

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000099-MR

RAYMOND G. McGRUDER AND
MAXINE McGRUDER

APPELLANTS

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE ERNEST A. JASMIN, JUDGE
ACTION NO. 95-CI-00354

FOSTER J. SANDERS; ELSIE JANE SANDERS;
GEORGE F. HENDERSON; NELL HENDERSON;
FRANCES SCOTT HENDERSON; ETHEL MAE
COCHRANE; AND SUBURBAN CONSTRUCTION
AND MANAGEMENT, INC.

APPELLEES

OPINION
VACATING AND REMANDING
** **

BEFORE: GUDGEL, CHIEF JUDGE, BARBER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This appeal involves a boundary line dispute and a prior attempt to get a written agreement as to the property line of numerous adjacent landowners. We opine that the circuit court did not follow our directions on remand and again, vacate and remand with directions.

This case is back to this Court after a remand to the circuit court to reconsider the validity of a "Deed and Agreement". It appears that the Deed and Agreement was signed by

all but one of the adjacent property owners, or their predecessors in title. The trial court originally concluded that the written Deed and Agreement was invalid. In an unpublished case rendered April 23, 1999, (final on July 15, 1999), in Case No. 1998-CA-001998-MR, this Court concluded the trial court erroneously interpreted the law, applying requirements as to parol agreements fixing boundary lines to the facts in this case rather than the requirements for written agreements establishing boundary lines. More specifically, this Court concluded "that the very nature of a parol agreement compels the requirements of uncertainty, acquiescence, and possession, whereas there exists no such compulsions as to a written agreement." The trial court was given directions on remand to reconsider the validity of the written Deed and Agreement in light of this Court's clarification of the law.

After remand, the trial court again discussed the requirements for an oral agreement, mentioned estoppel, mentioned written agreements, and simply concluded that the documents did not meet the minimum requirements for a simple contract. There is no analysis of the written agreement (other than the one missing signature) to see if it meets the requirements of a deed, as ordered by this Court.

On remand, the trial court should look at the Deed and Agreement first and gather from the four corners of the instrument, the intentions of the parties. Phelps v. Sledd, Ky., 479 S.W.2d 894 (1972); Dennis v. Bird, Ky. App., 941 S.W.2d 486, 488 (1997). An unambiguous instrument of conveyance must be

construed according to its terms. Parol evidence of the parties' intentions is not admissible unless the deed is ambiguous. Id. Interested parties have the right to agree on a dividing line between their lands and to reduce their agreement to writing. Those that do so (the signatories) and those claiming under them are bound by the agreed line. VanHoose v. Fitzpatrick, 248 Ky. 335, 58 S.W.2d 587 (1933). After deciding whether or not the Deed and Agreement meets the requirements for a valid deed, the trial court will need to determine the boundary lines between the parties.

For the foregoing reasons, the judgment of the Bullitt Circuit Court is vacated and the matter remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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