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Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002027-MR

RONALD L. HARGROVE AND
TONY E. HARGROVE AND
ANNA V. HARGROVE — APPELLANTS

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE JANET P. COLEMAN, JUDGE
ACTION NO. 00-CI-00714

AMOS HALL — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER, SCHRODER, AND TAYLOR, JUDGES.

SCHRODER, JUDGE: Ronald L. Hargrove, Tony E. Hargrove, and Anna V. Hargrove, his wife (collectively referred to as the "Hargroves"), appeal from a judgment entered in a boundary line dispute by the Hardin Circuit Court in favor of Amos Hall ("Dr. Hall"). Finding no error, we affirm.

Dr. Hall initiated this action in the Hardin Circuit Court seeking to resolve a boundary line dispute with the Hargroves. In 1996, the Hargroves acquired two tracts of land

that bordered on the northwest side of Dr. Hall's property. Dr. Hall had acquired his property in 1976. The trial court concluded that none of the parties had personal knowledge of the actual location of the disputed boundary line between their respective properties. The court observed: According to the testimony at trial, this land is rough undeveloped land, with no activity on either side of the land in the way of farming or any other type of continuous activity which might demonstrate a claim of ownership to an observer. The Hargroves and Dr. Hall retained surveyors who gave expert testimony at trial regarding the location of the boundary. On December 12, 2001, the court conducted a bench trial and subsequently entered judgment on April 16, 2002, in favor of Dr. Hall. The Hargroves filed a motion to "vacate, alter or amend" the court's judgment, which was denied by order entered on September 10, 2002. This appeal follows.

Before analyzing in detail the issues raised on appeal, we believe that a review of the history of both parties' property is necessary to fully understand the extent of the boundary dispute before this Court.

HARGROVES' PROPERTY

Ronald Hargrove and Tony and Anna Hargrove acquired adjacent tracts of land in Hardin County, from AAAH Investments,

Inc. on November 22, 1996. Ronald acquired a 31.02-acre tract, and Tony and Anna acquired a 31.57-acre tract from AAAH. The property was part of a larger tract known as the Darst Farm. The Darst Farm contained approximately 128½ acres. It is important to note that the Darst Farm was originally part of a 166-acre tract that had been conveyed to Betty Springer in 1956. Springer sold 128½ acres to Leslie and Dorothy Darst in 1969. Both parties to this appeal agreed that the Hargroves' property was once part of the Springer property that was conveyed to the Darsts and formed the northwest boundary adjacent to the property subsequently conveyed to Dr. Hall. It is also important to note that there is no dispute as to the legal description for the Springer property, whose title was traced back in the record to the early 1900s.

DR. HALL'S PROPERTY

Dr. Hall acquired his property from Lyndell L. Hill, Sr. and Lyndell Hill, Jr. (collectively referred to as "the Hills") in July of 1976. The legal description for Dr. Hall's property referenced that the tract contained 252 acres. However, in examining the source deed to the Hills dated January 2, 1974, the legal description of the property conveyed to the Hills consisted of three separate tracts containing 100 acres,

85 acres, and 30 acres respectively, for a total of 215 acres, not 252 acres.

The parties agreed for purposes of this appeal that the portion of the property owned by Dr. Hall, from which the boundary dispute in this case arises is the 100-acre tract of land described in the Hill deed dated and recorded in January 1974. The legal description for the 100-acre tract as set forth in the 1974 deed is as follows:

> BEGINNING at a Post Oak and Black Oak, being corner to the Phil Brown land; thence N 60 E 110 poles to a post oak; thence S 40 E 126 poles to two Black Oaks and a Hickory; thence S 40 W 112 poles to three Red Oaks; thence to the beginning, containing 100 acres, more or less.

Surveyors for both parties testified as experts at trial. Both parties agreed that John Duvall was a predecessor in title to the 100-acre tract and that Duvall's title was derived in 1871. The surveyors further agreed that the reference in the Springer deed to the Duvall line was in fact the boundary line between the Duvall 100-acre tract (now owned by Dr. Hall) and the property owned by Betty Springer (a portion of which is now owned by the Hargroves).

Additionally, the Hargroves have noted that there is a gap in the chain of title to the 100-acre tract dating from 1871 to 1934, as referenced in a deed dated May 18, 1934 from Mary Cundiff. The deed acknowledges that John Duvall was Mary

Cundiff's father and that a deed establishing her ownership of the property had been destroyed by fire and was never recorded. The 1934 deed further states that Cundiff asserted title to the 100-acre tract under the doctrine of adverse possession, claiming that she had lived on the property for more than fifty years to the exclusion of all other persons. There is nothing in the record to reflect that these adverse possession rights were ever adjudicated by a court of competent jurisdiction. For reasons discussed later in this opinion, we do not believe this title gap is relevant to this appeal.

THE SURVEYORS

Each party retained a registered land surveyor to testify at trial regarding the boundary dispute. The Hargroves retained Kendall Clemons, who was an experienced land surveyor from Leitchfield, Kentucky. Dr. Hall retained Jim Banks, who was an experienced land surveyor from Hodgenville, Kentucky. Clemons had surveyed the Darst Farm (128½-acre tract) on at least two occasions in the mid-1990s. Additionally, Clemons surveyed the lot division that created the tracts that were subsequently conveyed to the Hargroves in their respective deeds. Clemons testified that he had conducted a field survey of the Darst Farm, and his survey found 117 acres existed, not 128½. He also surveyed the Springer property and testified that

his survey was consistent with the descriptions in the Springer deed and the Darst deed.

Banks testified that he conducted a field survey of Dr. Hall's property. He acknowledged that his first survey utilized the survey findings of Clemons as pertained to the northwest boundary line for the property, but that the initial survey only accounted for 175 acres of Dr. Hall's 252-acre legal description. Banks made a subsequent survey of the property and determined that the northwest boundary with the Hargroves' property was an old barbwire fence that meandered across the property. He based this conclusion on his field observations, the identification and location of monuments, and discussions with neighbors from adjoining properties. Banks also concluded that Clemons had made an error in platting the legal description of the Darst Farm by adding a call that was not included in the Springer deed (the 166-acre tract from which the Darst tract was derived). Banks's final survey that was introduced at trial determined that Dr. Hall's property consisted of 198 acres and as previously noted, that the northwest boundary with the Hargroves was an old fence line. Banks's revised survey thus reflected a boundary overlap with the Hargroves' property of approximately 22 acres. The overlapping deeds were the basis for this action commenced by Dr. Hall.

TRIAL COURT JUDGMENT

The trial court conducted a bench trial on December 12, 2001. The court considered the testimony of both Clemons and Banks as well as the testimony of neighbors who lived adjacent to Dr. Hall and the Hargroves' property. The court also considered testimony from Tony Hargrove and Tim Aulbach, who owned AAAH Investments, Inc., a predecessor in title to the Hargroves' property. The testimony of Dr. Hall was submitted by deposition as stipulated by the parties.[1] The court entered findings of fact, conclusions of law, and judgment on April 16, 2002. The court concluded that Banks's testimony was the more credible of the surveyors and determined that the old fence line was the proper boundary between Dr. Hall's property and the Hargroves' property, as set forth on Banks's survey. The court further applied the legal doctrine of "boundary by inaction" in determining that the fence line was the actual boundary between Dr. Hall and the Hargroves' property. This appeal followed.

THE APPEAL

The Hargroves assert a number of errors on appeal. First, the Hargroves assert that they have superior record title, and that under KRS 382.280, record title controls. KRS 382.280 does provide "deeds of trust or mortgages shall take

[1] Dr. Hall is a physician/surgeon who resides in Oregon. Due to a conflict in his schedule, the parties stipulated the submission of his deposition as evidence at trial.

effect in the order that they are lodged for record." However, we are not dealing with either such encumbrance but deeds of conveyance. The rule on deeds of conveyance in Kentucky is contained in KRS 382.270 which establishes Kentucky as a race-notice state, that is, the first to record a deed without notice of a prior conveyance has superior title. See Minix v. Maggard, 652 S.W.2d 93, 96 (Ky.App. 1983) and for an explanation, see 4 American Law Of Property § 17.5 (A.J. Casner ed. 1952). The question in this case is not who recorded first (without notice) because the statute, KRS 382.270, on its face, applies to a conveyance of the same parcel. The case before us involves different parcels, each with its own chain of title, and separate legal descriptions. It was not until the surveys were performed that the parties learned of a possible overlap or mistaken call in one of the boundaries. An overlap, by definition, involves two or more parcels, and is not what is being regulated by a race-notice statute which involves one parcel.

The Hargroves contend that their survey was the only correct and accurate survey. The trial court as a fact-finder may choose between conflicting opinions of surveyors as long as the opinion relied upon is not based upon erroneous assumptions or the opinion does not ignore established factors. Webb v. Compton, 98 S.W.3d 513 (Ky.App. 2002) (citing Howard v. Kingmont

Oil Co., 729 S.W.2d 183 (Ky.App. 1987)). In our case, the trial court found:

> Each of the two sides has presented the testimony of a surveyor, and the opinions of these two surveyors conflict. Considering the testimony of both of the surveyors, the testimony of Mr. Banks seems to be the more credible as Mr. Banks surveyed the parent tract which consists of 166 acres and belonged to Betty Springer before she sold off 128 ½ acres to a party named Darst who, in turn, sold the property which was subdivided and portions of that sold to Defendants. The deed from Springer to Darst contained a call that did not exist in the parent tract, and the surveyor who testified for the Defendants, Mr. Clemmons [sic], surveyed the 128 ½ acre tract with this additional call, with the result that his survey showed a line a few hundred feet southeast of an existing fence line. When surveyor Banks surveyed the Hall property, he was of the opinion that the fence line was on the boundary line, based upon the calls and found monuments in the Hall deed.
>
> The testimony of surveyor Banks is supported by witnesses Edwin Elliot, Ethel Pillow and Kenneth Pillow. Edwin Elliot testified that he had lived in the area for 25 years, that the old fence had survey ribbons on it at one point, and a previous owner of the Springer property, by the name of Baker, told Mr. Elliot that he believed the fence to be the boundary line. Both Ethel Pillow and her son Kenneth used to live on adjoining property for many years. Both testified that the fence was the boundary line. Kenneth Pillow testified that he remembers as a boy that survey tags existed along the old fence line.

The findings of fact made by the trial court at a bench trial shall not be set aside unless clearly erroneous. CR 52.01.

This rule is applied in boundary disputes. Croley v. Alsip, 602 S.W.2d 418 (Ky. 1980). We do not believe the trial court's analysis of the facts was clearly erroneous. To the contrary, the trial judge made a thorough analysis of the testimony and the facts, and ruled appropriately.

The Hargroves' third argument is that the fence cannot be the boundary line because it zigzags and ends up nowhere. How much the fence zigzags is an issue of fact. That is one consideration the surveyors reviewed in forming their expert opinions. In the case of a boundary line overlap, there are sure to be conflicting opinions, and it is the trial court's job as a fact finder, to sort it out. This argument is part of the previous argument and answered above.

The fourth argument is that Dr. Hall's claim is really an adverse possession claim, and since the area was all grown over, there was no evidence of actual physical possession. The trial court concluded the fence line was established as the boundary by virtue of the legal doctrine of boundary by inaction. There are four elements that must be proven to claim a boundary by inaction. First, the boundary must exist between two adjoining land owners. Liberty National Bank & Trust Co. v. Merchant's & Manufacturers Paint Co., 307 Ky. 184, 209 S.W.2d 828 (1948). Second, the neighbor who claims the boundary must occupy the property up to the visibly marked boundary. Combs v.

Combs, 240 S.W.2d 558 (Ky. 1951). Third, the parties must acquiesce or otherwise fail to act as to the existence of the new boundary claimed by inaction. Id. Finally, this inaction must last for fifteen years. Id.

The evidence presented at trial satisfies these elements. As the trial court noted, the land was rough undeveloped land with no real activity on either side. However, there was an old fence in the trees for a good portion of the alleged boundary line. Witnesses testified that through the years, survey tape was attached to the fence and for some fifty years or so, people treated it as the boundary line. One surveyor placed the fence along a boundary line described in Dr. Hall's deed. Even though Dr. Hall hadn't walked the boundaries when he purchased the property, he had constructive possession up to the fence. See Mullins v. Hargis, 242 S.W.2d 611, 612 (Ky. 1951). We agree with the trial court that the facts of this case fit into a boundary by inaction case.

The Hargroves' final argument is that the trial court failed to make specific definite findings of fact and that the case must be reversed and remanded for specific findings. The requested issues and findings were mostly discussed in the preceding arguments dealing with KRS 382.280; the gap in Dr. Hall's title; the differences in the surveys; and the problems with the fence line. These issues were all discussed by the

trial court which made sufficient findings. The Hargroves' request is just a rehash of the above issues and we see no need for further discussion.

For the foregoing reasons, the judgment of the Hardin Circuit Court is affirmed.

BARBER, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

TAYLOR, Judge: I respectfully dissent. This case looks to an extremely complex boundary dispute that apparently has laid dormant for over one-hundred years. I believe that the findings of fact made by the trial court in its judgment are clearly erroneous and warrant reversal of the judgment.

I would first point out that the majority has ignored several facts in its opinion that are relevant to this appeal. As noted, Dr. Hall's property actually consisted of three separate tracts containing 100 acres, 85 acres, and 30 acres respectively - for a total of 215 acres - not 252 acres as set forth in his deed from the Hills. There is no recorded plat consolidating the three tracts conveyed by the Hills to Dr. Hall between the date of the Hills source deed of January 2, 1974 and Dr. Hall's deed dated and recorded July 1976. Thus, there is absolutely no explanation in the records of the Hardin County Clerk regarding how the 252-acre legal description in Dr. Hall's deed came into existence, given the source deeds reflected the

tract consisted of only 215 acres. Banks, as Dr. Hall's surveyor and expert, could not explain this discrepancy at trial, other than to say that the 252-acre description was in error. As noted by the majority, Banks' initial survey found that only 175 acres existed from Dr. Hall's 252-acre legal description. Banks' first survey matched up with the Clemons survey for the Hargrove property as pertains as to the northwest boundary line. However, as Dr. Hall testified at his deposition, he was not satisfied with these findings by Banks and instructed Banks to locate his missing land. Banks obviously complied with his instructions, thus generating a new survey locating 198 acres which effectively took approximately 22 acres of the Hargroves' property. The majority ignores the fact that Banks testified there were boundary problems with his survey for Dr. Hall's property on the northeast boundary with another adjoining property owner and that Banks could not explain at trial deficiencies in the legal descriptions for both the 85-acre and 30-acre tract that comprised the remainder of Dr. Hall's property. Banks' opinion is simply based upon numerous erroneous assumptions and ignores established factors that were presented into evidence at trial.

The trial court concluded as a matter of law that the boundary line would be established in accordance with Banks' survey, finding that the boundary line between Dr. Hall and the

Hargroves' properties was an old fence line, which Banks' revised survey had identified. Clemons' survey located a different boundary based upon the legal descriptions set forth in the Springer deed and the Darst deed. Clemons rejected the fence line as a boundary due to its lack of consistency and erratic path through the wooded area. In other words, the fence could not be a straight line boundary as concluded by the court in adopting Banks' survey, especially since there was no beginning or ending point for the fence on the Hargroves' property.[2]

The trial court's reliance on Banks' survey regarding the fence line boundary is misplaced for several reasons. First, I would note that I have made a thorough review of each and every deed in the chain of title that was submitted into evidence at trial. There is absolutely no reference whatsoever in any of these deeds to a fence line constituting a boundary between the Hargroves' property and Dr. Hall's property. Next, no predecessor in title for either party testified at trial that the fence line had been constructed or otherwise existed as a boundary between the two properties. The trial court heard hearsay testimony from some adjoining neighbors who alleged that former owners had told them that the fence line was a boundary. In fact, the court specifically cites to hearsay testimony in

[2] The record reflects that the trial judge did not conduct an on-site examination of the properties, including the disputed boundary area.

its findings of fact as a basis for entering judgment in favor of Dr. Hall. This is reversible error on its face under applicable Kentucky law.

The problem of reliance upon hearsay testimony by a trial court as a finder of fact was addressed directly by this Court in G.E.Y. v. Cabinet for Human Resources, 701 S.W.2d 713 715 (Ky.App. 1986).[3] The Court summarized the applicable rule of law as follows:

> We agree when a judge acts as a fact finder it is presumed that he will be able to disregard hearsay statements. However, where, as here, it is apparent that he relied on the hearsay in making his decision, the error in the admission of the unreliable evidence cannot be deemed harmless or nonprejudicial. As the court noted in *Santosky,* citing *Woodby v. INS,* 385 U.S. 276, 282, 87 S.Ct. 483, 486, 17 L.Ed.2d 362 (1966), "[J]udicial review is generally limited to ascertaining whether the evidence relied upon by the trier of fact was of sufficient *quality* and *substantiality* to support the rationality of the judgment." *Id.,* p. 757, n. 9, 102 S.Ct. at p. 1397, n. 9.

G.E.Y., 701 S.W.2d at 715. The evidence in this case does not meet either test set out in the opinion above.

Even Dr. Hall, who acquired his property in 1976, testified that he had never walked the entire fence line and had only seen about 100 feet of it during his twenty-five years of ownership. Dr. Hall, at his deposition in December of 2000,

[3] Discretionary review was denied and the opinion in this case was ordered published by the Kentucky Supreme Court on January 28, 1986.

could not identify the fence line on a plat prepared by Banks for him and testified that his only knowledge of the alleged fence arose from purported (hearsay) discussions with his predecessor in title, Lyndell Hill Sr. Mr. Hill nor his son testified at trial.

Dr. Hall did reveal that Mr. Hill had provided him a "plat" of the purported 252 acres he purchased in 1976. This plat was prepared for Mr. Hill by a post-engineer from Fort Knox. The plat is also arguably hearsay evidence and notably, has never been approved by any governmental entity nor recorded in the county clerk's office.[4] Banks testified that he used this plat as a "piece of evidence" in conducting his survey, though noting it had several deficiencies. More importantly, this plat was obtained by Mr. Hill in contemplation of the sale of his property to Dr. Hall and makes no reference whatsoever to a fence boundary on the northwest property line. Since Banks relied on this survey in part, I believe that Banks' survey fails to address an established factor from the land records he relied on – that there was no fence line boundary in existence

[4] This plat was introduced as Plaintiff's Exhibit No. 10 by Dr. Hall at trial. The post-engineer had apparently prepared this plat based upon the 252-acre legal description for Hall's property. This plat details various permanent monuments including trees, posts, drains, and the like, yet fails to make any reference whatsoever to a permanent fence boundary on the northwest property line. I believe Banks' assumption of the existence of a fence line boundary was erroneous, and thus his testimony not credible for the trial court to rely on.

on the northwest boundary of Dr. Hall's property at the time it was acquired by Dr. Hall.

Additionally, the boundary line adopted by the court in its judgment is a straight line. However, the undisputed evidence at trial was that the fence line was uneven, zigzagged in several locations, did not cross the entire property, and had no definitive starting and ending points. Clemons platted the fence line on an exhibit introduced at trial that clearly demonstrated the fence was not constructed in a straight line across the property. The finding by the trial court of a straight line boundary is not supported by the evidence introduced, and thus, is clearly erroneous.

The trial court also relied upon Banks' explanation of a purported additional call in the Darst deed that did not exist in the Springer deed and his conclusion that Clemons must have erred in his survey as a result. The fallacy of this finding is twofold. First, Banks did not testify that he surveyed the Springer tract as set forth in the court's findings, which I believe is a blatant error by the trial court. In fact, the only person who testified about surveying the entire Springer tract and the Darst property was Clemons. Banks testified that he examined the legal descriptions and platted the calls from these descriptions in the area where the boundary dispute existed. Banks then adjusted his field survey on Dr. Hall's

property to a point adjacent to the fence to establish the boundary line for his survey of the Hall property. There were no exhibits introduced at trial that reflect Banks made a comprehensive field survey or prepared a survey plat for either the Springer or Darst property. Secondly, it was undisputed that the conveyance from Springer to Darst was less than the entire 166 acres that Springer had title to. As noted, the Darst out conveyance was approximately 128½ acres. Obviously, the legal description for a lesser tract from a parent tract will contain different calls from those contained in the parent deed. If the trial court had applied the same reasoning to the Banks' survey based upon the vague legal description of the 252 acres described in Dr. Hall's deed, then the court would have had justification to throw out the entire Banks survey since there is no call in the Banks' survey that corresponds to the calls in Dr. Hall's deed.

As noted, there was no predecessor in Dr. Hall's title who testified at trial. However, Tim Aulbauch, a predecessor in title to the Hargroves, testified that the alleged fence was nothing more than two strands of barbwire that ran erratically across the property. He further testified that the fence had never been identified as a boundary line during his ownership of the property. Notably, during the period of 1976 through 1999, Dr. Hall never expressed to the Hargroves or any predecessor in

title that the northwest boundary to his property was the fence line.

There was additional evidence introduced at trial that refuted the fence line boundary theory. Testimony by both Dr. Hall and Tony Hargrove indicated that Dr. Hall had contacted the Hargroves about obtaining a right-of-way easement for access across the very property that is now the subject of this boundary dispute. Dr. Hall never disclosed to the Hargroves that they were encroaching across a fence line boundary on his property. This lawsuit was commenced shortly after the Hargroves declined to grant Dr. Hall the easement.

Additionally, Dr. Hall admitted under oath that most of the timber in the disputed boundary area had been harvested by a predecessor to the Hargroves' title. Dr. Hall did not at any time object to the removal of the timber, but he hinted in his testimony that he would take legal action against those responsible if he prevailed in this action. His actions (or lack thereof) clearly establish that the timber was not located on his property.

The majority further erroneously affirms the trial court's conclusion that the fence line was established by the "doctrine of boundary by inaction." The evidence presented at trial clearly refuted two of the four necessary elements to invoke the doctrine. There is no evidence in the trial record

that Dr. Hall actually occupied his property up to the alleged fence line. In fact, Dr. Hall testified at his deposition that he did not know the exact location of the fence line on his boundary and further admitted that timber had been removed from much of the disputed area inside the alleged fence line boundary without any protest by Dr. Hall. Likewise, there was absolutely no evidence in the record that indicated the Hargroves or a predecessor in title, had acquiesced to the fence line being a boundary for their property. In fact, the testimony was just the opposite. For almost twenty-five years of ownership, Dr. Hall never took any action that one could reasonably construe as an act asserting ownership of property up to the alleged fence line boundary. Accordingly, I believe the trial court clearly erred as a matter of law in applying the doctrine of boundary by inaction in this case. If anything, the doctrine works to the Hargroves' advantage.

Finally, although I believe the trial court erred in establishing the fence line as the boundary between the Hargroves' and Dr. Hall's property, I believe there was sufficient evidence presented to the trial court to establish the boundary. There exists no dispute between the parties that the Hargroves' property was derived from the Darst Farm which had been obtained from Springer in 1969 as set forth in that deed. As noted, Springer obtained the 166-acre tract in 1956 by

deed of record in Deed Book 149, Page 175, in the Office of the Hardin County Clerk. The boundary line between the Dr. Hall and Hargroves' properties as set forth in the Springer deed reads as follows:

> [T]hence with Duvall's line S 40 W 126 poles to the beginning at a post oak in Shawler's line.[5] (Emphasis added.)

The evidence presented at trial established that Duvall was a predecessor in title to Dr. Hall on the 100-acre tract that formed the northwestern boundary of Dr. Hall's property with the Hargroves. In fact, Banks acknowledged this property line on the survey plat prepared for Dr. Hall and introduced as plaintiff's exhibit 12 at trial. The survey plat referenced this boundary line as follows:

> [L]ocation of the original Betty Springer line as per D.B. 149 Pg. 175.

I would note that the legal description for this same boundary line in the Darst deed from Springer is a similar call, albeit not identical, but is the exact same boundary length, 2079 feet.

In determining boundaries, our courts have followed the general rule that natural and permanent monuments are the most satisfactory evidence and control all other means of description. Metro. Life Ins. Co. v. Hoskins, 117 S.W.2d 180

[5] A pole is equivalent to 16.5 feet. Lewis v. Louisville and Nashville R.R. Co., 99 S.W. 658 (Ky. 1907). 126 poles is equivalent to 2,079 feet.

(Ky. 1937). If permanent or natural monuments cannot be identified, artificial marks, courses, distances and area follow in that order with area being the weakest of all methods for description. Id. In this case the only monument located by either surveyor was a stone found purportedly at the base of a large oak, which was located near the Shawler property, but was completely at the opposite end of the 100-acre tract from which the boundary dispute has arisen.[6] I do not believe that monument has any significance in determining the location of the disputed boundary. Since I would reject the fence line as not being sufficient for an artificial marking to identify the boundary, I then look at courses and distances, which takes us back to the legal description in the Springer deed. This deed clearly identifies the boundary line between the Springer property and Duvall property which I believe is the boundary line in dispute. As noted, the Banks' survey reflected the exact location of this boundary line originating from an iron pin corner that had been identified in Clemons' survey for the Hargroves' property. This boundary line is further reflected in a comparative drawing prepared by Banks shown on Plaintiff's Exhibit No. 11. Based on the evidence presented and the record as a whole, I believe this is the actual boundary between the properties. Upon reversal

[6] I also note with great curiosity that in the 100-acre description set forth in the Hill deed, a nearly identical call to the Springer deed, in the length of 2,079 feet is found. However, neither surveyor addressed this at trial.

and remand, I would have directed the trial court to enter a judgment that reflects the location of the original Betty Springer line as shown on Plaintiff's Exhibit No. 12 to be the actual boundary line between the Hargroves' property and Dr. Hall's property.

For the foregoing reasons, I would reverse the judgment and remand this case to the circuit court with directions.

BRIEF AND ORAL ARGUMENT FOR APPELLANTS:

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BRIEF AND ORAL ARGUMENT FOR APPELLEE:

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