

RENDERED: APRIL 25, 2003; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2001-CA-001369-MR

ROGER D. HILL and
BRENDA M. HILL

APPELLANTS

v. APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE SAM H. MONARCH, JUDGE
ACTION NO. 95-CI-00197

ESTATE OF PEARLIE MATTINGLY;
WILMA HOBSON and EDWARD HOBSON

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; JOHNSON and SCHRODER, JUDGES.

EMBERTON, CHIEF JUDGE. Four issues concerning a boundary line dispute are presented in this appeal from a judgment of the Grayson Circuit Court. They are: (1) whether the trial court erred in adopting the testimony of appellees' surveyor; (2) whether it should have ordered an independent survey; (3) whether it erred in refusing to accept the "void land" theory proposed by appellants' surveyor; and (4) whether it erred in

refusing to enforce a handwritten agreement between the parties' predecessors in title. We affirm.

Appellants, the Hills, own property in a subdivision known as Cascade Acres which shares a common boundary with a large tract of land owned by appellees, the Mattinglys. The Mattinglys' ownership of their farm predates the creation of Cascade Acres, the plat of which was first recorded in the office of the Grayson County Clerk in 1968. A revised plat was recorded approximately two years later. The Mattinglys claim that the boundary line between the properties is that depicted by the revised plat; the Hills, who acquired title to their property by deed dated April 7, 1994, assert that the true boundary is reflected in the original plat. The trial court, after reviewing the deeds and surveys provided by the parties, as well as hearing testimony in a bench trial, determined that the property description in the Hills' deed indicates that the property line is derivative of the J. B. Mattingly line and is not dependant upon a plat of Cascade Acres. The trial court emphasized the fact that the Hills' deed contains a metes and bounds description, and found that although they purport to hold title to Lot 64 as depicted on the original plat of Cascade Acres, the lot does not appear on the original plat. The court also noted that while the parent tract to the Hills' property has common calls with the Mattinglys' deed, neither party's

surveyor could place the boundary set out by these calls because no monuments could be located.

The decisive factor in the trial court's analysis was the unrebutted testimony of Mattinglys' surveyor that the Hills' metes and bounds description fits perfectly into the boundaries of Lot 64 in the revised plat of Cascade Acres. Supporting the trial court's conclusion that the true boundary line was depicted in the revised plat was the testimony of the Hills' predecessor in title who stated the revised plat depicted what he and Mattingly long ago agreed was the line between the properties. Based on these factors, the trial court concluded that establishing the common calls was unnecessary in this case.

The trial court also rejected the Hills' contention that an agreement between J. B. Mattingly and Robert E. Romines, their predecessor in title, establishes their ownership of the disputed parcel of land. After noting that the agreement would not satisfy the statute of frauds because it contained only the signature of J. B. Mattingly and not that of Pearlle Marie Mattingly, the trial court concluded that even if the agreement were sufficient to bind the Mattinglys, it would in no way benefit the Hills because they could claim only that to which they held title - Lot 64 as depicted on the revised plat. The fact that the Hills' predecessors may have had more land did not entitle them to claim more than that to which they hold title.

The Hills first argue in this appeal that the trial court erred in accepting the testimony of the Mattinglys' surveyor rather than that of their expert. We disagree. In situations in which a trial court is presented with conflicting testimony, it has the sole prerogative to weigh the testimony and make a decision based upon its assessment of the evidence. In Richardson v. Lainhart,¹ the court made clear that where evidence, although conflicting, is sufficient to sustain the decision of the fact finder, its findings will not be disturbed:

The cases are legion in holding that we will not disturb the chancellor's finding of fact on conflicting evidence unless there is more than a doubt in our minds that he erred in his conclusion.

Here, there is no such doubt. The conclusion of the Mattinglys' surveyor was supported by the testimony of the Hills' predecessor in title and was, in our opinion, ample to sustain the findings of the trial court.

Next, the Hills argue that the trial court was required to order an independent survey, as it had indicated might be necessary earlier in the proceedings. Again, we disagree. Even if the trial court's initial impression was that the testimony of an independent surveyor would be required to resolve the conflict in the opinions of the parties' experts, it

¹ 314 Ky. 221, 234 S.W.2d 721, 722 (1950).

was in no way compelled to follow that line of thinking if, after reviewing the evidence presented by the parties, the court found it could render an informed and reasoned decision without additional testimony. Clearly the trial court was not required to order an independent survey in this case.

The Hills also contend that the trial court erred in failing to accept the "void land" theory proposed by their surveyor. This issue is, in reality, simply a reiteration of the claim that the trial court should have accepted the testimony of the Hills' surveyor over that supplied by the Mattinglys' surveyor. In his deposition, the Hills' surveyor admitted "void land" was not his term but the term employed by counsel for the Hills and that he understood the term to refer to the difference in how the two plats of Cascade Acres matched up. In other words, "void land" was intended to depict the area between the boundaries as shown when comparing the two surveys. Because the trial court made no specific findings as to the "void land" theory, we question whether it has been properly preserved for our review. In any event, as previously discussed, the trial court did not err in relying upon the opinion of the Mattinglys' expert rather than on the evidence supplied by the expert for the Hills.

Finally, the Hills assert that it was error to fail to enforce the agreement between J. B. Mattingly and their

predecessor in title. We fully concur in the trial court's conclusion that the Hills cannot, by virtue of this agreement, bind Pearlie Marie Mattingly as she was not a party to the agreement. Nor does the agreement support their claim to possess more than that to which they hold title. The extent of their property is Lot 64 as depicted on the revised plat of Cascade Acres; that is precisely what they purchased. The fact that their predecessor may have had an agreement with J. B. Mattingly for the use of additional land does not inure to the benefit of the Hills.

In sum, the critical inquiry in this appeal is whether the evidence of substance supported the findings and conclusions of the trial court. Because our review of the evidence disclosed ample support for the decision of the Grayson Circuit Court, we affirm its judgment in this case.

ALL CONCUR.

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