

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001633-MR

KAYE SPEARS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DAVID A. TAPP, JUDGE  
ACTION NO. 03-CI-01282

JAMES R. PING

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; KELLER, JUDGE; HENRY, SENIOR  
JUDGE.

COMBS, CHIEF JUDGE: Kaye Spears appeals from a judgment of the Pulaski  
Circuit Court involving a dispute over a property line. After our review, we affirm.

Spears and James R. Ping are owners of adjoining properties near  
Burnside in Pulaski County. In December 2003, Ping filed a civil action against  
Spears alleging that Spears habitually trespassed upon his property – despite the

fact that a well-defined boundary line separated the two parcels. Ping also alleged that Spears had damaged a fence marking the boundary line and that she had destroyed trees growing on his property. In her answer, she denied that the fence marked the proper boundary between their properties. She also denied that she had trespassed on Ping's property. Spears stated that she had removed the fence in order to provide access for heavy equipment to her backyard in order to repair recurring sinkholes. According to Spears, there was a change to a call in a deed in a prior conveyance that was included in her chain of title. She believed that new call created a "buffer area" or a "pie-shaped no-man's-land" between Ping's property and her own. While Spears made no claim to the "buffer area," she contended that Ping, who had acquired his property first, had no right to it either.

The matter was tried before the court. On July 9, 2007, the trial court entered findings of fact, conclusions of law, and final judgment. The court determined that the parties shared a common grantor. Based upon the testimony of one of the surveyors, the court concluded that Ping had established that the disputed property fell within his grant and not within any prior grant from the parent tract. It concluded that Spears had failed to show that the revised call appearing in her chain of title was an accurate description of the land conveyed to her. As a result, the court ordered reformation of the property description contained in Spear's deed and quieted title to the disputed parcel in favor of Ping. No monetary damages were assessed. This appeal followed.

Spears argues that the trial court erred in its determination of the correct location of the disputed boundary line for three reasons: (1) the court ignored relevant evidence presented by Bobby Hudson, a licensed surveyor; (2) the court failed to acknowledge the importance of monumentation in establishing the boundary; and (3) the court failed to consider that heavy equipment must be accessible to Spears's backyard to repair sinkholes that are a danger to her and to other residents of the subdivision.

The standard of review in cases tried before the court without a jury is well established. "Findings of fact shall not be set aside unless clearly erroneous. . . ." Kentucky Rules of Civil Procedure (CR) 52.01. This rule has been held to apply to boundary disputes. *Webb v. Compton*, 98 S.W.3d 513 (Ky. App. 2002).

In its judgment, the trial court discounted the testimony of Bobby Hudson, a land surveyor, in favor of expert testimony offered by Gary Girdler, also a licensed land surveyor. Hudson testified that he had undertaken a survey of property owned by James Vanhook. He had surveyed a parcel of Vanhook's property that was later conveyed to Ping in October of 1996. Hudson indicated that the legal description included in the deed to Ping matched: (1) his survey, (2) a survey undertaken by John Sturgill in 1983, and (3) the recorded plat.

Hudson later surveyed Vanhook's remaining property. Separate tracts were eventually conveyed to others, including the one to Spears's predecessor in title. In response to questioning by Ping's attorney, Hudson denied that the legal description of the property conveyed to Spears's predecessor in title called for a

boundary line adjoining Ping's property. He was steadfast in testifying that because of the similar bearings and distances from a single point as described in the deeds, a gap resulted between the parties' properties.

In his testimony, Gary Girdler intimated that Hudson had erred in his survey, and he offered a plausible explanation for the error. Girdler indicated that during the course of his work at the site, he had located a concrete monument that had been described in several deeds and that had been originally referred to by John Sturgill in his 1983 survey. Girdler explained that the legal description contained in Ping's deed along with the concrete monument constituted an accurate survey that would cause the disputed properties to adjoin at precisely the location proposed by Ping; *i.e.*, a common boundary line with no intervening space or gap as urged by Spears.

Having reviewed this conflicting testimony, we must conclude that the trial court's judgment was based upon substantial evidence and that it was not clearly erroneous. We are not persuaded that the trial court erred by relying on Girdler's survey and fieldwork or by accepting as correct the location of the disputed boundary as determined by Girdler. "A fact finder may choose between the conflicting opinions of surveyors so long as the opinion relied upon is not based upon erroneous assumptions or fails to take into account established factors." *Howard v. Kingmont Oil Co.*, 729 S.W.2d 183, 184-185 (Ky. App. 1987).

Spears next argues that the trial court erred by failing to acknowledge relevant monumentation identified on the ground by Bobby Hudson. We disagree. Girdler testified that by using the concrete monument and the bearings and distances calls included in Ping's deed, his line coincided with the location of an undisputed pin located across Skyview Drive, the road marking the boundary of the property belonging to Ping and Spears. The trial court was persuaded by this testimony, and its judgment was based upon substantial evidence. There was no reversible error.

Spears last contends that the trial court erred by failing to take into account her need to have heavy equipment enter her backyard. In her deposition, Spears indicated that although she had not had the property surveyed before she purchased it, the fence enclosing the backyard did not mark the property line. Spears admitted during trial that the disputed fence had been destroyed by heavy equipment used to deposit rock in a sinkhole on the property. Spears had admitted in a deposition that she did not own the property that she sought to use. Based upon the entirety of the evidence presented, we cannot conclude that the court erred in ruling that Spears had no claim to the title or the use of the disputed property.

We affirm the judgment of the Pulaski Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Matthew B. Dehart  
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BRIEF FOR APPELLEE:

Jason Price  
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