RENDERED: July 13, 2001; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000556-MR

FREEMAN CHADWELL;
RONNIE CHADWELL;
PATSY CHADWELL;
MIKE CHADWELL;
HELEN CHADWELL;
PATTY AUSTIN;
BRENDA KEGLEY; AND
HOWARD KEGLEY — APPELLANTS

v.

APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM MAINS, JUDGE
ACTION NO. 97-CI-00258

JAMES A. HOWARD;
JIMMY RAY HOWARD;
EDITH CHADWELL; AND
CLYDE CHADWELL — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BARBER, GUIDUGLI AND HUDDLESTON, JUDGES.

GUIDUGLI, JUDGE. Freeman Chadwell, et al., appeal from an amended judgment of the Rowan Circuit Court in an action initiated by James A. Howard, et al.,[1] to establish a boundary line between two parcels of real property. We affirm.

[1]Lila Chadwell died during the pendency of this action.

The facts are not in controversy. On November 6, 1997, James A. Howard and Jimmy Ray Howard ("the Howards") filed the instant action in Rowan Circuit Court seeking a declaration and judgment establishing title and boundary lines to a parcel of real property. They named as defendants the adjacent landowners Freeman Chadwell, individually and as guardian of Lila Chadwell ("the Chadwells"). The Howards sought an order enjoining the Chadwells from trespassing on the disputed parcel as well as an order requiring the Chadwells to remove personal property. The complaint subsequently was amended to name as additional defendants Edith and Clyde Chadwell, who sold the parcel to the Howards.

After settlement negotiations failed, the matter proceeded to a bench trial on April 22, 1999. The trial resulted in the issuance of findings of fact, conclusions of law, and judgment. The judgment provided in relevant part that a boundary line was to be marked between the parcels in conformity with the findings of fact.

On August 13, 1999, the Howards filed a motion to alter, amend or vacate the judgment, and it appears that the parties again attempted to settle the matter. When the settlement attempt failed, the Howards advised the court that they would withdraw their motion to alter, amend or vacate if the court ruled that the establishment of the boundary line extinguished any easements on the parcels. On December 15, 1999, the court rendered an order stating that no such right of way or easement existed.

Thereafter, the Chadwells filed a motion to alter, amend or vacate the December 15, 1999 order, requesting therein that the court remove the language referring to the easement (i.e., that the easement remain enforceable). On February 4, 2000, the court rendered an order to which the Chadwell now take issue. That order located the easement and provided for its maintenance; located a gate and determined who was to have keys to the gate; determined that the Howards could erect a privacy fence and allocated the cost of its construction; and, moved the property line. This appeal followed.

The Chadwells now argue that the court acted outside the scope of its authority by amending the original judgement more than five months after it had been rendered. They maintain that the court lost its authority to amend the judgment when the Howard's withdrew their August 13, 1999 motion to alter, and that the court cannot alter a judgment on its own initiative. They also argue that the trial court improperly granted additional relief not requested. They seek to have the original July 23, 1999 judgment reinstated without amendment.

We have closely examined the record, the law, and the arguments of counsel, and find no error. First, we must note that this claim of error has not been properly preserved. See generally, CR 76.12(4)(c)(iv). As the Howards note, the alleged error must be precisely preserved and identified in the lower court, giving the court the opportunity to correct the error. Elwell v. Stone, Ky. App., 799 S.W.2d 46 (1990).

Nevertheless, we have reviewed the matter which the Chadwells now raise, and find no error. The corpus of their argument is that the court acted outside the scope of its authority in amending the February 4, 2000 order and by addressing in that order extraneous matters like the establishment of a gate and privacy fence. We are not persuaded by this argument because the Chadwells tendered a motion on December 16, 1999, asking the court for the very amendment of which they now complain. Their motion to amend was properly tendered to the court and properly ruled upon. They sought and received an order declaring the easement to be enforceable. As for the assertion that the court went beyond what the Chadwells had sought and improperly addressed matters such as the gate and fence, these matters are reasonably related to the easement issue and are clearly within the scope of the court's authority to bring all such matters to a final conclusion. The trial court is presumptively correct in its rulings, City of Louisville v. Allen, Ky. 385 S.W.2d 179 (1964), and the Chadwells have not overcome this presumption. Accordingly, we find no error.

For the foregoing reasons, we affirm the judgment of the Rowan Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul Stokes
Morehead, KY

BRIEF FOR APPELLEES, JAMES HOWARD AND JIMMY HOWARD:

B. R. Salyer
Morehead, KY

BRIEF FOR APPELLEES, EDITH CHADWELL AND CLYDE CHADWELL:

John J. Ellis

Morehead, KY