

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION IV

CA07-108

December 12, 2007

RONALD L. CLARK et al.

APPELLANTS

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT [NO. CIV-
04-875]

V.

HON. CHARLES E. CLAWSON, JR.,
JUDGE

RICHARD READNOUR et al.

APPELLEES

AFFIRMED

This is a subsequent appeal after remand of a case seeking removal of obstructions from a road asserted to be a county road established in 1910. In our opinion of January 18, 2006, we remanded for the trial court to find whether the disputed road was public or private. After hearing evidence relating to this issue on remand, the trial court found that appellants had failed to sustain their burden of proving that the road they seek to open was in fact the county road established in 1910. Appellants argue that this finding was erroneous. We affirm.

A plea to remove obstructions placed on a public road sounds in equity. *See Hatchett v. Currier*, 249 Ark. 829, 461 S.W.2d 934 (1971). In reviewing cases that sound in equity,

we consider the evidence *de novo*, but will reverse a trial court's findings only if they are clearly erroneous or clearly against the preponderance of the evidence. *Alphin v. Alphin*, 364 Ark. 332, 219 S.W.3d 160 (2005). In doing so, we give due deference to the superior position of the trial court to view and judge the credibility of the witnesses. *Hunt v. Perry*, 357 Ark. 224, 162 S.W.3d 891 (2004).

Here it was undisputed that the description of the public road opened in 1910 did not match the location of the road that appellants sought to open. Acknowledging that the original description of the road was in error, appellants argued at trial that this was a mere clerical error that could be corrected by the court. The trial judge correctly rejected this argument. The description of the disputed road introduced at trial references a diagram on an accompanying sheet, but no such diagram appeared in the records. It is also undisputed that several of the calls in the description, including the first call, would need to be modified to make the description match the existing road bed. Finally, the description states that the county road opened in 1910 is 7.75 miles in length, whereas the existing road is approximately five miles long.

It is essential that the description of a public road be sufficient to allow it to be located from land records, and an insufficient description will invalidate a proceeding establishing a public road. *Bowden v. Oates*, 248 Ark. 577, 452 S.W.2d 831 (1970); *Armstrong v. Cook*, 243 Ark. 230, 419 S.W.2d 308 (1967); *Lemon v. Tanner*, 173 Ark. 414, 292 S.W. 668 (1927). The description must be definite enough not only to be located from land records, but also definite enough to avoid future litigation. *Bowden v. Oates, supra*. The description

at issue was void for uncertainty, *see Lemon v. Tanner, supra*, and we hold that the trial court did not err in finding that appellants failed to prove that the way in issue was in fact a county road.

Affirmed.

ROBBINS and BIRD, JJ., agree.