Official Arkansas Supreme Court Opinion

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SUPREME COURT OF ARKANSAS

No. 10-1059

REAGEN CRAIG KIRKLAND,
APPELLANT,

VS.

JAY SCOTT SANDLIN AND ALLISON C. SANDLIN,
APPELLEES,

Opinion Delivered May 12, 2011

APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT,
NO. CIV2008-4144-4,
HON. MARY ANN GUNN, JUDGE,

AFFIRMED.

PAUL E. DANIELSON, Associate Justice

Appellant Reagen Craig Kirkland appeals from the circuit court's order finding a boundary by agreement with respect to property between Kirkland's home and the home of appellees, J. Scott Sandlin and Allison C. Sandlin, husband and wife. Kirkland argues on appeal that the circuit court erred in (1) failing to find that the agreement as to the boundary line was the product of an unconscious mutual mistake, which was corrected by Kirkland; and (2) failing to find that Kirkland was entitled to possession of the disputed area and that the Sandlins should have been ejected from that area. We find no error and affirm the circuit court's order.

The pertinent facts are these. Kirkland owns Lot 29 in Savanna Estates, a subdivision of residential lots in Fayetteville, Arkansas. The Sandlins own the lot on the left side of Kirkland, Lot 28. The Sandlins purchased Lot 28 on June 30, 2000, and began constructing

a residence on the lot. During the construction of their residence, the Sandlins notified the original owners of Lot 29, the Fullbrights, that they intended to construct a fence along the common boundary between Lot 28 and Lot 29, but were uncertain as to the location of the boundary line. The Sandlins and the Fullbrights then agreed to a location for the boundary line (hereinafter "the Sandlin/Fullbright boundary line"), and the Sandlins constructed a fence at that location. It was stipulated that the Sandlin/Fullbright boundary line was not the actual boundary line as recorded on the plat of Savanna Estates filed with the circuit clerk and ex-officio recorder of Washington County, Arkansas. Subsequent to the completion of the fence, the Sandlins and the Fullbrights each landscaped on their respective sides along the Sandlin/Fullbright boundary line with bushes, shrubs, plants, and grass. The grass planted on Lot 28 was a type of fescue, and the grass planted on Lot 29 was a type of bermuda.

The Fullbrights sold Lot 29 on October 31, 2003, to the Salters. It was during this transaction that the boundary-line issue first arose. Surveys that had been performed prior to the sale showed a discrepancy between the Sandlin/Fullbright boundary line and the recorded boundary line. Specifically, the Sandlins' brick and wrought iron fence was shown to extend beyond the boundary line and into the rear corner of Lot 29. The Fullbrights subsequently discussed the sale of Lot 29 to the Salters with the Sandlins and informed the Sandlins that the survey had shown a variance between the Sandlin/Fullbright boundary line and the recorded boundary line.

Between the date that the Salters signed an offer and acceptance with the Fullbrights

and the date of the actual closing, a meeting was held at the Sandlins'. The Sandlins offered to purchase the disputed area from the Salters for $10,000. Their attorney drafted a contract for the sale and purchase of the disputed area, and the Sandlins signed it. The Sandlins delivered the signed contract to the Salters for their signature, but the Salters never signed it and subsequently declined to sell the disputed area. After the Salters closed on the sale with the Fullbrights, a conversation occurred between Mr. Salter and Mr. Sandlin, wherein Mr. Salter stated that the two could "work it out later." However, the matter was evidently dropped.

Approximately five years later, in September, 2008, the Salters decided to sell Lot 29 and their residence thereon. On September 12, 2008, the Salters entered into a real estate contract with Kirkland for the purchase of Lot 29. Before the date of closing, Mr. Salter conversed with Kirkland regarding the boundary line. He informed Kirkland that the Sandlins had a portion of their fence on Lot 29 according to the recorded boundary line and that, at one time, the Sandlins had offered to purchase the area for $10,000. Mr. Salter advised Kirkland that he could either ask the Sandlins to move the fence, or make them purchase it. However, the Sandlins were not involved in these discussions. Kirkland closed on the purchase of Lot 29 on September 19, 2008; however, he never discussed the boundary-line issue with the Sandlins prior to closing. After the closing, Kirkland received a general warranty deed from the Salters and the property description simply read Lot 29 of Savanna Estates per plat.

On October 22, 2008, Kirkland delivered a letter to the Sandlins demanding that the

Sandlins remove the fence; however, the Sandlins refused to do so. On November 5, 2008, Kirkland filed a complaint for ejectment against the Sandlins.

The case was submitted to the circuit court on briefs and stipulated facts, as well as an in-person visit to the disputed property. The circuit court found that a valid boundary by agreement was entered into by and between the Sandlins and the Fullbrights and that Kirkland took possession of Lot 29 subject to that agreement. Kirkland now appeals.

Kirkland argues that the Sandlin/Fullbright boundary line was the product of an unconscious mutual mistake and, therefore, the agreement could be rescinded and corrected later by himself as the successive owner.[1] The Sandlins argue that the circuit court correctly found that a valid oral boundary-line agreement existed in this case.

For bench trials, the standard of review on appeal is not whether there is substantial evidence to support the finding of the court, but whether the judge's findings were clearly erroneous or clearly against the preponderance of the evidence. *See* Ark. R. Civ. P. 52(a) (2010); *City of Rockport v. City of Malvern*, 2010 Ark. 449, 374 S.W.3d 660. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that an error has been committed. *See City of*

[1]While Kirkland relies on both *Randleman v. Taylor*, 94 Ark. 511, 127 S.W. 723 (1910) and *Short v. Mauldin*, 227 Ark. 96, 296 S.W.2d 197 (1956) to support his argument, the four-prong test discussed in this opinion has since been adopted. Regardless, even were we to analyze the facts of the instant case under *Randleman* and *Short*, we would reach the same conclusion. This is not a case in which there was an unconscious mutual mistake where the parties agreed upon a boundary line believing it to be the true, recorded line. Rather, the parties were unsure of, and did not ascertain, the recorded line and, instead, mutually agreed to establish the line.

Rockport, *supra*. Facts in dispute and determinations of credibility are solely within the province of the fact-finder. *See* 2010 Ark. 449, 374 S.W.3d 660.

For a valid oral boundary-line agreement to exist, four factors must be present: (1) there must be uncertainty or dispute about the boundary line; (2) the agreement must be between the adjoining landowners; (3) the line fixed must be definite and certain; and (4) there must be possession following the agreement. *See Nunley v. Orsburn*, 312 Ark. 147, 847 S.W.2d 702 (1993). The joint stipulation of facts submitted to the circuit court by the parties clearly established that each of the four factors were present in the instant case.

The stipulated facts reveal that the Sandlins and the Fullbrights mutually agreed on a boundary line along which the Sandlins could build their fence after "the Sandlins communicated to the Fullbrights that they were uncertain as to the location of the boundary line." Clearly, the Sandlins and the Fullbrights were adjoining landowners as it is also stipulated that they shared a common, adjoining boundary. After the Sandlins and the Fullbrights fixed the line, that line became definite and certain when the Sandlins built their brick and wrought iron fence at the agreed location. Furthermore, it is stipulated that subsequent to the completion of the fence, the Sandlins and the Fullbrights each landscaped on their respective sides along the Sandlin/Fullbright boundary line with bushes, shrubs, plants, and different types of grass. The landscaping completed on either side not only illustrates that the line was definite and certain, but also that the Sandlins and the Fullbrights each took possession on their respective sides up and to the agreed upon line where the fence

was built.

Based on the facts presented, this court cannot hold that the circuit court's finding that there had been a valid oral boundary-line agreement between the Sandlins and the Fullbrights was clearly erroneous. Furthermore, we have previously held that the owners of adjoining lands may fix a boundary line by agreement that will bind them and their grantees. *See Clements v. Cox*, 230 Ark. 818, 327 S.W.2d 83 (1959). For these reasons, we affirm.

Affirmed.

HENRY, J., not participating.