

SHANNON BURKS and WYLODINE	)	
ROBERSON,	)	
	)	Lawrence County Circuit
Plaintiffs/Appellees,	)	No. 13970
	)	
VS.	)	
	)	
CALVIN GOBBLE,	)	Appeal No.
	)	01A01-9602-CV-00075
Defendant/Appellant.	)	

IN THE COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CIRCUIT COURT OF LAWRENCE COUNTY  
AT LAWRENCEBURG, TENNESSEE

HONORABLE JIM T. HAMILTON, JUDGE

PAUL B. PLANT  
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ATTORNEY FOR PLAINTIFFS/APPELLEES,

<p><b>FILED</b></p> <p><b>August 16, 1996</b></p> <p><b>Cecil Crowson, Jr.</b> Appellate Court Clerk</p>
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MODIFIED AND REMANDED

HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

BEN H. CANTRELL, JUDGE,  
WILLIAM C. KOCH, JR., JUDGE,

SHANNON BURKS and WYLODINE	)	
ROBERSON,	)	
	)	
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	)	
Defendant/Appellant.	)	

**O P I N I O N**

The Defendant, Calvin Gobble, has appealed from the judgment of the Trial Court establishing the boundary between the land of Defendant and that of Plaintiff, awarding Plaintiff \$1,000 damages, and enjoining Defendant, his family and employees from trespassing upon Plaintiff's land or threatening or harassing Plaintiff or his family.

Defendant presents two issues for review of which the first is:

- I. Whether the Circuit Court has subject matter jurisdiction to hear a boundary line case?

T.C.A. § 16-11-106 reads in part as follows:

**Boundary disputes.** - (a) The chancery court has jurisdiction to hear and determine all cases in which the boundary line or lines of adjoining or contiguous tracts of land is one, or the only, question at issue in the case.

It is noteworthy that the quoted statute does not confer exclusive jurisdiction upon the Chancery Court in boundary line cases.

T.C.A. § 16-10-111 provides:

**Equity powers.** - Any suit of an equitable nature, brought in the circuit court, where objection has not been taken to the jurisdiction, may be transferred to the chancery

court of the county, or heard and determined by the circuit court upon the principles of a court of equity, with power to order and take all proper accounts, and otherwise to perform the functions of a chancery court.

No published authority is cited or found wherein a boundary dispute was heard by a Circuit Court under the authority of the last quoted statute. However, Circuit Court judgments have been upheld in a suit to invalidate an election, *Cattett v. Knoxville S & E Ry*, 120 Tenn. 699, 112 S.W. 559 (1908), a suit to annul a marriage. *Southern Ry v. Baskette*, 175 Tenn 253, 133 S.W.2d 498 (1939), and a suit for rescission of a lease, where no objection was made to jurisdiction.

No reason occurs to this Court why T.C.A. § 16-10-111 should not be inapplicable to a suit to resolve a boundary dispute erroneously brought in the Circuit Court and tried there without objection. No record is cited or found of any objection to the Trial Court as to its jurisdiction.

The Circuit Court is a court of general jurisdiction. T.C.A. § 16-10-101.

No authority is cited or found which holds that the general jurisdiction of the Circuit Court does or does not include boundary disputes. No reason occurs to this Court why a Court of general jurisdiction would not be authorized to decide any dispute not exclusively committed to some other Court.

Defendant's first issue is found to be without merit.

Defendant's second, and last issue is:

II. Whether the Trial Court erred in placing the boundary line in the middle of a road when all of the witnesses testified the boundary line was located south of the road?

A tax map of the area of the dispute is appended to this opinion as Exhibit A. The property of Plaintiffs fronts on the northerly side of Danby Road at its intersection with Posey Circle Road which, in its north-south section, forms the westerly boundary of Plaintiffs' land. At or near the northwest corner of Plaintiffs' land there is a sharp curve or turn in Posey Circle Road which then extends eastward from the turn. The disputed boundary between Plaintiffs' land and Defendant's land is in the vicinity of this east-west section of Posey Circle Road.

Plaintiffs employed a surveyor, J. T. Dixon, whose survey produced the map appended to this opinion as Exhibit B establishing the disputed line near the southerly margin of the east/west section of Posey Circle Road in approximately the position shown in the tax map. This suit was brought to establish this boundary and to obtain injunction relief and damages.

Defendant introduced evidence that his land extended across Posey Circle Road for some distance, but failed to provide any specific location of the boundary.

The Trial Court determined the boundary in the following language:

It is therefore, **ORDERED, ADJUDGED** and **DECREED** that the boundary line between the Plaintiffs and the Defendant herein be determined to be as follows:

BEGINNING at a point in the center of the diameter of Posey Circle Road where it turns generally from North and South to East and West and being approximately 34 feet North of that point shown as the Northwest corner of the map in Exhibit No. 3 hereto, thence running in an Easterly direction parallel with the North line shown on the map attached hereto as Exhibit No. 3 to a point in the boundary line between the Defendant Gobble and Willie Johnson; thence Southwesterly with said boundary line to an iron pin.

The Court further orders and directs J.T. Dixon to survey said line and to prepare a description incorporating said line; which said description will become a part of this Order.

Mr. Dixon composed a description of the line appended to this opinion as Exhibit D. The material portion of said description is:

.... to a spike in or near the center of road, the point designed by Judge James Hamilton; thence with the decreed line between James C. Gobble and Shannon Burks, S 81 deg. 25' 15" E, along or near the center of Posey Circle Road, leaving said road at 870.0 feet and continuing with the decreed line to a total of 1461.63 feet to an iron pin in the WBL of Willie Johnson.

In this appeal from a non-jury judgment, the factual finding of the Trial Judge as to the location of the disputed boundary is presumed correct unless the evidence preponderates otherwise. T.R.A.P. Rule 13d.

When the Trial Court has made a decision which hinges upon the credibility of witnesses, it will not be reversed unless, other than the oral testimony of witnesses, there is found in the record other real evidence which compels a contrary conclusion. *State ex rel Balsinger v. Town of Madisonville*, 222 Tenn. 272, 435 S.W.2d 803 (1968); *McReynolds v. Cherokee Ins. Co.*, Tenn. App. 1991, 815 S.W.2d 208.

Of course, the foregoing rules are not applicable if the finding of the Trial Judge is unsupported by any material evidence.

In the present case, all of the evidence presented by Plaintiffs and Defendant was to the effect that the true boundary was in some position south of the south margin of the east-west section of Posey Circle Road. There is evidence that Plaintiffs' westerly line follows the center of the north-south section of Posey Circle Road, but there is no evidence that the northern boundary of Plaintiffs' property follows the center line of Posey Circle Road after the sharp curve at the northwest corner of Plaintiffs' property. There is uncontradicted evidence that the east-west section of Posey Circle Road has been an ill defined dirt road, the location of which has changed from time to time.

For this reason, this Court is unable to affirm the judgment of the Trial Court which

places the northern, disputed, boundary in the center of Posey Circle Road.

In this situation, this Court has the duty to find the facts in accordance with the preponderance of the evidence if it can do so.

As heretofore indicated, Plaintiffs' version of the line is supported by testimony and documentary evidence of a licensed surveyor and his employee who identified visible monuments supporting their conclusions. The Defendant's version of the line is supported by his personal opinion which is not clearly defined. Defendant also presented the testimony of an employee of a former surveyor as to different monuments observed by him. Defendant presented no evidence from which the location of the line could be determined with specificity. The descriptions in the deeds in the record are not helpful in locating the disputed boundary.

This Court finds that the correct boundary between the land of Plaintiffs and that of Defendant is that which appears on Exhibit 3 to the record and Exhibit B to this opinion.

This modification of the judgment will result in a corresponding modification in the scope of the injunction included in the judgment and reconsideration of the amount of damages awarded to Plaintiff.

The judgment of the Trial Court is modified as set out herein. Costs of this appeal are assessed against the appellant. The cause is remanded to the Trial Court for entry of judgment in conformity with this opinion, for reassessment of damages and for such other proceedings as may be necessary and proper.

MODIFIED AND REMANDED.

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HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

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BEN H. CANTRELL, JUDGE

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WILLIAM C. KOCH, JR., JUDGE