



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00045-CV

CAROLINA B. ALVARADO, APPELLANT

V.

JAY WADE, APPELLEE

On Appeal from the 121st District Court
Terry County, Texas
Trial Court No. 20329, Honorable John A Didway, Presiding

November 14, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PARKER, JJ.

The lawsuit from which this appeal arose started as an attempt to collect rent or damages due to an apparent trespass. It ended as an adjudication of the boundaries to land. Jay Wade sued Carolina B. Alvarado to collect those damages after buying the realty in question at a sheriff's sale. He had the tract surveyed and discovered that two structures located completely or partially on the property were his neighbor's (i.e., Alvarado's). She believed the structures to be on her property and secured her own survey to establish that. When the cause came to trial, the only issue presented to the

trial court (as fact-finder) was the location of the boundary lines of the property acquired at the sheriff's sale. The parties were not disputing the boundaries of the property Wade bought, only their location on the ground. Furthermore, each litigant submitted their respective survey demarcating the location of the boundaries. The trial court adopted the survey commissioned by Wade and the lines therein. Alvarado appealed.

We are asked to determine whether the trial court's decision locating the boundaries as it did was supported by legally sufficient evidence. One attacking the legal sufficiency of the evidence underlying an adverse finding for which he did not have the burden of proof must show that no evidence supported the finding. *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 215 (Tex. 2011). Next, evidence is legally sufficient to support the finding if it enables reasonable and fair-minded people to make that finding. *Id.* And, in assessing that, we credit favorable evidence if a reasonable fact-finder could and disregard contrary evidence unless a reasonable fact-finder could not. *Id.*

As noted by our Supreme Court, where boundaries lie on the ground is a question for the fact-finder, that is, a question of fact. *TH Inv., Inc. v. Kirby Inland Marine, LP.*, 218 S.W.3d 173, 203 (2007). Similarly, the question of which competing survey accurately shows the location of those lines is also a question of fact. *Id.* at 204.

As previously mentioned, the trial court selected the survey commissioned by Wade and the boundary lines demarcated on it. That was done after hearing testimony from the surveyor who created the survey and drew those lines. That surveyor described the source of his calculations and the manner in which the lines were drawn. No one testified that it was wrong. Rather, the testimony of Alvarado's surveyor could

reasonably be interpreted as simply suggesting that while his opponent's survey may be right, it may also be wrong. So, in his view, his survey offered a better solution to any vagaries that may be involved.

In short, the trial court was asked to select between competing boundary lines as they appeared on the ground. It selected the boundary lines shown in the Wade survey. Because the lines appeared in a survey which no one established was inaccurate, some evidence existed upon which a reasonable fact-finder could select the option selected by the trial court.

We overrule the issue and affirm the judgment.

Brian Quinn
Chief Justice