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

DIVISION II

CA07-1044

April 30, 2008

MARY E. VANDERFORD
APPELLANT

V.

WILLIAM E. RUCK and
TERRI J. RUCK
APPELLEES

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[CV 07-606]

HON. MARY McGOWAN, JUDGE

AFFIRMED

Appellees Terri and William Ruck sought and obtained specific performance of a boundary-line agreement they had reached with appellant Mary Vanderford. On appeal, Vanderford argues that the trial court erred in its conclusion that the parties' letter agreement was an enforceable written contract. She further claims that the matter cannot be resolved as a contract action because it "should have been brought as a property boundary dispute." We disagree and affirm.

The testimony adduced at trial showed that Vanderford lives at 35322 Kanis Road in Little Rock. Her home is adjacent to property owned by the Rucks, who purchased a portion of their property from Vanderford's father in 1984. In 2005, the Rucks purchased the remainder of their property from Vanderford's sisters. Following her father's death, Vanderford inherited the property on which she now resides. And it was after her father's

death that a fence-line dispute arose between the Rucks and Vanderford. The crux of the parties' dispute was the proper placement of the property-line "iron pin" point. The trial evidence showed that, according to five separate surveys, the point was the same; and each survey showed that Vanderford's fence was encroaching upon the Rucks' property. However, the evidence also showed that Vanderford's fence had been in its location for sometime and that she had several possible, even plausible, equitable claims to the disputed area.

The evidence also showed that when the Rucks purchased their first tract of land from Vanderford's father in 1984, the land was only accessible via an easement they received running through the section of land now owned by Vanderford. However, after their acquisition of additional adjacent land from Vanderford's sisters in 2005, the easement through Vanderford's property was no longer their only route of access to their original tract purchased in 1984.

According to the Rucks' testimony, in an effort to avoid protracted litigation relating to the fence encroachment, they sent a letter to Vanderford offering to settle the matter. A meeting was scheduled at the office of Ken Jones, who served as Vanderford's personal attorney. The letter proposed that the matter be resolved by the exchange of two quitclaim deeds.[1] The deeds would extinguish the Rucks' easement rights across Vanderford's tract of land and it would foreclose any potential equitable rights that Vanderford might claim in relation to her fence-line encroachment. The Rucks also agreed to bear the cost to relocate

[1]The agreement reads, "I shall exchange quitclaim deeds which mutually relinquish any and all easement or access rights presently existing across our properties."

the fence.[2] After a thorough discussion of the offer, Vanderford's counsel recommended that she sign the agreement; and she did.[3] However, the evidence shows that only a couple of days after the meeting she called her attorney and indicated that she had changed her mind.

Thereafter, the Rucks relocated the encroaching fence. Vanderford responded by tearing down the relocated fence and placing it back in its prior location. She also refused to sign the quitclaim deed. The Rucks responded by filing a civil suit asking for specific performance of the agreement and damages for relocating the fence. Following a trial in Pulaski County, Vanderford was ordered to specifically perform per the terms of the parties' agreement, and the Rucks were granted damages of $1,735 for the cost of relocating the fence and attorney fees of $5,026. It is from this order that Vanderford now appeals.

The standard of review for bench trials is whether the circuit court's findings were clearly erroneous or clearly against the preponderance of the evidence. *Smith v. Eisen,* 97 Ark. App. 130, 245 S.W.3d 160 (2006). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Hodge v. Hodge*, 97 Ark. App. 217, 245 S.W.3d 695 (2006). We give special deference to the superior position of the trial judge to evaluate the credibility of

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[2] In relevant part, the document states "I hereby grant permission for the Rucks to immediately relocate the encroaching fence to our commom [sic] property line at their expense, thereby eliminating the encroachment shown on the attached survey. They shall use reasonable care to prevent the escape of my livestock (goats) during this process."

[3]Vanderford accepted the language of each relevant section of the agreement by circling the word "yes" and by signing her name after each portion.

witnesses and their testimony; however, we give no deference to the trial judge's conclusions on questions of law. *Id.*

As such, the court's task on appeal is relatively straightforward. We must simply determine whether the trial court's finding that the parties' agreement was a contract is clearly erroneous. Our analysis begins with an examination of the legal principles of contract law. The essential elements of a contract are (1) competent parties, (2) subject matter, (3) legal consideration, (4) mutual agreement, and (5) mutual obligations. *Hanna v. Johnson*, 233 Ark. 409, 344 S.W.2d 846 (1961). In construing a contract, the court must give effect to the intention of the parties as far as that can be done consistently with the law, and this intention must be ascertained from the whole of the contract. *See Williams v. Cotten*, 9 Ark. App. 304, 658 S.W.2d 421 (1983).

As to the first component of the alleged contract, there is no debate. The parties each concede that all involved parties were competent to enter into a contract. Second, although Vanderford argues that real-property boundary line disputes are better settled by "deed reformation," there is no real dispute that the subject matter of the agreement can reside in contract. Also, the third element, "legal consideration" is satisfied by the proposed exchange of quitclaim deeds. The Rucks are trading their rights of ingress and egress across Vanderford's land for her waiver of a potential equitable or legal right in the Rucks' property. Both the compromise of a disputed claim and the waiver of equitable rights are sufficient forms of consideration to support a promise. *See Kelly v. Keith*, 77 Ark. 31, 90 S.W. 150 (1905); *Buckner v. McIlroy*, 31 Ark. 631 (1877). The consideration tendered by each party also fulfills

the fifth essential element of the contract—mutual obligation. Thus, our focus must turn to the fourth contractual element, mutual agreement.

Indeed, as Vanderford argues, a court cannot make a contract for the parties. *Hanna*, *supra*. It can only construe and enforce the contract that they have made; and if there is no meeting of the minds, there is no contract. *Id*. Vanderford claims that the letter she received from the Rucks was merely an offer "suggesting cooperation" that is "being touted" as a contract. She notes that the plain language of the contract states, "We offer these options to you until September 3, 2006," and the parties did not meet until October 11, 2006. Thus, Vanderford surmises that "by the time the parties met ... the offer had terminated by its own terms." Further, she complains that the letter was not certain in its terms because it provided her with several choices to resolve the land and fence issues between her and the Rucks because the letter states, "In an effort to obtain input from you on these matters, we have listed some options below which you may exercise by placing a circle around the "YES" response, endorse, and return to us... ."

After a careful review of the letter and the conduct of the parties we are satisfied that there was a meeting of the parties' minds that the encroaching fence was to be relocated. There can be no doubt by the parties' conduct—meeting at the office of Vanderford's attorney to settle the dispute—that the offer remained open. Further, the signed letter agreement was clear and unambiguous as to the parties' various obligations and entitlements. Once Vanderford made her choice of the four options and signed and dated the agreement, she was obligated to perform. The terms of the option she selected were clear. The Rucks

would relocate her fence at their expense. She would give up any equitable claim she might have to the area, and the Rucks would relinquish their ingress and egress rights across her property. This would be carried out via an exchange of quitclaim deeds. Vanderford's own attorney acknowledged that she understood the terms of the agreement and accepted them without coercion. This is by definition mutual agreement. Finally, the fact that Vanderford attempted to revoke her consent *after* the contract was signed does not terminate the contract or her obligations. *See Equity Fire v. Traver*, 330 Ark. 102, 953 S.W.2d 565 (1997).

Affirmed.

GLADWIN and GLOVER, JJ., agree.