

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-956

ROOSEVELT DYE

APPELLANT

V.

ANDERSON TULLY, ET AL.

APPELLEES

Opinion Delivered APRIL 1, 2009

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT,
[NO. CV-2006-161-1]

HONORABLE SAM POPE, JUDGE

DISMISSED

ROBERT J. GLADWIN, Judge

Summary judgment was granted to appellee Anderson Tully Company by the Desha County Circuit Court on June 9, 2008, pursuant to the trial court's conclusion that appellee was entitled to the property at issue as a matter of law based upon adverse possession. Appellant Roosevelt Dye claims on appeal that the trial court erred in granting summary judgment because material issues of fact were left to be decided. We hold that the trial court's order purportedly quieting title to the property at issue was not a final order in that it lacked the required specific legal description of the property; accordingly, we dismiss the appeal.

On October 2, 2006, in Desha County Circuit Court, appellant filed a petition to quiet title to approximately 175.05 acres of land that he claims is positioned in Desha County, Arkansas, in close proximity to the Arkansas River. The land is described by appellant as

follows:

The Southwest Quarter, Sec. 31, Township 8 S, Range 1 West, containing 95.05 acres of land and

The South one-half of the SW 1/4, section 31, Township 8 South, Range 1 West, containing 80 acres.

Appellant claimed to have acquired the property through a devise from H.T. Marshall, who acquired title from the State of Arkansas in a tax deed filed for record on February 10, 1921, wherein the real property was purported to be sold to J.M. McBroom and H.F. Marshall.¹ He filed his petition to quiet title and served both Anderson Tully Company and Yancopin Hunting Club, as both entities were adjacent property owners.

Appellee Anderson Tully filed both an answer, claiming ownership of the land, and a motion to dismiss. Appellee claimed that it acquired the property in 1916 through a deed executed by W.H. Bonner, which is recorded in Arkansas County and describes the property as follows:

The fractional Southeast Quarter containing 95.05 acres and the South Half of the Southwest Quarter containing 80 acres in Section 31, T.8S, R.1W. All originally South of Arkansas River, but now North of Arkansas River.

Appellee argued in his pleadings before the trial court that the land claimed by appellant was situated in Desha County, Arkansas, at the time the original government survey

¹Appellant explains in his quiet title petition that H.F. Marshall is also shown as H.L. Marshall, and was the father of H.J. Marshall, deceased, whose Will left the property to appellant. Appellant does not explain the discrepancy in the statements that H.J. Marshall left the property to appellant in his Will, and that appellant acquired the property through a devise from H.T. Marshall. Further, nothing was presented to explain the chain of title as related to J.M. McBroom.

of the property was prepared in 1840. Appellee claimed that the Arkansas River moved in a southwardly direction over time, and that by 1917, the real property that is the subject of this action was situated to the north of the Arkansas River by gradual and imperceptible accretion, becoming part of the land conveyed to appellee in 1916.

On December 12, 2007, appellee filed a motion for summary judgment on the issue of accretions, and alternatively, on the claim that it had acquired title to the real property by adverse possession, regardless of the issue of accretions. Supporting affidavits were attached that related to each issue. On January 15, 2008, appellant filed his response asserting that there were issues of fact with regard to the movement of the Arkansas River that would make summary judgment improper. Appellant argued that the questions included whether the river moved south of the subject property, whether the river moved by accretion or avulsion, and whether the county lines moved from where they were set by law in 1885.

The trial court denied appellee's motion for summary judgment on the accretion issue, and this portion of the order was not appealed. However, the trial court granted appellee's motion as to the issue of adverse possession, finding that appellant failed to file a counter affidavit to the affidavit of Tim Bitely. Mr. Bitely's undisputed facts led the trial court to rule that appellee was the owner of the land in question by adverse possession and had been since 1967-68, if not before. The trial court's order included both legal descriptions of the property claimed by the parties as set forth above. A timely notice of appeal was filed, and this appeal followed.

Our supreme court in *Petrus v. Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688

(1997), stated:

In a long line of cases, this court has held that a chancery court's 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).

Id. at 725, 957 S.W.2d at 689. In the present case, the circuit court judge entered an order entitled "Findings and Conclusions and Order Granting Motion for Summary Judgment," which purported to dismiss the appellant's claims and find appellee had prevailed on its adverse-possession claim. However, this order does not identify the boundary lines of the property in dispute. 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. *See Harris*, 306 Ark. at 261, 813 S.W.2d at 252; *Riddick*, 313 Ark. at 712, 858 S.W.2d at 62. Accordingly, we dismiss this appeal for lack of a final order pursuant to Rule 2(a) of the Arkansas Rules of Appellate Procedure - Civil.

Dismissed.

PITTMAN and HENRY, JJ., agree.