

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002219-MR

MILDRED HACKLEY LEWIS
and WALTER C. LEWIS

APPELLANTS

v. APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE SAM H. MONARCH, JUDGE
ACTION NO. 96-CI-00117

DELMER WILLIAMS, LEDA WILLIAMS,
REX C. WILLIAMS, PHYLLIS WILLIAMS,
ROGER WILLIAMS, BRENDA WILLIAMS,
BELVA HUNTLEY, and JAMES D.
HUNTLEY

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: BUCKINGHAM, COMBS, and TACKETT, Judges.

COMBS, JUDGE. This appeal is taken from a judgment resolving a boundary line dispute. The appellants, Mildred Hackley Lewis, and her husband, Walter Lewis, contend that the trial court erred by relying upon a survey offered by the appellees, the Williamses. We conclude that the trial court's judgment was

supported by substantial evidence. Therefore, we affirm the judgment.

The Lewises and the Williamses own adjoining parcels of property in Grayson County, Kentucky. In May 1996, following a disagreement regarding the location of their property boundaries, the Williamses filed a lawsuit. In September 1997, they agreed to a bench trial. The matter was tried to the court in June 1998.

At the beginning of trial, the parties entered into a number of stipulations. They acknowledged that their respective deed descriptions had not changed since the earliest recorded deeds and that the property descriptions overlap and have overlapped for more than a century -- as far back as the records could be traced. They agreed that according to a survey conducted by Kendall Clemons, a registered land surveyor, the overlapping descriptions involve approximately 4.85 acres. Finally, the parties stipulated that the property described by the overlapping descriptions was rough, overgrown, and marginal in value.

Neither party was in a position to prove that his respective deed description was superior to that of the other. The trial court rejected the Williamses' contention that they had acquired the disputed parcel through adverse possession or that a boundary had been established through generations of

fencing. Instead, the trial court found credible the surveyor's presentation of the layout of the disputed tract and his testimony indicating that he could locate only one recognized point (the fork of the creeks) common to both deeds. With little else to guide it, the trial court established the boundary as a straight line between the fork of the creeks and the opposite corner, the established intersection of the parties' property boundaries. On January 4, 2001, the trial court entered its findings of fact, conclusions of law, and judgment.

On January 12, 2001, the Williamses filed a motion to amend the judgment pursuant to Kentucky Rules of Civil Procedure (CR) CR 59.05. In their motion, the Williamses contended that the court's order erroneously recited that they had not claimed an interest in a portion of the property described by the court as a "triangulated strip of land." Instead, they contended that the Lewises had not claimed any interest in this property. The Williamses asked the court to amend the judgment to reflect this fact. The Lewises agreed that the court had erred on this point and conceded that the disputed triangle-shaped parcel belonged to the Williamses. The motion was granted, and the order was duly amended.

The Lewises also served a motion to alter or amend the judgment, seeking to reopen the evidence to show errors in the

survey introduced at trial. In an order entered October 18, 2002, the trial court denied the Lewises' motion. This appeal followed.

The Lewises argue that the trial court erred by relying on the survey introduced by the Williamses since "[t]here was only one way that any surveyor could have run the Williams' line and that would have been if a corner had been pointed out to him." Brief at 3. Without this evidence, they contend that the Williamses could not have met their burden to show that the disputed property was encompassed by their deed.

We are not persuaded that the trial court erred by relying (to the extent that it did) on the survey offered by the Williamses. Kendall Clemons, a professional land surveyor, testified that he could find only one point on the ground that appeared common to both parties' deeds. His testimony was detailed and based upon both a thorough examination of the competing deeds and a focused field search. His conclusions were based on experience.

In reviewing the judgment of the trial court, our standard is not how we would have evaluated the evidence but whether the trial court was clearly erroneous in its assessments. CR 52.01. In reviewing the limited evidence, we cannot conclude that the trial court erred in establishing the boundary line as it did.

The judgment of the Grayson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Robert D. Meredith
Leitchfield, Kentucky

BRIEF FOR APPELLEES:

David B. Vickery
Leitchfield, Kentucky