STATE OF MICHIGAN

COURT OF APPEALS

DONA J. DEAVEN, Plaintiff-Appellant,	UNPUBLISHED February 15, 2011
v	No. 294624 Oakland Circuit Court
SCOTT PAULSON and KIMBERLY PAULSON, Defendants-Appellees.	LC No. 2007-087964-CH

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order, following a bench trial, determining the boundary line between plaintiff's and defendants' adjacent properties. We affirm.

The parties own lots in Cedar Crest Subdivision No. 4, in White Lake Township, Oakland County. Defendants own lot 737. Plaintiff owns lots 718, 719, 720, 734, 735, and 736, all of which are contiguous and adjoin defendants' property to the east and south. To the west of defendants' property is a canal. To the north of both parties' property is Juniper Trail. The subdivision was platted in 1925. Significantly, trial testimony indicated that the subdivision plat is notorious among area professionals for its latent and patent ambiguities. Defendants' surveyor testified that the "mathematics don't work on it" and called it "basically a nightmare for any of the surveyors that go in there." Plaintiff's surveyor conceded that the plat contains ambiguities. The dispute in this case is between a survey performed on behalf of plaintiff and a survey performed on behalf of defendant, affecting a wedge of land that plaintiff contends belongs in lot 736 and defendants contend belongs in lot 737. The trial court found defendants' survey to be the more accurate.

In a bench trial, we review the trial court's conclusions of law and equitable rulings in general—such as to quiet title—de novo, but we defer to the trial court's findings of fact, which we will reverse only upon a finding of clear error, meaning we must be definitely and firmly convinced that the trial court made a mistake. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008). Determinations of credibility "are far more within the competence of the trial court than within the competence of appellate judges reading dry records." *Morris v Clawson Tank Co*, 459 Mich 256, 271; 587 NW2d 253 (1998). In a quiet title action, the plaintiff must prove a prima facie case of title to the disputed land, after which the defendant

must prove a superior right or title. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999).

This case is, at its heart, a credibility and methodology contest between the two surveyors. Defendants' surveyor prepared a "plot plan," whereas plaintiff's surveyor prepared a certified boundary survey, but neither of them prepared a recordable survey. Both of them found limited monuments. Defendants' surveyor relied more heavily on the monuments that he found, reasoning that "someone who had some sort of scientific engineering surveying experience" had established what the plat intentions were, even if the markers differed from the unworkable paper plat. In contrast, plaintiff's surveyor used what markers he found to fit his survey as closely as possible to the recorded plat. The boundary line in plaintiff's survey is more consistent with the boundary line shown in the 1925 subdivision plat.

However, as Justice COOLEY observed, and as this Court has recently reaffirmed:

> Nothing is better understood than that few of our early plats will stand the test of a careful and accurate survey without disclosing errors. This is as true of the government surveys as of any others, and if all the lines were now subject to correction on new surveys, the confusion of lines and titles that would follow would cause consternation in many communities. Indeed the mischiefs that must follow would be simply incalculable, and the visitation of the surveyor might well be set down as a great public calamity.
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> But no law can sanction this course. . . . The question is not how an entirely accurate survey would locate these lots, but how the original stakes located them. No rule in real estate law is more inflexible than that monuments control course and distance,—a rule that we have frequent occasion to apply in the case of public surveys, where its propriety, justice and necessity are never questioned. But its application in other cases is quite as proper, and quite as necessary to the protection of substantial rights. The city surveyor should, therefore, have directed his attention to the ascertainment of the actual location of the original landmarks . . . and if those were discovered they must govern. If they are no longer discoverable, the question is where they were located; and upon that question the best possible evidence is usually to be found in the practical location of the lines, made at a time when the original monuments were presumably in existence and probably well known. . . . As between old boundary fences, and any survey made after the monuments have disappeared, the fences are by far the better evidence of what the lines of a lot actually are, and it would have been surprising if the jury in this case, if left to their own judgment, had not so regarded them. [*Diehl v Zanger*, 39 Mich 601, 605-606 (1878) (COOLEY, J., concurring) (internal citation omitted), quoted with approval in *Jonkers*, 278 Mich App at 267-268.]

Although plaintiff presented evidence that could have supported the establishment of a different boundary line, the trial court's determination of the correct boundary line is supported by the existence of actual markers that were found on the property. We are not left with a definite and firm conviction that the trial court erred in its determination that defendants' survey was the

more credible and correct, and therefore the trial court did not clearly err in its determination of the boundary line between lots 736 and 737.

Plaintiff argues that the trial court erred in failing to address her trespass and other claims. We disagree.

Plaintiff alleged that defendants paved a portion of Juniper Trail, and attempted to exclude plaintiff and other subdivision owners from using it, without their consent. But the unrefuted trial testimony showed that defendants realized that Juniper Trail was dedicated to the use of all subdivision owners and they did not intend to exclude other subdivision owners from using Juniper Trail. Plaintiff never filed a complaint, or sought to file an amended complaint, that contained an actual claim that defendants' shed was moved onto the common property dedicated to all lot owners. Therefore, no claim involving the location of the shed was pending before the trial court.

Plaintiff also testified that defendants planted trees along the border of lot 735 and Juniper Trail, which prevented her from accessing Juniper Trail at that location. Defendants testified that the builder planted the trees after he mistakenly removed plaintiff's existing trees. Defendants had no involvement. Plaintiff did not present any contrary testimony. Further, the trial court asked plaintiff to have her surveyor show the location of the trees. An amended survey was prepared, but it did not depict any trees on the boundary between lot 735 and Juniper Trail. In summary, we find nothing in the record showing that plaintiff had any remaining meritorious claims pending, so the trial court did not err in impliedly rejecting them.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause