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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA11-1041

GLEN STEVENS APPELLANT V. PATRICK STAIR, LEE R. BREWER, RANDALL GILPATRICK, and REBECCA GILPATRICK APPELLEES	**Opinion Delivered** May 9, 2012 APPEAL FROM THE STONE COUNTY CIRCUIT COURT [NO. CV 2010-64-4] HONORABLE TIM WEAVER, JUDGE AFFIRMED

RITA W. GRUBER, Judge

This appeal involves the trial court's determination of a property boundary through deed construction and surveys. Appellee Patrick Stair purchased part of the Northeast Quarter of the Northwest Quarter of Section 7, Township 15 North, Range 12 West in 2001. He subdivided it and sold lots to appellee, Lee Brewer, and appellees, Rebecca and Randall Gilpatrick. Appellant Glen Stevens owns land directly east of this property. Appellees filed a complaint against appellant, alleging that appellant had been contending that the surveys showing the boundary between the properties was not the proper location of the dividing line and that he was entitled to a substantial portion of appellees' property. Appellees asked the court to determine that the dividing line between the properties was, as evidenced by the deeds and the surveys, a longstanding fence. After a hearing on the matter, the trial court entered an order, finding that the fence was the dividing line and that it had been referenced as the dividing line in deeds and surveys for years. Appellant argues on appeal that the court

erred in determining that the fence was the boundary. We find no error and affirm the court's order.

I.

The crux of appellant's argument is that he owns more acreage than the surveys suggest—how much more is not clear. The entire forty-acre tract of this quarter-quarter section of land (NE1/4 NW1/4) was all originally owned by A.A. Stevens and his wife, Viola. In 1946, A.A. and Viola conveyed property to J.M. Stevens, including "ten acres more or less" in the eastern part of this quarter-quarter section. In 1947, J.M. Stevens conveyed this same tract to Cecil Stevens. Appellant testified that he and his siblings inherited this property. He introduced a quitclaim deed from his siblings conveying their interest to him in September 2010, which purports to convey part of the East Half of the Northwest Quarter—at issue in this case—and part of the West Half of the Northeast Quarter, using a metes and bounds description and including a boundary running north and east along a fence line that appears to be the boundary fence appellant is challenging in this case. The property contains 6.7 acres, more or less. Appellees introduced a survey filed of record and allegedly prepared for appellant in 2008 appearing to describe this 6.7-acre tract, but appellant denied having the survey prepared.

In 1957, A.A. and Viola Stevens conveyed the western thirty acres of this quarter-quarter section (NE1/4 NW1/4) to Ulis Stevens, reserving a life estate in themselves. No other description was provided of the tract. In 1978, A.A. Stevens (Viola was no longer living) and Ulis Stevens conveyed this tract to Sheron and Bobby Carter, describing the land

as follows: "All that Part of the NE1/4 of the NW1/4 of Section 7, Township 15 North, Range 12 West, lying West of Old Turning Row and Fence, containing 30 acres, more or less . . . ." In 1993, the Carters conveyed the property to A.R. Stevens and his wife, describing the property as "Pt. NE1/4 NW1/4, containing 38.10 acres, more or less" and then describing the property by metes and bounds, including the now-disputed fence line. This same description was used in the deed from A.R. Stevens to appellee Patrick Stair.

The trial court also had before it six surveys performed between 1996 and 2008, all of which designate the fence line as the boundary between the two tracts. Appellant's deed from his siblings contains a legal description from a survey (the one appellant denied having prepared) that states that it was prepared for him in July 2008. The deed refers to the "fence line" as a western boundary in its description.

Appellant argues that, based on A.A. Stevens's conveyances of the property designating the eastern part as ten acres and the western part as thirty acres, the trial court's interpretation of the deeds and surveys cannot be correct because he owns more acreage than these descriptions indicate. He has not set forth exactly what he owns, as he presented no survey or other evidence to the trial court delineating any dividing line other than the one found by the court. His own deed suggests that he owns 6.7 acres, not ten, but it also includes part of the Northeast Quarter, which is not included in the original ten-acre tract conveyed by A.A. Stevens in 1946.

At trial, appellees presented the testimony of Eugene Gorton, who had been a surveyor in Stone County since 1990—as an apprentice until 1998 and as a licensed surveyor since

then. He testified that he surveyed the property in 2002 for appellee Patrick Stair. He said that the east line of Stair's property was the fence line shown on the survey. He also explained on the survey the boundaries set forth in the descriptions of the 38.10-acre tract from the 1993 deed conveying the property from the Carters to A.R. Stevens and his wife and from the 2001 deed from A.R. Stevens to appellee Patrick Stair. He specifically pointed out the fence line as described in the metes and bounds description. He reviewed several surveys introduced into evidence, including a survey from 1996, and opined that all of the surveys showed the same fence line as the boundary between the two tracts. He testified that, in his opinion, the fence became the legal boundary in 1978, when A.A. Stevens and Ulis Stevens conveyed this tract to Sheron and Bobby Carter.

Appellant testified that the fence was not the boundary between the two tracts and that the fence came onto his property "about 300 or 400 feet." "[I]t gets wider as it goes north." He said that he had inherited the property and that Ulis Stevens could not have conveyed more than thirty acres in 1978 because the west thirty acres is all that he owned.

At the conclusion of the hearing, the court stated that there was no testimony that the line existed anywhere other than the fence line, which had been referenced in all of the deeds since 1978, including appellant's. The court's order found that the dividing line between appellees' and appellant's property was the fence: "There is no question in that the deeds and testimony of the surveyor clearly indicate that in fact the fence has been referenced as the dividing line for years and the Court finds that the line is the old fence as described on [appellant's] deed and as depicted on the Replat of Roasting Ear Village."

The construction of a deed is a matter of law, which we review de novo. *Maxey v. Kossover*, 2009 Ark. App. 611, at 1. When interpreting a deed, we give primary consideration to the intent of the grantor. *Harrison v. Loyd*, 87 Ark. App. 356, 365, 192 S.W.3d 257, 263 (2004). We examine the deed from its four corners for the purpose of ascertaining that intent from the language employed. *Id.* Further, we gather the intention of the parties, not from some particular clause, but from the whole context of the agreement. *Gibson v. Pickett*, 256 Ark. 1035, 1040, 512 S.W.2d 532, 535–36 (1974). We will not resort to rules of construction when a deed is clear and contains no ambiguities, as here, but only when the language of the deed is ambiguous, uncertain, or doubtful. *Harrison*, 87 Ark. App. at 365, 192 S.W.3d at 263. What boundaries the deed refers to is a question of law; where those boundaries are located on the face of the earth is a question of fact. 12 Am. Jur. 2d *Boundaries* § 121 (1997); *see also Killian v. Hill*, 32 Ark. App. 25, 28, 795 S.W.2d 369, 371 (1990).

II.

Appellant's argument is that the original deeds dividing the property attempted to convey a western thirty-acre tract and an eastern ten-acre tract and, therefore, that the fence, which appears to alter this acreage distribution, cannot be the dividing line. But he offers no evidence of what the dividing line is, and the deeds, at least from 1978 on, state that the fence is the dividing line. We turn to established law that acreage in a deed must yield to objects and monuments, whether natural or manmade. *Wyatt v. Ark. Game & Fish Comm'n*, 360 Ark. 507, 202 S.W.3d 513 (2005); *Rice v. Whiting*, 248 Ark. 592, 598, 452 S.W.2d 842, 845 (1970). In discussing this concept, our supreme court stated the following:

> The discrepancy between the acreage as given in the deed and that which the appellant claims does not alone render the deed void. Under a conveyance of 100 acres, "more or less," he might take the title to 253.95 acres, if the description was otherwise sufficient for that purpose. The most general terms of description employed in deeds to ascertain the things granted are: (1) quantity, (2) course and distance, (3) artificial or natural objects and monuments. And whenever a question arises as to description, the terms or objects most certain and material will govern. Therefore quantity yields to course and distance, and course and distance to artificial and natural objects. *Doe v. Porter*, 3 Ark. 18.
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> "A call for quantity in a deed must yield to a more definite description by metes and bounds. The quantity of land conveyed is generally mentioned in the deed; but, without an express averment or covenant as to quantity, it will always be regarded as a part of the description merely, and it will be rejected if it be inconsistent with the actual area of the premises, if the same is indicated and ascertained by known monuments and boundaries. It aids but does not control the description of the granted premises. *Campbell v. Johnson*, 44 Mo. 250.
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> Our own court has said of the words "more or less," when used in the description of land conveyed that they are words of precaution, intended to cover slight or unimportant inaccuracies, but that they do not control an otherwise good description. *Walker v. David*, 68 Ark. 544.

Scott v. Dunkel Box & Lumber Co., 106 Ark. 83, 88, 152 S.W. 1025, 1027–28 (1912).

We hold that the trial court did not err in its interpretation of the legal descriptions in the deeds. Except for the first deed, in which the legal description was the western thirty acres of the Northeast Quarter of the Northwest Quarter, all of the deeds conveying the western part of the quarter-quarter section mention the fence as the eastern boundary line. The only deeds presented conveying the eastern part of the quarter-quarter section either mention a fence or a "turning row" as the dividing line. Appellant presented no survey or expert testimony to further explain the descriptions in any of the deeds. The acreage mentioned in the 1946 and 1947 deeds is "ten acres, more or less." The acreage in appellant's deed is 6.7 acres, but it includes part of another quarter-quarter section. Further, all of the

surveys introduced into evidence contain the fence as the dividing line between the tracts. Appellant presented no testimony or survey suggesting another dividing line. The acreage in the deeds must yield to the property descriptions in the deeds, which include the fence as the dividing line. Accordingly, we affirm the trial court's order.

Affirmed.

WYNNE and BROWN, JJ., agree.

Jerry D. Patterson, for appellant.

Brad J. Williams, for appellees.