

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-106

DECEMBER TERM, 2020

Edward Fisette & Nancy Fisette v. Michel	}	APPEALED FROM:
Brousseau* & Judy Scott*	}	
	}	Superior Court, Grand Isle Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 11-2-16 Gicv
		Trial Judge: Robert A. Mello

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

Defendants appeal the court’s order entering judgment in plaintiffs’ favor in this boundary dispute. On appeal, defendants argue that the court erred in using the survey’s courses-and-distances description of the parties’ mutual boundary line over the location of pins placed by the original surveyor. We affirm.

Following an evidentiary hearing, the court made the following relevant findings. The parties own adjacent parcels of land on West Shore Road in Alburgh, Vermont. This case involves a dispute about the location of the boundary line marking the southern boundary of plaintiffs’ land and the northern boundary of defendants’ land. The boundary is shaped like an elbow with the tip pointing north towards plaintiffs’ property. Plaintiffs purchased their property in 2003 and their lot comprises the most northerly part of a three-lot subdivision created several years earlier. The deed describes the boundary using courses and distances coming to the point of that elbow and does not mention the existence of a pin or other monument at the location of the elbow. The deed refers to a survey map prepared by William Robenstein in conjunction with the subdivision creation and recorded in the town records. After conducting his survey, Robenstein placed pins in several locations, including at the point of the elbow. Robenstein committed gross errors in the placement of the pins and they were mostly placed in the wrong locations. The pin that Robenstein installed at the elbow of defendants’ northern boundary was more than 33 feet further north of where it should have been based on the courses and distances in the survey. If the pin were accepted as the location of the elbow, all other deed descriptions of the parties’ common boundary line would be incorrect.

Defendants purchased their lot in 2013. Their deed describes the boundary between their lot and plaintiffs’ similarly to the description on plaintiffs’ deed. At the time, defendants had little knowledge of the actual location of their boundaries. In 2014, defendants hired TDH Surveying and Design to survey their lot and TDH discovered that Robenstein had placed several survey pins in the wrong locations, including at the point of the elbow. TDH informed defendants of the error and installed new pins. Plaintiff saw TDH employees working and asked for a copy of the survey, but defendants refused to provide it.

In 2015, defendants sought to purchase from plaintiffs the land between the old Robenstein pin and the new TDH pin. Plaintiffs declined the offer. A few months later, defendants began installing a metal fence on the boundary as marked by the original Robenstein pin. The court found that defendants instructed their contractors to remove the survey markers set by TDH. Plaintiffs asked defendants to delay their fence work to allow them to complete their own survey. Defendants commenced and completed the fence on their northern border despite knowing that they were constructing it on land claimed by plaintiffs. Defendants installed 1000 feet of fencing and removed trees and shrubs from 9000 square feet of plaintiffs' land. Plaintiffs hired surveyor Albert Harris. His survey agreed with TDH's conclusion that the correct location of the elbow's point was about 34 feet south of where Robenstein had placed his erroneous pin.

Plaintiffs filed suit seeking damages and equitable and declaratory relief for trespass and nuisance, timber trespass, removal of a survey pin, quiet title, and ejectment.

Following an evidentiary hearing, the trial court entered judgment for plaintiffs. The court rejected defendants' assertions that the deed was ambiguous and that the Robenstein pin should be considered the correct location of the parties' boundary. The court concluded that the language in the deed describing the location of the boundary line in courses and distances was clear and unambiguous. The courses and distances in the survey provided a precise location of the elbow, as depicted by both the TDH and Harris surveys. The court explained that the monument rule did not apply because the pin was not mentioned in the parties' deeds. The court credited of two witnesses that Robenstein was not highly regarded as a surveyor and that the placement of his pins was in error. Moreover, the court found that using the Robenstein pin was unreasonable because it would render the descriptions of the courses and distances in the deeds incorrect. The court entered judgment for plaintiffs and declared that the line shown on the Harris survey constituted the location of the parties' common boundary line, including the location of the elbow.¹ Defendants then filed this appeal.

Defendants argue that the Robenstein survey pins are controlling monuments and that the pin at the tip of the elbow marks the parties' boundary, rather than the courses and distances in the deed describing the boundary. Defendants rely on the general rule that "monuments designated or referred to in the description of the grant control over courses and distances." Marshall v. Bruce, 149 Vt. 351, 532 (1988). Defendants further argue that the subsequent surveys are not relevant to the determination of the boundary line's location as a matter of law.

"The proper construction of a deed is a question of law, which we review de novo." LeBlanc v. Snelgrove, 2015 VT 112, ¶ 30, 200 Vt. 570. In construing the language of a deed, the intent of the parties governs and the language of the deed as a whole is given effect "to arrive at a consistent, harmonious meaning, if possible." Id. (quotation omitted). "The court's determination of a boundary line is a question of fact to be determined on the evidence." Pion v. Bean, 2003 VT 79, ¶ 15, 176 Vt. 1. This Court "will not disturb the trial court's findings of fact unless they are clearly erroneous, despite inconsistencies or substantial evidence to the contrary." Id.

Here, the court's findings are supported by the record, and those findings in turn support its conclusion that the Harris survey accurately depicts the parties' mutual boundary line. As to the construction of the deed, the court did not err in rejecting defendants' assertion that Robenstein's survey pin controls because it is a monument. Where a deed contains a boundary

¹ Among other things, the court also prohibited defendants from removing the survey marker on the parties' boundary line and ordered defendants to remove the metal fence from plaintiffs' side of the common boundary line.

description that uses both monuments and courses and distances, “an inconsistent metes and bounds description yield[s] to a description by monument.” Monet v. Merritt, 136 Vt. 261, 265 (1978). In that situation, “distances must be lengthened or shortened and courses varied so as to conform to the monument description.” Id. Here, however, although the deed refers to the Robenstein survey, the deed does not describe the boundary line based on the pin as a monument. The deed describes the boundary solely using courses and distances. Because this description was unambiguous, the court did not have to look to other evidence, such as the pins or the survey itself to ascertain the location of the boundary.²

Moreover, the court acted within its discretion in finding that Robenstein made gross errors in placing his pins and that using the pin to define the boundary would be unreasonable because it would require reconfiguring all of the distance descriptions in the deed. See id. (explaining that “trial court’s findings of fact will not be overturned unless clearly erroneous despite inconsistencies or substantial evidence to the contrary”). The court’s finding that the Harris survey accurately depicts the boundary described in the deed is supported by the evidence.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

² For this reason, defendants’ reliance on cases that use the original survey or markers laid out by the original surveyor to determine the location of a boundary is misplaced. The deed description itself was unambiguous and the court acted within its discretion in relying on it.