



01/16/96 MILDRED D. SCANLAN v. BEATRICE L. MILLER

1996 | Cited 0 times | Court of Appeals of Minnesota | January 16, 1996

TOUSSAINT, Chief Judge

Mildred Scanlan brought quiet title action against respondents regarding a boundary line dispute. The trial court determined that respondents had title to all of the disputed area and Scanlan had only an implied easement as to a cart path at the edge of the disputed property. Scanlan challenges the trial court's decision as not being supported by the evidence. She also claims the trial court failed to consider adverse possession. We reverse and remand.

FACTS

In 1955, Scanlan and her late husband purchased the east farm (Parcel A). In 1966, they purchased the neighboring farm to the west (Parcel B). In 1968, the Scanlans transferred Parcel B to their son, James Scanlan. He died in 1972 and his wife, Jean Mindrum, sold Parcel B on a contract for deed to the respondent Millers; the final payment was due in 1987.

An unsurfaced road or cart path (Cart Path) ran along the boundary between Parcels A and B. Before the Scanlans bought the property in 1955, there was a fence west of the Cart Path indicating the Cart Path was part of the Scanlans' property, Parcel A. The record reveals that the fence was poorly maintained and now only remnants of it remain. Prior to 1985, there was no dispute over ownership of the Cart Path.

In 1985, Mindrum had the property surveyed (prior to the final contract for deed payment from the Millers). The survey was done by the Davy Engineering Company (Davy Survey) and it indicated that the boundary line was east of the Cart Path and Scanlan's fence. According to the survey the Cart Path and the Scanlan's fence were on the Millers' property, Parcel B. Scanlan's fence was torn down and she replaced it approximately three times. The Millers then built a fence along the Davy Survey line east of the Cart Path, blocking Scanlan's access to the Cart Path.

In 1992, Scanlan brought this quiet title action and had another survey conducted (Blumentritt Survey). The Blumentritt Survey showed that the boundary line was west of the Cart Path and almost matched Scanlan's old fence line. Tony Blumentritt was the only expert to testify at trial. He explained that the Davy Survey was inaccurate because the surveyor calculated the southern boundary incorrectly, thus moving the boundary 33 feet east and placing the Cart Path on Parcel B. Blumentritt testified that his survey accurately followed the recorded legal description and placed the Cart Path primarily on Parcel A. Blumentritt's testimony was uncontradicted.



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Following a bench trial, the court determined that the Millers had title to the disputed area and that Scanlan had an implied easement to use the Cart Path across the disputed area. Scanlan appeals claiming the decision is unsupported by the evidence and that the court failed to address the adverse possession claim.

DECISION

Scanlan appeals, alleging the trial court's decision should be reversed because it is not supported by the evidence. In an appeal from a decision of a bench trial, an appellate court will not disturb the trial court's findings unless they are clearly erroneous; the appellate court must determine whether the trial court's findings are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. *Estate of Serbus v. Serbus*, 324 N.W.2d 381, 385 (Minn. 1982).

I.

Boundary Line

The trial court was asked to determine the boundary line between the Millers' and Scanlan's property and the ownership of the Cart Path through the disputed area.¹ The trial court acknowledged that two surveys had been done to define the boundary, however, it did not make an explicit finding as to which survey was correct. The court stated that the "legal description of the land deeded to the [Millers] included the disputed cart path," and that Scanlan had an easement through the disputed area. Although the trial court did not make a specific finding about where the proper legal boundary was located, it implicitly adopted the Davy Survey by giving the property to the Millers and granting Scanlan an easement.

We conclude that this judgment is not supported by the evidence. Our analysis is divided into two parts: (1) determining the legally recorded boundary, and (2) determining ownership of the remaining disputed area.

Although two surveys have been conducted to determine the boundary line, only one expert testified at trial. Blumentritt stated that the survey he did for Scanlan in 1992 accurately followed the recorded legal description. He also testified that the Davy Survey was inaccurate. Blumentritt explained that the Davy Survey shortened the southern call² of Parcel A by 33 feet. Doing so moved the western boundary line 33 feet to the east, thus making the disputed area and Cart Path part of Parcel B rather than Parcel A. According to the legal description, the southern boundary should be 5.57 chains or 367.62 feet.³ A chain is 66 feet. *Black's Law Dictionary* 229 (6th ed. 1990). The Davy Survey, a portion of which was admitted into evidence, shows that the distance is recorded as 367.62 feet but is plotted on that survey as 334.62 feet.

Blumentritt's testimony is un rebutted and there is no evidence questioning the validity of the



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Blumentritt Survey. There is no testimony explaining the Davy Survey or claiming that it is accurate. The Millers did not argue to the trial court or on appeal that the Davy Survey accurately follows the legal description.

Despite this evidence, the trial court adopted the Davy Survey line as the boundary. This conclusion is not reasonably supported by the evidence. The trial court's finding of fact number six, that the land deeded to the Millers included the disputed Cart Path, is clearly erroneous. Because the evidence only supports one conclusion, we hold that the Blumentritt Survey represents the recorded legal boundary as a matter of law. ⁴

II.

Adverse Possession

Due to our holding regarding the recorded legal boundary, most of the Cart Path is located on Parcel A. The only remaining question is ownership of the portion of the Cart Path located west of the Blumentritt Survey line on Parcel B. Scanlan claims that she owns the entire Cart Path to the old Scanlan fence line based on adverse possession, and in the alternative based on the doctrine of practical boundary location. She argues that she met the 15 year statute of limitations prior to 1966 or between 1968 and 1985.

Scanlan argued these theories to the trial court and most of the evidence presented related to the theories, but the trial court failed to make findings on either adverse possession or practical boundary location. ⁵ The trial court did, however, grant Scanlan an implied easement for the property up to the old Scanlan fence line making a finding of fact that Scanlan "requires use of the cart path for access to her land on the ridge" and stating in its memorandum that the Cart Path is "the necessary access route" to a portion of Scanlan's property. Although the trial court was erroneously looking at the entire disputed area, rather than only the disputed areas west of the Blumentritt Survey line, the conclusion that the Cart Path provides necessary access is still valid. The Millers have not challenged this easement.

The issue is whether Scanlan owns those portions of the Cart Path on Parcel B to the old Scanlan fence line. It appears that Scanlan may have satisfied the requirements for adverse possession or practical boundary location.

Establishing a boundary line by adverse possession requires that the party claiming title by adverse possession make open, hostile, continuous, exclusive, and actual use of the property for 15 years. Minn. Stat. § 541.02 (1994); *Bjerketvedt v. Jacobson*, 232 Minn. 152, 156, 44 N.W.2d 775, 777 (1950). There is a presumption that when parents use land owned by their child, the use is permissive rather than hostile. *Alstad v. Boyer*, 228 Minn. 307, 37 N.W.2d 372, 376 (1949). When a party satisfies the requirements of adverse possession, that party has perfect legal title, though not of record, and it



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extinguishes the right of the party holding paper title. *Ehle v. Prosser*, 293 Minn. 183, 197 N.W.2d 458 (1972).

The doctrine of practical boundary location presents an independent legal theory upon which a party who satisfies the requirements can achieve the same legal effect as adverse possession. *Engquist v. Wirtjes*, 243 Minn. 502, 505, 68 N.W.2d 412, 417 (1955). Practical location can be established if:

the location relied upon [has] been acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations.

Id. at 506, 68 N.W.2d at 416. The statute of limitations is the same as that for adverse possession. *Id.* at 507, 68 N.W.2d at 417. The parties do not have to be aware of the actual boundary line for practical boundary location to apply. *Id.* at 507, 68 N.W.2d at 416. The parent-child presumption that defeats adverse possession does not apply in practical boundary cases; unlike adverse possession, hostile use is not a requirement for this doctrine.

Because the applicability of adverse possession and practical boundary location involve questions of fact, we remand to the trial court to make findings on this issue. See *Id.* at 508, 68 N.W.2d at 417 (applicability of adverse possession and practical boundary location questions of fact for trial court).

We reverse the trial court's determination of the legal boundary and remand for additional findings on adverse possession and practical boundary location. The trial court should also reform the legal description consistent with this opinion and the findings it will make. ⁶

Reversed and remanded.

January 5, 1996

Edward Toussaint

1. The parties stipulated to a legal description of the disputed area that includes the Cart Path in question. The legal description defines the area from the Davy Survey line where the Millers' fence now stands to Scanlan's old fence line.
2. A visible natural object or landmark designated in a patent, entry, grant, or other conveyance of land, as a limit or boundary to the land described, with which the points of surveying must correspond. *Blacks Law Dictionary* 204 (6th ed. 1990).
3. 14.25 acres more or less in the Southwest Quarter (SW 1/4 of Section Twenty-eight (28) Township One Hundred Three (103) North, Range Four (4) West described as follows: Commencing at 1/4 post South side Section Twenty-eight (28) Township One Hundred and Three (103) North Range Four (4) West; thence West variation 5 degrees 30' East 5.57 chains; Thence North 6 1/2 degrees West 2.11 chains; thence North 9 degrees West 3.69 chains; thence North 9 degrees East 4.51



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chains: thence North 18 degrees West 2.55 chains: Thence North 11 1/2 degrees East 4.70 chains: Thence North 1/2 degree West 2.43 chains: Thence North 34 degrees East 2.41 chains; Thence North 55 1/2 degrees East 4.50 chains: Thence South 24.20 chains to place of beginning.

(Emphasis added). This legal description has been used consistently in all the deeds and legal descriptions of Parcel A. The legal description of Parcel B does not help determine the boundary between Parcels A and B because it is described as a particular area except Parcel A (using the above legal description of Parcel A).

4. We reject the Millers' claim that the Davy Survey is the boundary because the parties had an agreement to be bound by the survey. The trial court made no findings as to whether there was an agreement and the trial testimony is conflicting. Even if there had been an oral agreement, it would have moved the boundary line from the recorded legal description (Blumentritt Survey line) to the Davy Survey line. Such an agreement would be barred by the Statute of Frauds. See Minn. Stat. § 513.04 (1994) (agreements transferring interest in land must be in writing).

5. We note that the trial court's finding of fact number nine is clearly erroneous. It states in part, "There was no evidence to establish when or by whom that fence was erected or maintained " (emphasis added). Testimony did not establish who built the fence or when, only that it was built before 1955. There was evidence, however, that Scanlan and her family members maintained the fence. For example, Scanlan and Mindrum testified that they repaired the fence in 1972. Francis Grau, a tenant of Scanlan's, repaired the fence in 1973 or 1974. Scanlan's daughter Sharon Rohrer testified that she helped her brother with the fence in 1982.

6. We grant the Millers' motion to strike the "Outline of Plaintiff's Presentation--Motion for Amended Findings" from Scanlan's appendix. This document was not filed with the district court so is not part of the record on appeal. See Minn. R. Civ. App. P. 110.01 (papers filed in trial court, exhibits, and transcript constitute record on appeal).

