulated order and consent decree relating to the marking of a property boundary is unenforceable for multiple reasons. **APPEAL DISMISSED.**

Alan M. Wilson of Miles Law Firm, Corydon, for appellant.

R. Kurt Swaim of Swaim Law Firm, Bloomfield, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

VAITHESWARAN, J.

In this appeal from an order enforcing a boundary agreement, we must decide whether we have appellate jurisdiction.

I. Background Facts and Proceedings

Warren Land Company and Kenneth Turner are adjoining land owners in Davis County. Warren Land sought a court determination of a boundary line between the two tracts of land. In 2009, the parties reached an agreement about the boundary, which the district court approved. Under the "Stipulated Order and Consent Decree Re: Boundary Line and Settlement," the landowners designated a marker to establish one point of a north-south boundary. They agreed that a survey company would project points from that marker, using "GPS locating devices or other appropriate and regular technology associated with contemporary surveying." They expressly agreed not to use a "full survey." The landowners further agreed on the positioning of the markings as follows:

> Said surveyor shall establish and mark a boundary that neither party may dispute by making such markings in as many points as necessary along a straight line which will project due north from the agreed to point mentioned above.

Finally, the parties agreed that the stipulation and decree resolved all issues relating to the location of the boundary line and the district court would retain jurisdiction "solely for the purpose of enforcing the decree and resolving any disputed issue, if any, which may arise in projecting and marking the new boundary line by GPS in the manner specified above."

The line preliminarily established under this protocol passed through one of Turner's cultivated fields. On realizing this, Turner refused to facilitate a complete marking of the intermediate points along the boundary line.

Warren Land applied to enforce the 2009 stipulation and consent decree. Following a hearing, the district court granted the application. Turner moved for reconsideration, raising a public policy challenge to the underlying consent decree. The district court denied the motion, and Turner appealed.

We begin and end with an appellate jurisdictional issue raised by Warren Land.

II. Appellate Jurisdiction

Generally, a party wishing to appeal a final order or judgment must file a notice of appeal within thirty days of the entry of that order or judgment. Iowa R. App. P. 6.101(1)(*b*). The requirements of the rule are mandatory and jurisdictional, and failure to comply requires dismissal of the appeal. *Hayes v. Kerns*, 387 N.W.2d 302, 305 (Iowa 1986).

Warren Land argues the final order or judgment from which Turner is attempting to appeal is the stipulation and consent decree filed in 2009 rather than the more recent order enforcing that decree. Turner did not appeal the 2009 decree or move within a year to correct, modify, or vacate it. *See* Iowa R. Civ. P. 1.1013(1). Accordingly, Warren argues, Turner is foreclosed from collaterally attacking it at this juncture and this court lacks jurisdiction to consider his present appeal.

Preliminarily, we conclude the 2009 stipulated decree was a final judgment. It established the starting point of the boundary, precluded use of a

full survey to determine the boundary line from that point, ratified use of a GPS system to mark the points along the line, and specified that the points would "lie on a straight line with a bearing due north as determined by GPS from the agreed to point mentioned above." All that remained was to implement this protocol, and the only judicial intervention envisioned by the agreement related to "disputed issues, if any, which may arise in projecting and marking the new boundary line by GPS in the manner specified above." If Turner wished to appeal this final judgment, he had to so within thirty days of its entry. *See* Iowa R. App. P. 6.101(1)(*b*).

Turner concedes he did not do so, but maintains that the final order or judgment from which he is appealing is not the 2009 stipulated decree but the order enforcing the decree. He points out that his notice of appeal was filed within thirty days of the ruling on his motion to reconsider that order. *See* Iowa R. App. P. 6.101(1)(*b*) (noting that if a motion to reconsider is filed, notice of appeal must be made within thirty days of the ruling on that motion).

Turner's appellate arguments belie his assertion. Those arguments are as follows: (1) "the stipulated order and consent decree re: boundary line and settlement is unenforceable as it violates Iowa Administrative Code section 193-11 and is therefore a violation of public policy,"[1] (2) "the stipulated order and consent decree re: boundary line and settlement is unenforceable due to mutual mistake by the parties," and (3) "the stipulated order and consent decree re: boundary line and settlement is unenforceable as it constitutes an illegal

[1] Turner suggests this provision required more than the use of global positioning system technology to establish the boundary line.

taking and unjustly enriches Warren Land Company." Each argument makes reference to the 2009 stipulated decree rather than the order enforcing the decree and each argument seeks to place the parties in the position they would have been in prior to the entry of that stipulated decree. There is no question, therefore, that Turner's appeal raises challenges to the 2009 final judgment rather than the later judgment. These challenges amount to an impermissible collateral attack on an un-appealed decree. *See Gail v. W. Convenience Stores*, 434 N.W.2d 862, 863 (Iowa 1989) ("A judgment may be attacked collaterally only if it was entered without jurisdiction.").[2]

We dismiss the appeal for lack of jurisdiction. *See Hayes*, 387 N.W.2d at 309.

APPEAL DISMISSED.

[2] None of Turner's arguments implicate the district court's jurisdiction to approve the stipulation.