

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2006-CA-001480-MR

ROSE LEWIS,  
EDWARD LEWIS, and  
STEVE LEWIS

APPELLANTS

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 03-CI-00710

JAMES E. EATON,  
JENNIFER EATON,  
ELLIS WELLS and the ESTATE  
of his wife LOTTA WELLS,  
a.k.a. LOTTIE WELLS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON AND NICKELL, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

GRAVES, SENIOR JUDGE: The issue in this appeal involves a  
disputed boundary line between adjoining properties. We affirm.

In 1975, Ellis Wells and Lottie Wells conveyed a  
portion of their property by deed to Boyd and Sadie Lewis. The

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the  
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and  
KRS21.580.

description of the property was written by the parties in the deed without the benefit of a survey. The pertinent language in the deed is as follows:

BEGINNING at a post on the right of way of the highway at W.E. Corn's corner; thence with the right of way line of said highway in an Eastward direction 182 feet to a post at corner of Ellis Wells; thence Northward in a line common to Ellis Wells 900 feet to a post, Ellis Wells' corner; thence Westward with Wells' line 182 feet to a corner Wells and Corn; thence Southward with Wells and Corn's line to the beginning, containing 4 acres, more or less.

In 1989, Boyd and Sadie Lewis conveyed the property to their daughter, Rose Lewis. In 1998, Ellis and Lottie Wells conveyed a portion of the retained property to their grandson, James E. Eaton. In 1994, a survey of the property was conducted by Ralph Peters and this survey was incorporated into the deed.

Shortly after the 1994 survey, Eaton began construction of an earthen dam to create a pond on the property. He cleared trees and built a road to the dam site. This controversy arose in 2003 when Steve Lewis and Edward Lewis, brothers of Rose Lewis, erected a barbed wire fence upon property that Eaton believed was included in his deed. Eaton filed a complaint in Laurel Circuit Court. After a bench trial, the court determined the correct boundary line between the parties' properties and found that Rose Lewis has no interest in

the Eaton property as established by the Peters survey. This appeal followed.

The sole issue on appeal is whether the trial court erred as by finding that the 900-foot line called for in the Rose Lewis deed was a straight line as determined by the Peters survey. "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01. This rule applies to boundary disputes. *Webb v. Compton*, 98 S.W.3d 513, 517 (Ky.App. 2002). Further, "[a] fact finder may choose between the conflicting opinions of surveyors so long as the opinion relied upon is not based upon erroneous assumptions or fails to take into account established factors." *Id.* (quoting *Howard v. Kingmont Oil Co.*, 729 S.W.2d 183, 184-5 (Ky.App. 1987)).

Lewis relies on the acreage contained in the deed to establish the correct boundary line. She argues that the evidence was sufficient to establish that the boundary line was not intended to run in a straight line.

Generally, boundaries are determined according to the following factors:

...natural and permanent monuments are the most satisfactory evidence and control all other means of description, and artificial marks, courses, distances and area follow in the order named, area being the weakest of all means of description.

*Wagers v. Wagers*, 238 S.W.2d 125, 126 (Ky. 1951). The rule in interpreting the description of a boundary line is that it is intended to run in a straight line absent evidence of a contrary intent by the parties to the instrument. *Edwards v. Williamson*, 307 Ky. 584, 211 S.W.2d 862, 863 (Ky. 1948). The intention of the parties may be demonstrated by evidence of the lay of the land and mutual acquiescence to the boundary line over an extended period of time. *Id.*

The trial court found that Ellis Wells and Boyd Lewis intended the disputed boundary to run as a straight line. Wells testified that Lewis and he walked the boundaries prior to the conveyance. Lewis testified that a fence had previously traced the boundary she claimed, but no physical evidence supported this assertion. No protest was made of Eaton's construction activity that commenced in 1994 until 2003. Additionally, the trial court was entitled to rely on the Peters survey. These findings are supported by substantial evidence in the record. The trial court did not err in determining the boundary line in this case.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Clint J. Harris  
Manchester, Kentucky

BRIEF FOR APPELLEE:

John T. Aubry  
Manchester, Kentucky