

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE SCHMIDT and NAN SCHMIDT,

Plaintiffs/Counter-Defendants-
Appellants,

v

CHET HEPINSTALL and ELIZABETH
HEPINSTALL,

Defendants/Counter-Plaintiffs-
Appellees.

UNPUBLISHED

October 15, 2009

No. 285071

Oakland Circuit Court

LC No. 2006-079322-CH

Before: K. F. Kelly, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order establishing both the eastern boundary of a lakefront parcel of plaintiffs' property and the boundary between the parties' residential properties. We affirm.

Plaintiffs first argue that the trial court improperly determined the eastern boundary of their lakefront parcel, which abuts defendants' property to the west. We review for clear error a trial court's factual findings and review de novo its conclusions of law following a bench trial. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). Considerable weight is given to a trial court's findings of fact in equity cases. *Gackler Land Co, Inc v Yankee Springs Twp*, 138 Mich App 1, 11; 359 NW2d 226 (1984). We also review questions of statutory interpretation de novo. *Dep't of Agriculture v Appletree Marketing, LLC*, 280 Mich App 635, 640; 761 NW2d 277 (2008).

In a boundary dispute, the duty of a factfinder is to determine what constitutes the best evidence of the true boundary line as the original government survey established it. *Woodbury v Venia*, 114 Mich 251, 255, 258-259; 72 NW 189 (1897). Where the location of a boundary line depends on the position of a section corner, the factfinder must strive to determine the location of the section corner as the government surveyor originally set it. See *Hess v Meyer*, 73 Mich 259, 264-265; 41 NW 422 (1889). 1 Cameron, Michigan Real Property Law (3d ed), § 5.6, p 166, provides:

It is an established principle of law that the subdivisions created in the
original government survey of Michigan are controlling as the actual subdivisions

and that the monuments placed by the original government surveyor are the best evidence of the location of corners. 43 USC 752; *Brown v Morrill*, 91 Mich 29; 51 NW 700 (1892); *Hess v Meyer*, 73 Mich 259; 41 NW 422 (1889); *Rozell v Redding*, 59 Mich 331; 26 NW 498 (1886); *Britton v Ferry*, 14 Mich 53 (1866).

Plaintiffs' lakefront parcel lies in Highland Township. That property lies southwest of the parties' residential properties, which are located in the Smith and Brown Subdivision in White Lake Township. The deed to the lakefront parcel contains the following legal description:

Part of the South 1/2 of the Northeast 1/4 of Section 12, Town 3 North, Range 7 East, Township of Highland, Oakland County, Michigan, more particularly described as: Beginning at a point distant South 234.39 feet from the Southeast corner of Supervisor's Plat No. 2; thence South 76 degrees 53 minutes 00 seconds West 542.16 feet; thence South 55.08 feet; thence East 528.00 feet; thence North 178.11 feet to beginning.

The lakefront parcel's beginning point lies some distance south of the southeast corner of Supervisor's Plat No. 2, and its eastern boundary lies on a straight line due south of the southeast corner of Supervisor's Plat No. 2. Supervisor's Plat No. 2 begins at a point on the relevant township section line and runs in a straight line. See *Willson v Hoffman*, 54 Mich 246, 249; 20 NW 37 (1884) ("All subdivisional lines of a section must be straight lines running from the proper corner in one exterior line to its corresponding corner in the opposite boundary of the section."). The trial court set the eastern boundary of the disputed property in accordance with the township section line as reflected in surveyor David Smith's 2007 survey. Smith essentially concluded that the township section line referenced in the Smith and Brown Subdivision plat was inconsistent with the township section line referenced in the plats of four other subdivisions, including Supervisor's Plat No. 2. The eastern boundary of the disputed property as set by the trial court was ultimately also set in accord with the language of the quitclaim deed, which cites a beginning point of the southeast corner of Supervisor's Plat No. 2. The eastern boundary of Supervisor's Plat No. 2 is the township section line; thus, the eastern boundary of the disputed property is necessarily the township section line. Notably, the northeast corner of Supervisor's Plat No. 2 is the section corner. At trial, there was evidence that Smith located the relevant section corner. Thus, the trial court, as factfinder, properly determined the boundary line as it related to the position of a relevant section corner. *Hess, supra* at 264-265.

We reject plaintiffs' argument that the trial court disregarded the applicable law by resetting the township section line. Nothing in the relevant statutory provision limits the state survey and remonumentation commission from revisiting a survey of a township section line, particularly one that appears incorrect. See MCL 54.268(2)(d) (requiring a county plan to provide for "perpetual monument maintenance plan," and where "all corners to be checked at least once every 20 years"). Further, there is no indication that surveyor Smith or the Oakland County Peer Group (the group charged with facilitating the county plan) became improperly involved in this dispute, or that Smith used the incorrect methodology to locate the corner at issue.

Plaintiffs also assert that the trial court disregarded Michigan law by adopting a recorded survey that failed to comply with the survey recording requirements, and thereby awarded defendants land that was not part of their platted subdivision lot. We disagree.

Here, the trial court considered competing testimony from the parties' surveyors as well as documentary evidence on the proper location of the boundary between the parties' residential parcels. The trial court found defendants' surveyor to be a credible witness. Defendants' surveyor testified about his methodology in surveying defendants' property and determining the location of the boundary between the parties' properties. Defendants' surveyor found several monuments that served as his basis for determining the corners and boundaries of defendants' property. Surveys of property that are made for the purpose of establishing boundary lines should be based on proper monuments. *Hurd v Hines*, 346 Mich 70, 78-79; 77 NW2d 341 (1956). The survey by defendants' surveyor comported with that general principle, while the survey by plaintiffs' surveyor did not. The trial court properly rejected the survey of plaintiffs' surveyor, which was primarily based on a dubious mortgage survey.

Plaintiffs complain that the survey by defendants' surveyor did not comply with MCL 54.211 *et seq.* However, plaintiffs have cited no authority to support the proposition that a survey that fails to satisfy the technical statutory requirements cannot establish boundary lines of a given property. See *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005) (failure to cite authority in support of an argument constitutes abandonment on appeal). Here, the trial court properly determined the location of the boundary between the parties' properties based on the documentary evidence and witnesses' testimony; it was the province of the trial court, as factfinder, to weigh the evidence and assess the credibility of the witnesses. *Gorelick v Dep't of State Hwys*, 127 Mich App 324, 333; 339 NW2d 635 (1983).

Finally, plaintiffs contend that the trial court failed to make suitable findings of fact as required by MCR 2.517. The proper interpretation and application of a court rule is a question of law that this Court reviews de novo. *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002). The record supports the trial court's findings and rulings related to the boundary of the lakefront property and the boundary between the parties' properties. The record reveals that the trial court made factual findings and conclusions of law that demonstrated its awareness of the issues presented and its resolution of these issues. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Moreover, the trial court was not required to supply detailed citations to the specific source of evidence upon which it relied, particularly where both parties can review the testimony that was presented and locate the specific sources. *Coburn v Mich Pub Service Comm*, 104 Mich App 322, 325-326; 304 NW2d 570 (1981). Under MCR 2.517(A)(2), "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." The trial court's findings of fact, as stated in its opinions and oral ruling, were sufficient under MCR 2.517(A).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald