



Collins v. Bray

2004 | Cited 0 times | Court of Appeals of Kentucky | April 16, 2004

NOT TO BE PUBLISHED

OPINION

AFFIRMING

This is an appeal from a judgment entered by the Whitley Circuit Court in an action arising out of a boundary line dispute. From our review of the record, we conclude that the findings of the trial court are adequately supported by the evidence and that they are not clearly erroneous. Hence, we affirm.

The appellants, Clifford Ray Collins and his wife, Geraldine Collins, and appellee, Shirley Caddell Bray, own nearly adjacent tracts of land in Whitley County. Their tracts originate from a common grantor and are divided by an old roadway. In October 1998, the Collinses filed this action against Bray alleging, in part, that her mobile home, situated at the western edge of the roadway, encroached upon the western boundary of their property. Bray answered and denied the allegation.¹ The primary dispute before the trial court concerned the proper location of the boundary separating the respective tracts.

The evidence consisted of numerous copies of deeds dating back to 1960, surveys, pictures of the property, and witness testimony. Richard Reese, a professional land surveyor, testified on behalf of the Collinses. Reese indicated that three sides of the Collinses property were fenced and that the old fence was located consistently with the calls given in the Collinses' deed. These boundaries are not in controversy.

Reese testified that he had also located an iron pipe at the northwest corner of the Collinses' property at the approximate location where he would have expected to find a wooden stake according to the Collinses' deed description. This pipe was located at the eastern edge of an old roadway -- known as Scale House Road -- that had been specifically excepted from the Collinses' deed.

However, Reese observed that his location of the Collinses' western boundary -- particularly the southwestern segment -- did not continue to follow the roadway and that he could not establish its original location. Reese's placement of the Collinses' western boundary was measured in a southwesterly direction, intersecting Scale House Road and eventually bisecting the site of Bray's mobile home. On cross-examination, Reese acknowledged that the Collinses' deed specifically called for their western boundary to follow the old road and that the road had never been conveyed to the



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Collinses. He also admitted that the property claimed by Bray did not overlap the road but instead lay to the west of it.

Bray testified that her property had been conveyed to her by her parents. She said that she had always been aware of the property boundaries because she had walked the tract with her parents. She noted that her father had built a house on that portion of the property now claimed by the Collinses and that her eastern boundary ran with Scale House Road.

The trial court reviewed the evidence and concluded that the western boundary of the Collinses' tract lay adjacent to the east side of Scale House Road and that the property they claimed on the west side of the roadway did not belong to them. Their complaint against Bray was dismissed.

In an action tried without a jury, CR² 52.01 provides that "[f]indings of fact shall not be set aside unless clearly erroneous" A factual finding is not clearly erroneous if it is supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, Ky., 976 S.W.2d 409 (1998). Substantial evidence is evidence that, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person. *Sherfey v. Sherfey*, Ky. App., 74 s.w.3d 777 (2002). With respect to property title issues, the appropriate standard of review is whether the trial court was clearly erroneous or whether it abused its discretion, and an appellate court may not substitute its opinion for that of the trial court absent clear error. See *Cole v. Gilvin*, Ky. App., 59 S.W.3d 468 (2001). After reviewing the evidence, we are not persuaded that the trial court erred in finding that Bray's mobile home did not encroach upon the Collinses' property.

When litigating a dispute over title to real property, the plaintiffs must rely upon the strength of their own title and not upon any weakness of their opponent's title. *White Log Jellico Coal Co, Inc. v. Zipp*, 32 S.W.3d 92 (2000). At the northwest corner of the Collinses' tract, Reece found an iron pipe which he identified as the stake referenced in the Collinses' deed. That iron pipe was also located on the eastern edge of Scale House Road. The Collinses' deed specifically places their western boundary along the Scale House Road. No competent, credible evidence was introduced to indicate that the location of the road had changed by any measurable distance.

The roadway is a monument of sorts, and the trial court did not err by concluding that the Collinses' western boundary must be located in accordance with that monument. Nor did the court err in concluding that the description in the Collinses' deed accurately defined the boundaries of their property. Having failed to establish title to property lying to the west of Scale House Road, the Collinses are not entitled to rely on their allegation of the weakness of Bray's title to disputed property. *White Log Jellico*, supra.

Based upon the foregoing, the judgment of the Whitley Circuit Court is affirmed.

ALL CONCUR.



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1. Bray entered into a land sale contract with Lori Conchas, whom they joined as a party to the action.
2. Kentucky Rules of Civil Procedure.

