IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
May 19, 2003 Session

LARRY C. JACKSON, ET UX. v. WAYNE SAPPINGTON, ET UX.

A Direct Appeal from the Chancery Court for Gibson County
No. H 4576 The Honorable George R. Ellis, Chancellor

No. W2002-02092-COA-R3-CV - Filed July 29, 2003

This is a dispute between two adjoining property owners concerning the location of the common boundary between their respective properties. A survey of the line indicates that the land in question is property of Appellees. Appellants claim title to the disputed property under theories of adverse possession under color of title and equitable estoppel based upon alleged representations made by the Appellees concerning the property line. The trial court found that the land in question is the property of Appellees. Appellants appeal. We affirm.

Tenn. R. App. P. 3; Appeal as or Right; Judgment of the Chancery Court Affirmed

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and HOLLY M. KIRBY, J., joined.

Mark L. Agee and Jason C. Scott, Trenton, For Appellants, Larry C. Jackson and wife, Wanda F. Jackson

G. Griffin Boyte, Humboldt, For Appellees, Wayne Sappington and wife, Phyllis Sappington

OPINION

This is a property line dispute. In 1993, Larry Jackson ("Mr. Jackson") and his wife, Wanda Jackson ("Mrs. Jackson," and together with Mr. Jackson, the "Jacksons," "Plaintiffs," or "Appellants") purchased Lot 19 of the T & G Golfcourse Subdivision in Gibson County, Tennessee ("Lot 19"). Wayne Sappington ("Mr. Sappington") and his wife, Phyllis Sappington ("Mrs. Sappington," and together with Mr. Sappington, the "Sappingtons," "Defendants," or "Appellees") own Lot 20 of the T & G Golfcourse Subdivision in Gibson County, Tennessee ("Lot 20"), which neighbors Lot 19. From 1993 until 2000, the Jacksons did not live on Lot 19. During this period, the Jacksons cleared the lot and prepared it for a manufactured home, which was placed in

November of 2000.[1] Mr. Jackson asserts that Mr. Sappington represented that the property line was located at a certain bush that ran between Lot 19 and Lot 20. Mr. Jackson allegedly relied upon Mr. Sappington's assertion regarding the property line and did not have an independent survey performed prior to doing the dirt work for the placement of a manufactured home. Sometime after the home was placed on the lot, the Jacksons' finance company ordered a placement survey. This survey revealed that the actual property line ran through the Jackson home, and that the Jackson house encroached upon the Sappington lot by .16 acres. Because of the lay of Lot 19, the Jackson home cannot be moved to the south without extensive dirt work. Consequently, the Jacksons offered fair market value for the strip of Sappington land on which their house was situated. The Sappingtons refused to sell to the Jacksons.

On July 23, 2001, the Jacksons filed a Complaint in the Chancery Court of Gibson County. The Complaint reads, in relevant part, as follows:

> 6. Since 1992, the Plaintiff's have been engaged in clearing, cleaning, and improving and exercises complete dominion and control over lot 19 including that strip of property which is now in dispute.
>
> 7. This control and dominion over the now disputed strip was done openly and with the full knowledge and consent of Defendants.
>
> 8. The Defendants further more, prior to the placement of the Plaintiffs' home expressly acknowledged the property line claimed to be true by the Plaintiffs.
>
> * * *
>
> 11. The Defendants had full knowledge of the Plaintiffs' clearing and improving of lot 19 and the placement of the Plaintiffs' home and have never prior to a recent survey objected nor claimed any encroachment.
>
> 12. A recent survey, done after all lot improvements, water lines, and utility pole placement, is the first indication as to any dispute regarding the property line between lots number 19 and 20. Plaintiffs would show that this survey was made at the request of one of the financial institutions with who the Plaintiffs are dealing and for the installation of the Plaintiffs' septic system...

[1] The work done to the property was funded by the Jacksons and included removing brick, filling in a pond, removing brush and other debris, and mowing the property.

13. Until said survey, Defendants had never complained as to the improvements of the Plaintiffs or the placement of their home.

* * *

15. The Plaintiffs would aver that they have spent thousands of dollars in the clearing, improving and preparation of their property and the placement of their home over several years. The Plaintiffs would further show that it would [require] approximately $10,000 to $15,000 to move their home and do the required land preparation.

16. The Plaintiffs have in fact exercised open control of this disputed trac[t] since 1992.

17. The Defendants have failed, at any time prior to the disputed survey to assert any ownership to the now disputed strip.

* * *

19. ...the Plaintiffs would show that they have in fact, under color of title, exercised open and exclusive possession, dominion, and control over the disputed strip for more than seven years and have defensible title thereto under the doctrine of adverse possession and under T.C.A. 28-2-103.

20. In the alternative, the Plaintiffs would show that both express and implied recognition of the Defendants of the line claimed to be the proper line by the Plaintiffs and the Plaintiffs' actual reliance upon that expressed and implied recognition resulted in the actual reliance thereon and resulted in the expenditure of thousands of dollars by the Plaintiffs. Plaintiffs would therefore, claim that they are entitled to said disputed strip and the Defendants by the doctrine of equitable estoppel and the Defendants should be precluded from making any claim at this late date to that disputed strip of property.

The Sappingtons filed their Answer on September 21, 2001. The case was tried by the court, sitting without a jury, on June 17, 2002. An Order of Dismissal was entered on July 29, 2002, which reads, in pertinent part, as follows:

> The action came on to be...heard upon the Complaint, the Answer thereto, the oral evidence in open Court, the exhibits and the entire record in this cause, from all of which it appeared that the

> allegations in the Complaint and the evidence are without merit and the action should be dismissed.
>
> IT IS THEREFORE ADJUDGED AND SO ORDERED that the action be and is hereby dismissed.

The Jacksons appeal from this Order and raise one issue, as stated in their brief:

> 1. Whether the trial court erred in determining the property line between the parties?
>
> A. The trial court erred in not applying the doctrine of adverse possession to find that the Plaintiffs/Appellants should have been awarded a clear title to the disputed strip of property.
>
> B. The trial court erred in not applying the doctrine of equitable estoppel to find that the Plaintiffs/Appellants should have been awarded a clear title to the disputed strip of property.

Since this case was tried by the court sitting without a jury, we review the case ***de novo*** upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. ***See*** Tenn. R. App. P. 13(d).

Adverse Possession

The Jacksons first assert that the disputed strip is theirs under the doctrine of adverse possession. Specifically, the Jacksons rely upon T.C.A. § 28-2-101 (2000), which reads, in relevant part, as follows:

> **Adverse possession–State conveyance.–**(a) Any person having had, either personally or through those through whom that person's claim arises, individually or through whom a person claims, seven (7) years' adverse possession of any lands, tenements, or hereditaments, granted by this state or the state of North Carolina, holding by conveyance, devise, grant, or other assurance title, purporting to convey an estate in fee, without any claim by action at law or in equity commenced within that time and effectually prosecuted against such person is vested with a good and indefeasible title in fee to the land described in such person's assurance of title.

It is well settled that there can be no constructive adverse possession that is not based upon a claim under an assurance or color of title purporting to convey an estate in fee, and a

possession outside of the boundaries recited in a deed, is not under such color of title, and, being limited in effect to the actual possession, cannot be invoked by the possessor as constructive adverse possession of land within the deed. ***See Slatton v. Tennessee Coal, Iron & R. Co.***, 75 S.W. 926 (Tenn. 1902). In short, the deed must identify the particular tract of land in dispute in order to be a proper assurance of title. If the description is indefinite or uncertain so as to make it impossible for the deed to locate the land, the conveyance and holding thereunder is void as a basis for constructive possession. ***Hebard v. Scott***, 32 S.W. 390 (Tenn. 1895).

The only instrument in the Jacksons' chain of title purporting to convey the disputed land is the 1993 Warranty Deed, which describes the conveyance as follows:

> Being Lot No. 19 as shown and described on the plat entitled Final Plat of T&G Golfcourse Subdivision originally recorded in Plat Book 1, page 198 in the Register's office of Gibson County, Tennessee, now filed in Plat Cabinet B, Slide 15, in the Register's office of Gibson County, Tennessee. Also included in this conveyance is all of the Grantor's right, title and interest in and to the street or road known as Golfcourse Drive as such street or road may be adjacent to the above lot. This conveyance is subject to the utility easements, setbacks and/or any other matters shown on the above listed Plat and specifically shall include any matters, restrictions, variances, plans, profiles as may be incorporated by reference into said Plat...

Lot 19 does not include the disputed strip of land. This fact is evidenced by the survey and is undisputed in the record. As set forth above, the Warranty Deed description encompasses only Lot 19. Consequently, the Jacksons did not have registered assurance of title necessary to perfect title by seven years of adverse possession. ***See Ragsdale v. McFall***, 237 S.W. 66 (Tenn. 1921); ***Burks v. Boles***, 934 S.W.2d 653, 655 (Tenn. Ct. App.1996); ***Fingar v. Beard***, 12 Tenn. App. 604, 608 (1930). To claim title to this land without color of title, the Jacksons would have to show that they have been in open, notorious, absolute and uninterrupted possession of the property for twenty (20) years. ***Catlett v. Whaley***, 731 S.W.2d 544, 546 (Tenn. Ct. App. 1987). Having only occupied this land since 1993, the Jacksons cannot meet this burden. The issue of adverse possession is, therefore, without merit.

Equitable Estoppel

The Jacksons also claim that the doctrine of equitable estoppel should apply in this case. Specifically, the Jacksons claim that they reasonably relied upon the Sappingtons' statements regarding the location of the property line and that the Sappingtons should now be estopped from asserting that the line is not located where they represented it to be.

The burden of establishing an estoppel rests upon the party who invokes it. ***Jenkins-Subway, Inc. v. Jones***, 990 S.W.2d 713 (Tenn .Ct. App.1998). In ***Consumer Credit***

Union v. Hite, 801 S.W.2d 822 (Tenn. Ct. App. 1990), this Court stated the requirements to establish equitable estoppel as follows:

> The essential elements of an equitable estoppel as related to the party estopped are said to be (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) Intention, or at least expectation that such conduct shall be acted upon by the other party; (3) Knowledge, actual or constructive of the real facts. As related to the party claiming the estoppel they are (1) Lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) Reliance upon the conduct of the party estopped; and (3) Action based thereon of such a character as to change his position prejudicially...

Id. at 825 (citing ***Callahan v. Town of Middleton*** 292 S.W.2d 501 (Tenn. Ct. App. 1954)).

The crux of the equitable estoppel argument in this case depends upon whether the Sappingtons concealed any material facts or made any false representations to the Jacksons concerning the location of the property line. Turning to the record in this case, Mr. Jackson testified as follows concerning the Sappingtons' representations about the property line:

> L. Jackson: When we purchased that land it had flags out there.... Me and my wife went out there to visit it....I seen Mr. Sappington. I went up there and talked to him and what I asked him was these flags right with his property. And we walked out there on the hill. He told me...see...see yes, it's right here's my bush. This is my permanent marker. The flag is right with my bush. You're O.K....
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> * * *
>
> L. Jackson: And like I said, when we purchased that, you know, I have not [sic] doubt with him, you know. And like I say, and when he come up there and showed me he said, "This is my bush," he said, "It [the property line] runs from this bush straight to the back."
>
> Agee: All right. Speaking of the back, did he [Sappington] tell you anything about your back boundary as well?
>
> L. Jackson: Yes. After we mowed that lot the first couple of seasons, [w]e made mention that it was a pile of b[r]ush there. And he made mention that my...that my line continued to go into that bush. And I

asked him, I said "Really?" He said, "Yeah." He said "It goes on back there to the back." So me and my father cleaned that off and we found [an] old stake back there behind them bushes back there in the back, which was in conjunction to the line across the back.

Agee: And Mr. Sappington knew about that?

L. Jackson: He told me about it.

Agee: Did he indicate...so he indicated that he had some knowledge of the boundary markers on those lots?

L. Jackson: Yes, sir.

* * *

Agee: ...in all the work you've done over the years, did you rely upon representations to Mr. Sappington about where the line was?

L. Jackson: I trusted Mr. Sappington.

Agee: In placing your house, did you rely upon the representations of the Sappingtons about where the line was?

L. Jackson: Yes, sir.

* * *

Agee: ...are you now aware that Mr. Sappington all this time, since 1993, has had a survey himself?

L. Jackson: No, sir. I did not know that.

Agee: And when did you find that out?

L. Jackson: When we had out deposition.

Agee: Has he ever mentioned that to you, shown it to you, referred you to his survey?

L. Jackson: No, sir.

Mr. Sappington testified as follows concerning his conversations with the Jacksons about the

property line:

> Boyte: What I would like for you to do, Mr. Sappington, is tell the court all the conversations that you can recall that you had with the Plaintiffs, Mr. Jackson and Mrs. Jackson,...about the boundary lines on your property.
>
> Sappington: ...I have never known where that line was. I don't know right now. I could give you what I would assume...where I thought it was and where I have taken for granted it has been for some, I don't know, fourteen years. And that was based [on] a telephone box to the rear of the lot and I was fairly close with that one. And then I'd always assumed that cut with an angle. It's so many feet, and I don't know how many east, of that bush. Never have told anybody this is a kind of reference point and this is my boundary. This is where I assume it to be.
>
> Boyte: There's no one–
>
> Sappington: No, sir. I couldn't tell anybody that this is...my property line, sir because I don't know. I could give you an approximation...
>
> * * *
>
> Sappington: Well, even that Saturday afternoon Mr. Reasons [the surveyor] came out there and ask[ed] me about the line, I said, "Well, I can give you" "Do you know where your line is." I said "Well, I can show you about where I think it is." And we went to the back. I got pretty darn close on that one about where the telephone repair box is. And I said, "And I'm thinking it's somewhere east of that bush." He said you're way off on the...on the front. And that's when he walked me down there and showed me about where it approximately was. I don't know if I could walk to that spot right now.

On cross-examination, Mr. Sappington testified, in relevant part, as follows:

> Agee: Now, when we took your...you remember taking the deposition. And numerous times...numerous times in the deposition you characterized your statements to Mr. Jackson and others as saying "The line is in the vicinity of that bush."
>
> Sappington: O.K.

Agee: Did you remember that's how you characterized it to me.

Sappington: I've used that word. O.K. Yes, it was said the area of.

Agee: Well first, let's get this straight. Where Mr. Reasons determined the line was not even in the vicinity of that bush, is it.

Sappington: That would depend on what your definition of vicinity would be.

* * *

Agee: O.K. And Mr. Jackson, when he...when he...back in '93, he did ask you about where the line was, didn't he?

Sappington: ...I told him where I assumed it to be. The vicinity of.

Agee: And you're saying you used those words?

Sappington: Yes, sir.

Agee: But did you...say but "you know, Mr. Jackson, I don't know exactly. Maybe we'd better check it out"?

Sappington: I didn't say that. I don't know where the line is. I can show you where I think the approximate area is.

* * *

Agee: And the triangle in question, in fact, worked mowed and clearing and so whatever needed to be done was done by the Jacksons. Because that was on the other side of where that line was supposedly located. Fair enough?...Nothing, you didn't say anything about the work going on. Right?

Sappington: Correct.

Agee: You were aware when they came in to set the piers and do so forth to set up the home. You were aware that work was going on?

Sappington: Yes, sir.

Agee: You never said a word about whether or not that might be encroaching or going over your line, did you?

Sappington: had a question about it encroaching it...

* * *

Agee: And you heard his [L. Jackson's] testimony that you indicated to him that that bush was basically the marker along that line. Was he mistaken.

Sappington: He was mistaken. I've never, never used that as a marker, sir.

Agee: So, when he said you told him that, he's mistaken.

Sappington: He's mistaken, yes, sir.

* * *

Agee: So, when he testified that you told him the fence was...two feet or so off your line, that he's mistaken. You never told him that?

Sappington: I...no, sir. I never told anybody any footage. I couldn't.

Agee: And you never told him that that bush was the marker?

Sappington: No, sir.

* * *

Agee: And it's true that at the time, I didn't look at the date on that, but at the time you had the survey ...from 1993 on, the Jacksons got the property in '93...does that sound about right to you?

Sappington: I...I don't remember exactly when they took possession of it.

Agee: You got a survey in '93. So all this time, you have had access to information which could have avoided all of this. Correct?

Sappington: In...in the lock box.[2]

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[2] We note that, on redirect examination, Mr. Sappington testified that his survey would not have been helpful in determining the boundary line between Lot 19 and Lot 20 because the survey's descriptions were in "degrees and (continued...)

As noted above, the burden of proving equitable estoppel rests with the Jacksons who must show, by a preponderance of the evidence, that, *inter alia,* the Sappingtons engaged in conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert. From the above testimony, it is clear that there was some dispute in the record as to what, if any, representations were made by the Sappingtons to the Jacksons concerning the property line. We note that, when the resolution of the issues in a case depends upon the truthfulness of witnesses, the trial judge who has the opportunity to observe the witnesses in their manner and demeanor while testifying is in a far better position that this Court to decide those issues. ***See McCaleb v. Saturn Corp***., 910 S.W.2d 412, 415 (Tenn. 1995); ***Whitaker v. Whitaker***, 957 S.W.2d 834, 837 (Tenn. Ct. App. 1997). The weight, faith, and credit to be given to any witness's testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court. ***See id.***; ***In re Estate of Walton v. Young***, 950 S.W.2d 956, 959 (Tenn. 1997). Because we do not find that the evidence preponderates against the trial court's finding, we must affirm.

Furthermore, one of the essential elements of equitable estoppel as related to the party claiming estoppel is the lack of knowledge or means of knowledge of the truth of the facts in question. ***Provident Washington Ins. Co. v. Reese***, 373 S.W.2d 613 (Tenn. 1963); ***Gitter v. Tennessee Farmers Mut. Ins. Co.***, 450 S.W.2d 780 (Tenn. Ct. App. 1969). In the instant case, the Jacksons could have obtained a survey of their lot at any time prior to placing the manufactured home. Despite the fact that Mr. Sappington had a survey of his property, this Court is not aware of any mandate requiring Mr. Sappington to share his survey with the Jacksons. Although we note that such a neighborly gesture on the part of Mr. Sappington may have saved these parties much in terms of this present litigation and their prospects for future harmony, we cannot say that Mr. Sappington's failure to produce the survey rises to the level of concealment of a material fact. This is especially true in light of the fact that the Jacksons had it within their power to obtain "knowledge of the truth of the facts" concerning the property line by ordering their own survey. We have here a case of perhaps two wrongs (i.e. the Sappingtons not sharing their survey and the Jacksons not obtaining their own) failing to come to one right. Although this Court sympathizes with the plight of the Jacksons, we are nonetheless bound by the law. Under the theories of adverse possession under color of title and equitable estoppel advanced by the Appellants, under the facts of this case, and for the reasons set out in this opinion, we can offer no relief to the Jacksons.

Therefore, we affirm the Order of the trial court. Costs of this appeal are assessed equally between the Appellants, Larry C. Jackson and Wanda Jackson, and their surety, and the Appellees, Wayne Sappington and Phyllis Sappington.

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[2](...continued)
minutes," as opposed to physical landmarks on the respective properties.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.