

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000561-MR

RANDALL KNUCKLES

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT  
HONORABLE JAMES L. BOWLING, JR., JUDGE  
ACTION NO. 00-CI-00048

JOHN SLUSHER and  
SHIRLEY SLUSHER

APPELLEES

### OPINION AFFIRMING

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BEFORE: KELLER AND TAYLOR, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: This appeal concerns the proper location of a disputed boundary line between the properties of adjoining landowners. We affirm.

Appellant, Randall Knuckles, and appellees, John and Shirley Slusher, are adjoining property owners along the southbound lane of U.S. Highway 25-E approximately one mile south of Pineville, Kentucky. The parties stipulated that the title

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<sup>1</sup> Senior Judge William L. Knopf, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

to their respective properties is traced to a common deed to George Knuckles from J.C. and Cordie Slusher in 1923. This property was subsequently conveyed to Clyde and James Knuckles in 1949. After the death of James Knuckles, a large portion of the property was conveyed to Charles and Edna Brashear in 1970. The Knuckles family retained a half-acre portion on the south end of the property and recognized a common boundary with the Brashears for over twenty years. Randall Knuckles brought suit against his parents and the Brashears in 1985. This action resulted in the voiding of certain deeds between Randall Knuckles and his parents and title was quieted in favor of the Brashears. During the pendency of that action, the Knuckles family retained the services of Andy Buell to survey their property. The Knuckles family identified a car axle that was driven into the ground, which represented the location of the common property line. In 1992, the Slushers purchased the Brashear's property and operated a car lot there until a dispute occurred with Randall Knuckles over the location of the boundary line. A bench trial was held on December 14, 2005, and judgment was entered in favor of the Slushers. This appeal follows. Additional facts will be developed as necessary.

Knuckles first argues that the evidence was insufficient to sustain a verdict quieting title in favor of the Slushers. He argues that the trial court erred by relying on a perceived weakness of his own deed rather than on the strength of the Slushers' own title. While Knuckles correctly states that the right of a party to relief depends on the strength of their own title and not on the weakness of their adversary's title, he overlooks the other evidence in this case.

In an action tried without a jury, the trial court's findings of fact will not be set aside unless they are clearly erroneous. CR 52.01. A finding of fact is not clearly erroneous if it is supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W. 2d 409 (Ky. 1998). Substantial evidence has been defined as evidence that when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person. *Sherfey v. Sherfey*, 74 S.W.3d 777 (Ky.App. 2002). The standard of review regarding property title issues is “whether the trial court was clearly erroneous or abused its discretion, and the appellate court should not substitute its opinion for that of the trial court absent clear error.” *Wells v. Sanor*, 151 S.W.3d 819, 822 (Ky.App. 2004). Further, “[a] fact-finder may choose between the conflicting opinions of surveyors as long as the opinion relied upon is not based upon erroneous assumptions or fails to take into account established factors.” *Webb v. Compton*, 98 S.W.3d 513, 517 (Ky.App. 2002)(quoting *Howard v. Kingmont Oil Co.*, 729 S.W.2d 183, 184-85 (Ky.App. 1987)).

It is evident that the trial court did not rely entirely on the weakness of Knuckles's title to support its verdict in favor of the Slushers. The trial court chose to rely on the testimony of the Slushers' experts and specifically noted the unreliability of Knuckles's expert. The descriptions found in their surveys were also supported by the testimony of several lay witnesses. The court further found that the description in the original deed between the Knuckleses and the Brashears contained calls which were

contrary to the intention and subsequent conduct of the parties. This finding was based on both expert and lay testimony.

Knuckles next argues that the trial court erroneously relied upon an “agreed” boundary line between Clyde Knuckles and Charles Brashear that was made at the time of the Buell survey in 1986. The basis of this argument is that Clyde Knuckles could not “agree” to a boundary line in 1986 because at that time Clyde only held a life estate in the land. This argument is without merit because the boundary was established at the time Clyde Knuckles and other Knuckles' heirs sold the property to the Brashears in 1970. It is undisputed that all were owners in fee simple at that time. Further, it is evident that the trial court's reference to the agreed upon line was not used in the sense of a legal agreement, but rather it was taken as evidence to reflect the intent and custom of usage of Clyde Knuckles and Charles Brashear with regards to the boundary line. There was no error.

Knuckles next argues that the trial court erred by reforming the description in the Slushers' deed. A trial court may only reform a deed when: (1) the mistake is mutual; (2) the evidence is clear, convincing, and beyond reasonable controversy; and (3) it is shown that the parties had actually agreed upon terms different from those appearing in the written instrument. *Pressley v. Morton*, 325 S.W.2d 81, 82 (Ky. 1959). As noted above, there was ample evidence for the trial court to conclude that the deed was incorrect either through the mutual mistake of the parties or through a scrivener's error. The subsequent conduct of the parties clearly indicated their belief as to the location of

the boundary line that they had agreed upon. There was also sufficient evidence to support the trial court's finding that Randall Knuckles removed the car axle which had served as a boundary marker, obscured other markers, and had withheld the 1986 Buell survey from discovery. The trial court did not err by reforming the Slushers' deed.

Finally, Knuckles argues that the judgment was not final and appealable because the trial court ordered a marker to be placed at the corner of the boundary line and that has not yet occurred. Knuckles also continues to argue that the boundary line has not been conclusively established. CR 54.01 states:

A judgment is a written order of a court adjudicating a claim or claims in an action or proceeding. A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02. Where the context requires, the term “judgment” as used in these rules shall be construed “final judgment” or “final order.”

All of the parties' rights have been fully adjudicated in this case. The trial court found in paragraph 7 of its findings of fact that the description contained in the Buell survey left no doubt as to the exact location of the boundary line. Other evidence supported this finding. The fact that a new permanent marker has yet to be placed upon the boundary line does not affect the specificity of the location or the rights of the parties. The judgment was final and appealable.

Accordingly, the judgment of the Bell Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

John T. Aubrey  
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BRIEF FOR APPELLEE:

Jeffrey W. Helton  
Pineville, Kentucky