ARKANSAS COURT OF APPEALS

DIVISION III
No. CA10-799

FREDRIC DOHLE, BERTHA DOHLE, JAMES DOHLE, and KATHY DOHLE APPELLANTS V. SUSAN ANN DUFFIELD, FRANCES and AUGUSTA DUFFIELD JOHNSON, and JIM JOHNSON APPELLEES	Opinion Delivered February 23, 2011 APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [No. CV-09-3282-6] HONORABLE R. DOUGLAS SCHRANTZ, JUDGE DISMISSED

LARRY D. VAUGHT, Chief Judge

The parties in this case, appellants Fredric, Bertha, James, and Kathy Dohle and appellees Sue Ann Duffield, Jim Johnson, and Frances and Augusta Duffield Johnson, are neighboring landowners. Their properties were once owned by appellees' predecessors in title. In 1985, appellants acquired the western tract but conveyed to appellees a two-acre "cemetery" portion, where members of appellees' family had been buried, as well as ingress and egress to the cemetery. Over the years, appellees have used this cemetery access to also access their property, although they also utilize a separate route that does not cross appellants' property. Additionally, appellees have used a spring house on appellants' property. Between 2000–2009, appellants began attempts to barricade this access, and eventually appellees filed suit seeking a temporary injunction against the barricade, establishment of permanent easements by prescription and necessity, and damages for trespass. After a trial on the merits, appellees abandoned their claims for trespass but were granted easements by prescription. On appeal, appellants contend that the

trial court erred in finding a prescriptive easement because appellees' use was neither continuous and uninterrupted nor was it hostile and adverse. However, we dismiss this appeal for lack of a final order.

In dismissing this appeal, we rely on *Petrus v. Nature Conservancy*, 330 Ark. 722, 724–27, 957 S.W.2d 688, 688–90 (1997), and its progeny. The *Petrus* case was originally filed in the court of appeals, but we certified the appeal to the supreme court. Our court raised the question as to whether the trial court's decree was a final, appealable order. The specific question we raised for the higher court was whether—after the trial court purportedly quieted title in Nature Conservancy—the court's decree should have specifically set out the legal description of the property, or portion thereof, to which each party and landowner had title. The supreme court considered the issue and concluded that without such a specific identification of the boundary lines of the properties in dispute, there was no final order.

The supreme court relied on a line of cases stating that a decree must describe the boundary line between disputing land owners with sufficient specificity that it may be identified solely by reference to the decree. *Riddick v. Streett*, 313 Ark. 706, 858 S.W.2d 62 (1993); *see also Harris v. Robertson,* 306 Ark. 258, 813 S.W.2d 252 (1991); *Rice v. Whiting*, 248 Ark. 592, 452 S.W.2d 842 (1970); *McEntire v. Robinson*, 243 Ark. 701, 421 S.W.2d 877 (1967). The supreme court also noted that, despite the trial court entering a decree captioned "Final Order," by leaving the precise boundary lines to be established by a future survey, additional disputes, piecemeal litigation, and piecemeal appeals were a likely (and undesirable) result. *McEntire*, 243 Ark. at 704, 421 S.W.2d at 879.

However, we would be remiss if we failed to note a second line of cases concluding that dismissal is not always necessary. When nothing remains to be done, but a trial court's decree does not describe a prescriptive easement with sufficient specificity so that it can be identified solely by reference to the decree, we may remand for the trial court to amend the decree and provide the easement's legal description. In *Johnson v. Jones*, 64 Ark. App. 20, 977 S.W.2d 903 (1998), we remanded in part so that the trial court could amplify and correct the decree by adding a precise legal description of an easement, which had been described in the decree as a line for which no width was given. In *Jennings v. Burford*, 60 Ark. App. 27, 958 S.W.2d 12 (1997), we granted leave to the trial court, under Arkansas Rule of Civil Procedure 60, to amend the decree by adding a more specific description of the boundary line between the parties' land. In that case, the decree had described the boundary line as a meandering fence reflected by a survey.

However, it is our view that the present case falls within the *Petrus* line of cases because nowhere in the circuit court's decree is the property awarded to the appellees identified, and the record does not contain sufficient evidence to permit the trial court to set forth the specific description of the property without further proceedings. The permanent record in a boundary-line decision should describe the line with sufficient specificity that it may be identified solely by reference to the order. As such, we hold that the trial court must modify the decree to fix and define the boundary lines of the ordered easements. Because we hold that the appeal is premature and that the decree lacks finality, we dismiss without prejudice.

Dismissed.

GLADWIN and MARTIN, JJ., agree.