

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
ASSIGNED ON BRIEFS OCTOBER 10, 2003

LOTTIE FAYE TAYLOR, ET AL. v. JOHNNY C. CARLIN, ET AL.

**Direct Appeal from the Chancery Court for McNairy County
No. 7563 Dewey C. Whitenton, Chancellor**

No. W2003-00640-COA-R3-CV - Filed February 26, 2004

This case involves a boundary line dispute. The plaintiffs brought this action to have the trial court determine the true boundary line between the western edge of plaintiffs' property and the eastern edge of the adjacent property belonging to defendants. After conducting a hearing, the lower court drew a boundary based largely upon the line used in the applicable property tax assessment maps. Defendants argue that the evidence preponderates against the location of the boundary as drawn by the trial court. They contend that the plaintiffs acquiesced to a boundary line further to the west that is marked by a fence running through the disputed property. For the following reasons, we affirm the ruling of the lower court.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

Lloyd R. Tatum, Henderson, TN, for Appellants

Terry Abernathy, Selmer, TN, for Appellees

OPINION

Facts and Procedural History

Lottie Faye Taylor ("Ms. Taylor") and Johnnie and Joyce Carlin ("the Carlins") are owners of adjacent tracts of property in McNairy County. The tract belonging to the Carlins shares its eastern border with the western edge of Ms. Taylor's property. These tracts both originated from a common parcel of land, which was split by the owner in two conveyances that took place in 1904 and 1906. Each tract then passed through a series of owners before coming into the possession of the parties. Ms. Taylor's father-in-law conveyed the property to Ms. Taylor and her husband, now deceased, in 1958. The Taylors, however, lived in Illinois at the time and did not begin to reside on

the property until 1973. The Carlins obtained their tract in 1969 and moved onto the property the following year.

Both parties agree that, as of 1970, a fence ran southeast through the general vicinity of the border between the parties' parcels of land. Indeed, the parties agree that the fence had been there for decades before they occupied their respective tracts. On the eastern side of the fence, the Taylors kept their cattle, while the Carlins raised goats on the western side. Apparently, from the date the parties moved onto the two adjacent tracts, everyone knew that the fence did not represent the true boundary line separating the two properties. The Taylors clearly felt that the true boundary was hundreds of feet to the west of the fence, in a straight north-south line, while the Carlins felt the boundary truly lay to the east of the fence. The dispute arose largely from a description in the Taylor's deed, which describes the western boundary of their property as follows: "Beginning at the mouth of a ravine in what is known as the Still House hollow [in the northwestern corner of the Taylor's property] . . . runs thence South to Marion Prices line [which marks the southern boundary of the Taylor's property]" The Taylors maintained that this meant a boundary running "due south," and the Carlins argued that the boundary ran southeast on the eastern side of the fence. Both families, however, were willing to ignore the boundary discrepancy for decades, as neither was really inconvenienced by the use of the fence as an unofficial boundary.

The record does not indicate what precipitated Ms. Taylor's dissatisfaction with this tacit arrangement, but, on July 24, 2000, she filed suit in McNairy County Chancery Court, seeking a judicial determination of the boundary line between the parties' property. As stated earlier, Ms. Taylor maintained that the true boundary separating the properties lay to the west of the fence, running in a north-south line, and the Carlins argued that the boundary lay somewhere to the east of the fence. In November 2001, James Martin ("Mr. Martin"), a licensed surveyor, searched the deeds to the properties at issue, conducted a physical survey of the disputed property, and composed a situation survey that mapped out possible boundaries between the properties. A hearing was then conducted by the lower court on December 16, 2002. At this hearing, Martin testified that this boundary dispute was "about as muddled" as he had encountered in his years as a surveyor. He stated that there was some overlap in the deeds and that he could not determine the boundary simply by reference to the same. He then testified that, under such circumstances, he often referred to maps prepared by the property tax assessor. The property tax assessment map to which Martin referred showed the boundary lying west of the fence in a straight north-south line, much as Ms. Taylor alleged.

After conducting the hearing, the lower court found that the boundary separating the two properties ran on a north-south line west of the fence, at the approximate position of the boundary as given in the property tax assessment map and in the Taylors' deed. The Carlins then timely filed the instant appeal challenging the ruling of the lower court.

Issue on Appeal

In their only issue on appeal, the Carlins ask us to consider whether the trial court erred in failing to find that the Taylors acquiesced to a new boundary running with the fence on the disputed property.

Standard of Review

A trial court's determination of a real property boundary line is a factual determination, rather than a legal one. *Mix v. Miller*, 27 S.W.3d 508, 514 (Tenn. Ct. App. 1999). As such, our review of the lower court's determination is *de novo* upon the record, with a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Kendrick v. Shoemaker*, 90 S.W.3d 566, 569 (Tenn. 2002). We note that findings of fact dependent upon the credibility of witnesses should be accorded great weight by appellate courts, as the trial court is in the best position to judge issues of credibility. *Duncan v. Duncan*, 686 S.W.2d 568, 571 (Tenn. Ct. App. 1984).

Law and Analysis

The Carlins argue on appeal that the lower court erred in failing to find that the Taylors had acquiesced to a new boundary line running southeast with the fence through the disputed property. They maintain that, by using the fence as a barrier to separate the properties for thirty years, both parties acquiesced to the establishment of the fence as the official boundary line. As noted by the Carlins, this Court recognized acquiescence as a valid doctrine in *Duren v. Spears*, 1990 Tenn. App. LEXIS 333, at *1 (Tenn. Ct. App. May 10, 1990). In that case, we held, in relevant part:

Boundaries between adjoining land owners can be established by acquiescence. *Roane County v. Anderson County*, 89 Tenn. 259, 14 S.W. 1079 (1890); *Gilchrist v. McGee*, 17 Tenn. (9 Yerg.) 455 (1836). The general rules as stated in 11 C.J.S., Boundaries, concerning acquiescence and its effect are as follows:

In order to establish a boundary by acquiescence, it is not necessary that the acquiescence should be manifested by a conventional agreement, but recognition and acquiescence must be mutual, and both parties must have knowledge of the existence of a line as a boundary line . . . The question as to what constitutes acquiescence must be decided from the particular facts of the case, and no absolute rule can be applied to every case. Generally it depends on the acts or declarations of the parties interested, on inferences or presumptions from their conduct, or on their silence . . . Failure to object to an encroachment with knowledge that the owner thereof claims to that line may amount to acquiescence establishing the line as a boundary . . . Recognition of, and acquiescence in, a line as the true boundary line of one's

land, not induced by mistake, and continued through a considerable period of time, affords strong, if not conclusive, evidence that the line so recognized is in fact the true line, and it supports an inference or presumption that there has been an agreement fixing it as the true line. Where recognition and acquiescence have continued for the period of time prescribed by statutes concerning acquiescence or for the period required by statutes of limitations for acquisition of title by adverse possession, the presumption that the line is in fact the true line or that there has been an agreement fixing it as the true line becomes conclusive, and the line as acquiesced in is conclusively established as the boundary. As established it will control courses and distances called for in the title deeds or grants, and the parties need not rely on paper title. 11 C.J.S., Boundaries, §§ 79 and 81 (1973).

Duren, 1990 Tenn. App. LEXIS 333, at *5-7.

After reviewing the record, we cannot find that the evidence preponderates against the lower court's determination. The doctrine of acquiescence, as described in *Duren*, requires mutual recognition and knowledge of the existence of a line as a boundary line. *Id.* at *5. At trial, both parties explicitly stated that no one ever considered the fence to be the boundary line, nor was it ever intended to be one. Indeed, this was one of the few issues of fact upon which the parties were in complete accord. Absent any such evidence of mutual acknowledgment, the lower court did not err in declining to apply the doctrine of acquiescence.

Conclusion

For the foregoing reasons, we affirm the ruling of the trial court. Costs of this appeal are taxed to the Appellants, Johnnie Carlin and Joyce Carlin, and their surety, for which execution may issue if necessary.

ALAN E. HIGHERS, JUDGE