

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2008-278

FEB 4 2009

FEBRUARY TERM, 2009

Clarence Bishop, Gloria Bishop, Peter Lawrence and Susan Lawrence	}	APPEALED FROM:
	}	
	}	
v.	}	Caledonia Superior Court
	}	
Robert Raeder and Wendy Raeder	}	DOCKET NO. 280-10-07 Cacv
		Trial Judge: Thomas A. Zonay

In the above-entitled cause, the Clerk will enter:

Lakefront landowners appeal the superior court's order establishing the boundary line between their summer camp and that of their neighbors, and rejecting their claim of adverse possession. We affirm.

The feuding parties are family members and longtime neighbors. Arthur and Lorraine Raeder, the now-deceased parents of defendant Robert Raeder, purchased a lakefront lot and summer cottage from Frank and Kathaleen Granger by way of warranty deed dated September 11, 1971. About that same time, the Grangers conveyed an adjoining lot and cottage to another couple, who sold that lot to plaintiffs Clarence and Gloria Bishop in September 1976. Clarence Bishop and Lorraine Raeder were brother and sister. The two families were close and socialized together on the camps for many years without conflict. There were never any questions raised concerning their common boundary line until 2007, when Clarence claimed ownership of land between the two properties, apparently in response to work being done by his nephew Robert. In response to Clarence's claim, Robert hired Richard Bell to prepare a boundary survey. Disagreeing with the boundary line indicated in the resulting Bell survey, the Bishops hired their own surveyor, Andrew Dussault, who concluded that the Bell survey was incorrect. The Bishops then filed a complaint asking the superior court to establish the location of the disputed boundary line in their favor or, in the alternative, to determine that they had adversely possessed the disputed property for the requisite period of time. Robert and his wife counterclaimed, asking the court to establish the boundary line in their favor.

Following two days of hearings, the superior court accepted the boundary line as depicted in the Bell survey and rejected the Bishops' adverse-possession claim. The Bishops appeal, arguing that the court erred: (1) by making a clearly erroneous finding that was material to its boundary decision; and (2) by adopting the indisputably flawed Bell survey. The Bishops also contend that the superior court must revisit their adverse-possession claim if the case is remanded for the court to establish a new boundary line.

Both parties and the court acknowledged that the language in the 1971 Raeder deed is internally inconsistent and thus ambiguous. In relevant part, the deed describes the boundary of the lot as running along the shoreline from one iron pin to another for approximately sixty feet and then “turning on an angle and proceeding northwesterly along a line [between the Raeder and Bishop lots] which shall be parallel to and 22 feet from the side of the cottage on said lot a distance of 215 feet to a large boulder set with an iron pin.” The parties agree on the location of the boulder with an iron pin behind the cottage and on the approximate location of the shoreline pin, which could not be found at the time the Bell survey was done. The inconsistency arises because if a straight line is drawn from the shoreline pin to the boulder pin, as the court ultimately did, the line is not precisely parallel to, nor twenty-two feet from, the Raeder cottage. If the boundary line were to be established twenty-two feet from, and parallel to, the Raeder cottage, it would then have to be angled at an indeterminate and unmentioned point to arrive at the boulder pin behind the cottage.

Noting this apparent ambiguity in the deed language, the court set about to determine the intent of the principals to the deed. See Main St. Landing, LLC v. Lake St. Ass’n, 2006 VT 13, ¶ 7, 179 Vt. 583 (mem.) (stating that the intent of the parties governs in construing a deed, and that if the deed language is ambiguous, “interpretation of parties’ intent becomes a question of fact to be determined based on all of the evidence”). After reviewing the evidence, the court concluded that when Robert, his father, and Frank Granger took measurements of the Raeder lot in anticipation of sale in September 1971, they erroneously believed that the boundary line ran twenty-two feet parallel to the Raeder cottage, the entire length between the iron pin on the shoreline and the boulder with the pin. The court decided to disregard the reference to the twenty-two-foot side measurement because if it were to insist on that precise measurement, the court would have to either disregard the boulder pin monument or establish an angle at some arbitrary point in the line between the shoreline pin and the boulder pin. See Pion v. Bean, 2003 VT 79, ¶ 15, 176 Vt. 1 (“An inconsistent metes and bounds description yields to a description by monument.”). The court acknowledged that there were older surveys from 1972 and 1980 that placed an angle in the boundary line between the lots, but concluded that there was no factual basis to establish a point at which to angle the line. In short, the court determined that the principals to the 1971 deed intended to establish a straight line from the shoreline to the boulder pin, and that they wrongly believed that such a line would be twenty-two feet from, and precisely parallel to, the Raeder cottage.

The Bishops challenge this determination, arguing that it was based on the superior court’s erroneous finding that Robert actually walked to the boulder pin in measuring the line from the shoreline to that pin. The Raeders concede that the court misstated that Robert actually walked to the boulder pin that day in September 1971, but argue that the erroneous finding was not material to the court’s decision. We agree. The court found that, in measuring the lot with his father and Frank Granger, Robert went up the hill with the measurement tape to the boulder pin. In fact, Robert testified that he did not measure to the boulder pin but later walked up to see where it was. As noted, in determining that the principals to the 1971 deed intended to draw a straight line from the shoreline pin to the boulder pin, the court surmised that the twenty-two-foot measurement was in error because “the parties were not surveyors” and the boulder pin “could not be seen from the spot next to the Raeder cottage where the side measurement was taken.” Thus, the court’s erroneous finding that Robert actually walked to the boulder pin with the measurement tape does not appear to be material to its decision regarding the parties’ intent. Indeed, the court assumed that the twenty-two-foot measurement was wrong precisely because the persons measuring the lot that day could not see the boulder pin when they made the side measurement. We conclude that the court’s erroneous finding does not require reversal of its


decision. See Guibord v. Scholtz, 2006 VT 22, ¶ 11, 179 Vt. 623 (mem.) (upholding trial court’s decision because “the court’s erroneous findings were not essential to its decision”).

The Bishops also argue, however, that the trial court’s decision must be reversed because it adopted the flawed Bell survey. The Bishops argue that Richard Bell indisputably determined the location of the shoreline pin separating the two cottages by measuring the distance from the wrong shoreline pin located on the easterly end of the Bishop lot. According to the Bishops, there were two shoreline pins one and one-half feet apart at the easterly end of the Bishop property, and that Bell measured from the wrong pin, the one that was closer to the Raeder property. The problem with this argument is that, although the Bishops proffer percentages of error resulting from this alleged mistake, they do not indicate exactly how they were prejudiced by Bell measuring from the pin that was one and one-half feet easterly of the allegedly correct pin. The court noted in its decision that Bell had measured from the easterly pin, and that the Bishops’ expert believed that the measurement should have been from the westerly pin. The court also noted that the line chosen in the Bell survey began at the shoreline in the immediate area of the flagpole that Clarence Bishop had erected on the supposed boundary line between the properties. The Bishops do not argue that the inconsistency in the 1971 deed would have been reconciled if Richard Bell had chosen the westerly shoreline pin on the Bishop property. Nor do they make it clear the extent to which establishing the Raeder-Bishop shoreline pin based on the westerly Bishop pin would have affected the boundary line established by the trial court. Under these circumstances, we decline to reverse the superior court’s judgment. See V.R.C.P. 61 (“[N]o error or defect in any ruling or order or in anything done or omitted by the court . . . is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.”)

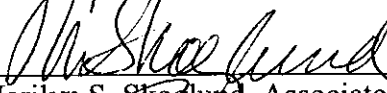
Finally, we find unavailing the Bishops’ challenge to the trial court’s rejection of their adverse-possession claim based on a presumption of permissive use among family members. See Harlow v. Miller, 147 Vt. 480, 484 (1986) (“Where a family relationship between claimants is involved, proof of adverse possession must be established by stronger evidence than is required in other cases.”). Indeed, on appeal, the Bishops appear to abandon any challenge to their adverse-possession claim absent our reversing the trial court’s boundary-line ruling.

Affirmed.

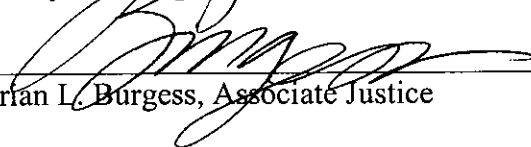
BY THE COURT:



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice