

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001546-MR

LARRY FIELDS

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE CHARLES E. LOWE, JR., JUDGE
ACTION NO. 95-CI-00458

JUANITA LOWE THACKER

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GUDGEL, CHIEF JUDGE; COMBS AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Larry Fields has appealed a judgment entered by the Pike Circuit Court on March 8, 2000, in a boundary dispute case. Fields claims there was an agreement between the parties determining the boundary to be at a location different from where the trial court found it to be, and that the trial court erroneously quieted title to the disputed property in favor of the appellee, Juanita Lowe Thacker. Having concluded that the findings of the trial court are not clearly erroneous and that the trial court correctly applied the law, we affirm.

In July 1964, Juanita Thacker purchased a tract of land on Chloe Creek in Pike County. Fields purchased an adjoining

parcel of land in September 1989. The primary survey exhibit in this case is Exhibit One to the Phillip Potter deposition. This exhibit is a plat for the "Young Subdivision Lower Section No. Three." The exhibit depicts a plat of 43 lots numbered one through 43. According to the deed descriptions, Juanita Thacker owns lots 22 through 34 and Fields owns lots 35 through 43; hence, pursuant to the deeds, the boundary between the Thacker and Fields property would correspond to the boundary between lots 34 and 35.

The boundary area was low-lying, and both Thacker and Fields had plans to fill the area. Larry Thacker, Juanita's son, testified that he had been occasionally and slowly working on filling the low-lying areas of Juanita Thacker's property. When it became apparent that Fields was going to fill his adjoining property, Fields and Larry Thacker decided that it would be in their collective best interests to fill the adjoining property at the same time. To this end, Fields, Larry Thacker, Phillip Potter, a land surveyor frequently used by Larry Thacker in his cemetery operations and Michael Davis, Fields' property engineer, met at the property site to discuss the fill project.

In his deposition testimony, Larry Thacker testified that at this meeting he did not actually agree to a boundary line, but rather, that he merely opined where he thought the boundary line was, and that he warned Fields that he should not rely upon this opinion and should independently determine for himself where the actual line was through his own survey. Fields, on the other hand, testified that at this meeting a

boundary line was identified and agreed to by Larry Thacker, and that the boundary was staked based upon the agreement.

Surveyor Philip Potter, in his deposition, substantially corroborated Fields' testimony. Potter testified that at the meeting Larry Thacker produced a map and mistakenly identified the boundary line between lots 33 and 34 as lying 25 feet to the north of the actual line. This misidentification would have excluded lot 34 from Juanita Thacker's tract of land.¹

In his deposition, Larry Thacker acknowledged that at the meeting he misidentified the boundary line, but he contended that when the mistake was eventually caught "quiet some time later," he timely notified Fields of the mistake. Fields testified that a considerable period of time elapsed between the meeting and the time he was notified of the mistake and that, in the meantime, in reliance upon the agreed upon boundary, he incurred the expense of filling the property and erecting a fence at the agreed upon boundary between lots 33 and 34. Exact, or even approximate, dates concerning the relevant events in this controversy are conspicuously absent from the record; however, Fields contends that the fence was erected "two or three years after the agreement." It is uncontested that Juanita Thacker objected to Fields' placement of the fence shortly after it was erected.

In her deposition, Juanita Thacker testified that she was unaware of the meetings between Larry Thacker and Fields regarding the fill work or of any purported agreement concerning

¹Lot 34 measures approximately 25 feet by 113 feet.

the boundary between her property and Fields' property. Juanita Thacker testified that she first became aware of Fields' assertion as to the boundary line when she began examining the property more closely after Fields erected the chain link fence. According to Juanita Thacker, based upon Fields' placement of the fence, it was very apparent that Fields was claiming part of her property.

On March 21, 1995, Juanita Thacker filed a complaint in Pike Circuit Court alleging that Fields had encroached upon and caused damage to her property; requesting that Fields be enjoined from encroaching upon her land; requesting that title to the disputed property be quieted in her favor; and requesting trespass damages. On April 4, 1995, Fields filed an answer and counterclaim denying the allegations contained in Juanita Thacker's complaint and alleging that based upon the placement of the boundary as agreed to by Larry Thacker, he was the actual owner of the disputed property.

Following discovery and the taking of depositions, the matter was submitted for final decision to the trial court by deposition. On March 8, 2000, the trial court entered a judgment wherein it found Juanita Thacker to be the owner of the disputed property and required Fields to remove the fence he had erected. On March 14, 2000, Fields filed a motion to alter, amend or vacate the judgment and requested the trial court to make a finding as to whether Juanita Thacker or Larry Thacker had agreed to a boundary line at a time when there was a dispute about the location of the boundary. On June 6, 2000, the trial court entered an order denying the motion. This appeal followed.

In cases tried by deposition,² the trial court is the finder of fact, and its findings may not be reversed unless the findings are clearly erroneous.³ We review questions of law de novo and, thus, without deference to the interpretation afforded by the circuit court.⁴

Fields does not contest the trial court's finding that surveyor Phillip Potter has correctly determined that the proper boundary between the Fields tract and the Thacker tract as reflected in the deeds lies between lots 34 and 35 and not between lots 33 and 34 and that the deeds reflect that Juanita Thacker is the owner of lot 34, the disputed property. However, Fields contends that pursuant to Bringardner Lumber Co. v. Bingham,⁵ the factors necessary to enforce an agreed boundary line have been met, and that he should be adjudged the owner of the disputed property.

Bringardner recapitulates the agreed boundary doctrine, which provides that (1) there must be a bona fide controversy between the owners at the time of the agreement concerning the true location of the property line; (2) the line claimed to have been agreed upon must be marked; (3) actual possession must be taken in accordance with such agreement; and (4) there must be a

²Kentucky Rules of Civil Procedure (CR) 43.04.

³Largent v. Largent, Ky., 643 S.W.2d 261, 263 (1982); CR 52.01.

⁴Cinelli v. Ward, Ky. App., 997 S.W.2d 474, 476 (1999).

⁵Ky., 251 S.W.2d 273 (1952).

continuing acquiescence or mutual recognition by the contiguous landowners for a considerable length of time.⁶

Even assuming, arguendo, that the boundary line was agreed upon and staked as claimed by Fields, that Fields took actual possession in accordance with the agreement, that there was a mutual recognition of the boundary line for a "considerable length of time", and that Larry Thacker was Juanita Thacker's agent and Larry's actions were binding on Juanita; nevertheless, we are not persuaded that Fields is entitled to a judgment in his favor under the agreed boundary line rule identified in Bringardner Lumber. In particular, Fields has failed to show that there was a bona fide controversy between the owners as to the boundary line at the time of the meeting between him and Larry Thacker. In fact, the admissions made by Fields in his deposition testimony are fatal to his claim that there was a bona fide controversy between the owners at the time of the meeting respecting the true location of the property line:

Q3. You have heard the testimony here today relative to a meeting that occurred out there to try to determine the boundary lines of that property?

A. Yes.

Q4. Just describe - Tell us what the purpose of that meeting was. Well, let me go back a little further than that. Why at that point were you having Mike Davis look at the property and why were you in a meeting with Larry Thacker?

⁶Bringardner, 251 S.W.2d at 274-75 (citing Cline v. Blackburn, 292 Ky. 713, 168 S.W.2d 15 (1943); Steele v. University of Ky., 295 Ky. 187, 174 S.W.2d 129 (1943); Wagers v. Wagers, Ky., 238 S.W.2d 125 (1951); and Redman v. Redman, Ky., 240 S.W.2d 553 (1951)).

A. We were filling the property and wanted to establish our property lines.

Q5. Had a question come up about it?

A. No. It just seemed to be the thing to do at the time.

Q6. Had anybody challenged anybody else's version of the property line?

A. No.

Based upon Fields' own deposition testimony, there was no actual dispute regarding where the boundary line was located. For example, the deeds were not overlapping or ambiguous; there was no adverse possession dispute; nor were there missing plats, maps, stakes or landmarks so as to call into question the location of the actual boundary. In fact, it appears that with minimal investigation and research, either Fields or Juanita Thacker could have easily determined the correct boundary between the two tracts.

In summary, we are persuaded that the "bona fide dispute" element of the agreed boundary line doctrine was not met in this case and, accordingly, Fields' attempted reliance upon the doctrine must fail.⁷ For the foregoing reasons, the judgment of the Pike Circuit Court is affirmed.

⁷While it is unfortunate that Fields apparently incurred the expense of filling property that he did not own based upon a misunderstanding regarding the proper boundary line, that is irrelevant to the quiet title issue. There may be other legal theories available to Fields to address Juanita Thacker's apparent windfall in this regard. However, such alternative theories were not pursued before the trial court and are not before us. See Clinkinbeard v. Poole, Ky., 266 S.W.2d 796, 798 (1954) (The general rule is that one who receives benefit from the labor of another, or who acquires property of another under an unenforceable contract, must pay on a quantum meruit basis the value of the benefits thus received).

ALL CONCUR.

BRIEF FOR APPELLANT:

Lawrence R. Webster
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Carole Friend Conway
Bruce A. Levy
Pikeville, Kentucky