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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1926**

Donald Franklin Granlund, Jr.,
Appellant,

Ann M. Granlund,
Plaintiff,

vs.

Mark L. Lumley, et al.,
Defendants,

Michael Droubie,
Respondent,

Suzanne Droubie,
Respondent,

OneWest Bank, F.S.B., as Servicer for
Deutsche Bank National Trust Company,
limited real party in interest pursuant to
Court Order filed November 30, 2010,
Respondent.

**Filed September 17, 2012
Affirmed
Halbrooks, Judge**

Mille Lacs County District Court
File No. 48-CV-05-2031

Donald F. Granlund, Oak Park, Minnesota (pro se appellant)

Michael Droubie, Suzanne Droubie, Tuscon, Arizona (pro se respondents)

Thomas P. Melloy, Gray, Plant, Mooty, Mooty & Bennett, P.A., St. Cloud, Minnesota
(for respondent OneWest Bank, F.S.B.)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's determination of the boundary line between his property and respondent's property, arguing that the district court erred in its evidentiary rulings and that there was insufficient evidence to support its decision. We affirm.

FACTS

Pro se appellant Donald Granlund and Ann Granlund own property in Milo Township, Mille Lacs County, that is described as the south one-half of the northwest quarter of the southeast quarter of section 30.¹ Respondent Deutsche Bank National Trust Company is the current owner of the property located to the north of the Granlunds.

The Granlunds filed a complaint against Mark Lumley, who owned the Deutsche Bank property when the Granlunds bought their property; Michael and Suzanne Droubie, who owned the property from 2005-2008; Dennis Pederson, who surveyed the property in January 2004, and his firm; and Nghiep Nguyen and Corinne Nguyen, who own property to the east of the Granlunds and Deutsche Bank.² The complaint alleged

¹ Although she was a plaintiff in the district court, Ann Granlund is not an appellant.

² The Nguyens did not appear in the proceedings.

statutory trespass against Mark Lumley; common-law trespass against Lumley and the Droubies; conversion against Lumley; and negligent misrepresentation against Pederson and his firm; and sought a determination of the boundary line. In March 2006, the district court denied the Granlunds' request to amend the complaint to include a claim of professional negligence against Pederson because there was no genuine issue of material fact that could withstand summary judgment on that claim. The district court also granted the summary-judgment motions of the respondents and sua sponte granted summary judgment to Lumley.

On a previous appeal, we affirmed the district court's denial of appellant's motion to amend the complaint and the district court's grant of summary judgment to Pederson on the claim of negligent misrepresentation. But we reversed and remanded summary-judgment rulings on the dispute over the boundary line and on the claims of statutory trespass, common-law trespass, and conversion.

After this court's first decision, the Droubies' mortgage was foreclosed upon. Following a sheriff's sale, the Sheriff's Certificate was transferred to Deutsche Bank, as trustee for the interest of IndyMac Federal Bank, F.S.B.A.; and Deutsche Bank appointed OneWest Bank as the trustee's attorney-in-fact and to act as servicer. Deutsche Bank was authorized by the district court to appear as the real-party-in-interest through its servicer, OneWest Bank.

On remand to the district court, the parties agreed to a bifurcated bench trial. The first part of the trial was to address the boundary dispute. Depending on the district court's determination of the location of the boundary line, the second phase was to

address the Granlunds' claims. Following a trial on the boundary-line issue, the district court found that the boundary line is correctly described in the certificate of survey that Pederson signed on January 20, 2004, which concludes that the area in dispute is part of the Deutsche Bank property. The district court subsequently dismissed Granlunds' claims with prejudice. While the Granlunds moved for a new trial or amended filings, they concede that the motion was untimely and, therefore, was not addressed by the district court. This appeal follows.

D E C I S I O N

I.

Appellant contends that the district court erred during trial by preventing him from testifying fully at trial, which he claims prevented him from presenting evidence, and by changing the trial date without providing them with notice. This court reviews evidentiary rulings and trial procedures in a civil proceeding if there has been a motion for a new trial in which the rulings have been assigned as error. *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986); *Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 790 (Minn. App. 2011). This rule recognizes the fast pace of a trial and provides the district court with the opportunity to correct an error within the context of the entire case, to explain its reasoning, and to develop the record fully. *Am. Bank of St. Paul*, 802 N.W.2d at 790. Because appellant failed to bring a timely motion for a new trial, the evidentiary and procedural issues are not properly before this court. Therefore, we do not address them.

II.

Appellant contends that the district court's findings of fact are not supported by the record and that the findings of fact do not support the conclusions of law. The district court's placement of a boundary line is a factual determination. *Wojahn v. Johnson*, 297 N.W.2d 298, 303 (Minn. 1980); *see also Ruikkie v. Nall*, 798 N.W.2d 806, 814 (Minn. App. 2011). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01.

In a boundary dispute, the findings of the district court will not be disturbed unless "the evidence taken as a whole furnishes no substantial support for them or where it is manifestly or palpably contrary to the findings." *Engquist v. Wirtjes*, 243 Minn. 502, 506, 68 N.W.2d 412, 416 (1955) (quotation omitted). Whether the findings of fact support a district court's conclusions of law is a question of law, which we review *de novo*. *See Donovan v. Dixon*, 261 Minn. 455, 460, 113 N.W.2d 432, 435 (1962) (noting that "it is for this court to determine whether the findings support the conclusions of law and the judgment"). In this dispute, the district court paid strict attention to the statutory scheme.

Minn. Stat. § 389.04 (2010) provides:

In all surveys the basis for the courses must be defined. In subdividing townships, sections, or parts of sections, as established by the United States survey thereof, and in restoring lost or obliterated government corners, the county surveyor shall follow the rules established by or pursuant to acts of Congress, and all such surveys shall be made in strict conformity to the original survey made by the United States.

When a surveyor attempts to locate a lost corner, he should attempt to locate the corner monuments, take existing fence lines into account, and use any other collateral evidence. *Wojahn*, 297 N.W.2d at 303-04. If the marker cannot be located and was destroyed, a surveyor shall make “full and accurate notes and records from which the entire survey can be relocated” and file it with the office of the county surveyor. Minn. Stat. § 381.12, subd. 1 (Supp. 2011). If a boundary dispute goes to trial, the district court has the authority to determine the boundary lines between two tracts that depend on any common point, line, or landmark. Minn. Stat. § 559.23 (2010).

The Granlund and Deutsche Bank properties are located in the Southeast Quarter of Section 30 of Milo Township. The evidence at trial established that the original survey of section 30 was conducted in 1855 by James Marsh for the United States and the General Land Office (GLO). The method that Marsh used to survey the land was designed so that any variations to the square plots caused by township boundaries would be reflected in the west and north tiers. Section 30 is along the western edge of Milo Township.

The next survey concerning the boundaries of section 30 was done in 1910 by R.S. Chapman, the Mille Lacs County surveyor at the time. The purpose of Chapman’s survey was to set the lines for the reconstruction of a road running east and west along the southern edge of section 30 and the corresponding Milo Township section lines running to the east. Chapman did not find all of the original corners set by Marsh, but his survey notes indicate that he found the original east quarter post for section 30 as set by

the 1855 GLO survey. Chapman reset the post. And his notes refer to two tamarack trees that pinpointed the location of the east-quarter corner. Chapman recorded the measurement of 2,645 feet from the southeast corner of section 30 to the east quarter corner of section 30.

During the late 1800s and early 1900s, the township built roads down section lines because it was easier to acquire a right-of-way from landowners if they knew where the corners were. Highway 12, which currently runs along the southern line of section 30, was built on top of the original township road that was constructed sometime after 1897.

John Oliver, who was then the Mille Lacs County surveyor, conducted the next survey in 1989, in connection with reconstruction of a road that is now County State Aid Highway 12. Dennis Pederson was part of this survey crew. The crew located the section and quarter corners along the section lines. Oliver filed two certificates of location for the southeast corner, identified as numbers 806 and 850, that placed the section corner in the same spot.

In 2000, Ronald Engelmeyer did the next survey and established the corner as part of a project for an adjoining property. He performed detailed work based on the fence lines, but did not use Chapman's work or the old survey books. Nor did Engelmeyer file a certificate of location.

In 2003, the Granlunds hired Steven Seeger of Rum River Land Surveyors to survey the parcel in connection with their purchase of the property. In his survey, Seeger relied on the measurements that Engelmeyer made in establishing the corner.

At the time the Granlunds purchased their property, the Deutsche Bank property was owned by Lumley. Lumley hired Dennis Pederson in 2003 to conduct a survey of section 30 when he was in the process of selling his land to the Droubies. Pederson provided Lumley with a preliminary survey by using Engelmeyer's numbers and generally came to the same conclusions as Seeger and Engelmeyer had. But Pederson also noted that this first survey was subject to further examination.

Pederson conducted a second survey, completed on January 20, 2004, that reached a different result. In the second survey, Pederson tracked the GLO survey markers, the Chapman measurements, and the measurements done by Oliver and Engelmeyer. Pederson noted that Chapman's measurements were different from GLO by about 60 feet on the southern border, but opined that such discrepancies are typical on the far west side of a township because of the manner in which the boundaries were originally set in 1855. Pederson did further research into Chapman's lines and examined the work of other surveyors. He also tried to locate the stumps from the tamarack trees that Chapman identified.

While section 30 is in a swamp that contains a lot of tamarack trees, Pederson thought, based on other landmarks, that he found the correct stump. But when tested, the sample from the stump was too decomposed to be determinative. Based on his additional research, Pederson agreed with the corner post location that was established by Chapman, as their calculations differed by only two feet, and disagreed with the Engelmeyer/Seeger corner because Engelmeyer had not considered the record evidence from previous surveyors. Pederson prepared and filed a certificate of location, number 965. Based on

Pederson's second survey, the Droubies built a home, driveway, and septic system on their newly purchased property. Parts of the driveway and septic system are located in the disputed area.

The county board retained Gary Stevenson as an independent surveyor to review the conflicting placements of the corner. In his 2004 report to the county board, Stevenson agreed with Pederson's placement of the corner.

In 2008, the Granlunds hired David Claypool to conduct another survey of the corner. Claypool found evidence of a post that had rotted or been removed that he believed to be in the location of the post set by Chapman in 1910, and reviewed the historical records. Claypool rejected the Oliver and Pederson surveys and concluded that his new measurements fit with Chapman's measurements and the original evidence from the GLO survey. As a result, Claypool opined that the corner should be moved from its current spot, which is in the middle of Highway 12, to a location 68 feet north and 137 feet east. Claypool did not file a certificate of location that reflected his opinion of the corner location.

The district court weighed the conflicting evidence and concluded that the correct corner is located by Pederson's Certificate of Location, number 965. In reaching its decision, the district court did not find convincing any of the tree identification by the surveyors, noting that Chapman identified the trees 95 years ago and that the trees had decomposed so much that the residue of the trees could not be relied upon. The district court also observed that Stevenson concluded that "Mr. Pederson's position is a proper reestablishment of the obliterated corner position using the record evidence from 1910."

After our careful review of the record, we conclude that all of the district court's findings of fact are well supported by the record. The district court's determination that Pederson's survey is correct is based on its determination of which body of survey work is more credible. Because the district court's findings of fact have substantial support in the record and are not contrary to the evidence, there is no reversible error. And because the issue of the location of the original marker was resolved through trial, the district court properly determined the boundary as a matter of law under Minn. Stat. § 559.23.

Affirmed.