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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0192**

Jack L. Menier,
Appellant,

vs.

William J. Gass, et al.,
Respondents.

**Filed December 15, 2014
Affirmed in part, reversed in part, and remanded
Hudson, Judge**

Otter Tail County District Court
File No. 56-CV-11-1922

Robert Bigwood, Pemberton, Sorlie, Rufer & Kershner, P.L.L.P., Fergus Falls, Minnesota (for appellant)

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Considered and decided by Kirk, Presiding Judge; Hudson, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

In this boundary dispute between adjacent property owners, appellant challenges: (1) the district court's determination of a boundary line between the parties' properties and (2) the district court's determination that appellant failed to prove that he adversely possessed a portion of respondents' land. We reverse the district court's determination of

the boundary line because it is based upon an erroneous construction of respondents' deed and the subsequent title history. But we affirm the district court's decision to deny appellant's claim for adverse possession of respondents' property.

FACTS

Appellant Jack Menier is the owner of Lots 19 and 20 of a plat of land located in Otter Tail County. Respondents William and Julie Gass own Lots 21 and 22 of the same plat, located west of appellant. Lots 19 through 22 run consecutively from east to west and Lots 20 and 21 are adjacent to one another. Each party also owns a portion of West Baden Common, a tract of land adjacent to the south border of the parties' platted lots and north of Stuart Lake. This dispute centers on the extension of a boundary line from the corner of Lots 20 and 21 through West Baden Common to the shoreline of Stuart Lake. Appellant asserts the boundary line angles to the southwest from that common corner; respondents, on the other hand, maintain that the boundary line is simply an extension of the common boundary of Lots 20 and 21 as it is located immediately north of West Baden Common. Appellant also claims title to a portion of Lot 21 by adverse possession, maintaining that it includes part of a gravel driveway that he has used adversely for many years.

Appellant's family received title to West Baden Common in 1957, except that part of West Baden Common that had been previously conveyed by a predecessor-in-interest to Nellie Jones.¹ By her deed, Jones acquired:

¹ Two other portions of West Baden Common were also conveyed prior to 1957. These portions are not relevant to the dispute here.

Ninety-eight feet (98) of West Baden Common adjoining [L]ot 21 . . . , and extending to the Shore line of Stuart Lake. . . . This land having a frontage of ninety-eight (98) feet along the shore of Stuart Lake in a southeasterly direction from a point on the shore ninety-eight (98) feet from the northwest corner of Lot 22.

Before appellant's family acquired West Baden Common, their predecessor-in-interest informed them that the boundary lines of the adjacent properties, including Lot 21 and the property described in the Jones deed, extended to the water to "give a footage equal to what they had before facing the Commons," but that the boundary lines of appellant's lot "angled out to provide" a "vastly increased amount of shoreline." Respondents acquired title to Lot 21 and the property described in the Jones deed in July 1999.

The location of the boundary line between Lots 20 and 21 became problematic following respondents' acquisition of their property. As a result, appellant hired Mark Jahner to prepare two surveys of his property, both of which Jahner completed in 2010. In Jahner's first survey, he extended the boundary in a straight line to the shore. In his second survey, Jahner identified two boundary line alternatives: one extending in a straight line as in his first survey and a second extending at a southwest angle. The second boundary line nearly intersects with a 1.5-inch metal shaft that Jahner located by the lakeshore. The metal shaft has since been removed, and the parties dispute whether the shaft was intended to serve as a boundary marker.

At trial, the parties presented testimony from additional surveyors hired to interpret the Jones deed in order to establish the location of the disputed boundary line. Respondents' surveyor testified that the second portion of the Jones deed description,

which stated “[t]his land having a frontage of ninety-eight (98) feet along the shore of Stuart Lake in a southeasterly direction from a point on the shore ninety-eight (98) feet from the northwest corner of Lot 22,” was “vague” and “confus[ing].” He stated that the call line described by this language terminated along the shoreline, which fluctuated as the water level of the lake changed. He testified that fluctuations in the water level would therefore cause the boundary line to change as well. Respondents’ surveyor stated that, though there were methods to create boundaries that accounted for variations in shorefront property, the second portion of the description should be disregarded to ensure that the boundary line remained fixed over time. He testified that the first portion of the deed, which described “[n]inety-eight feet (98) of West Baden Common adjoining [L]ot 21 . . . , and extending to the Shore line of Stuart Lake. . . ,” required that the boundary line be extended in a straight line. Using this interpretation, he prepared a survey that measured the shoreline described in the Jones deed to be more than 180 feet long rather than the 98 feet described in the deed.

Appellant’s additional surveyor testified, however, that he could use information ascertained from field work to create a boundary line that was consistent with the entire deed description. He determined that, if the boundary line extended southwest through the 1.5 inch shaft that Jahner located, the shoreline conveyed to respondents was consistent with the 98 feet of shoreline frontage described by the Jones deed. To account for fluctuations in the lakeshore, appellant’s surveyor consulted the original survey of the parties’ property, calculated the point where the lot line extended to intersect the lake on that survey, and used that measurement to establish boundary lines previously measured

along the lakeshore. Based upon this information, appellant's surveyor testified that the Jones deed described a boundary line that extended from the common corner of Lots 20 and 21 at a southwest angle, through the iron shaft, and to the shore of Stuart Lake.

With respect to his adverse-possession claim, appellant testified that he built the gravel driveway several years ago and stated that he had continued to bring gravel to the driveway "throughout the years." His surveyor determined that the driveway encroached three feet onto a portion of respondents' property and extended for approximately 45 feet. Respondents, however, testified that appellant did not construct the gravel road until 2002 or 2003, and that they believed the road did not extend onto their property. Respondents' neighbor concurred with this assertion, testifying that he never saw the gravel road extend onto respondents' property. Respondents' surveyor also testified that the gravel road did not extend into respondents' lot.

Appellant filed suit in September 2011, asserting he was the record owner of the disputed area of West Baden Common and that he owned a portion of Lot 21 by adverse possession. Respondents filed counterclaims for, among other things, adverse possession and determination of the boundary line. The district court ordered judgment in favor of respondents on both issues. This appeal follows.

D E C I S I O N

I

Appellant challenges the district court's determination of the boundary line between the parties' properties, asserting that the district court's determination of the boundary line is based upon an erroneous interpretation of the Jones deed. In a

boundary-dispute action, the district court's findings of fact are not disturbed unless clearly erroneous. *Allred v. Reed*, 362 N.W.2d 374, 376 (Minn. App. 1985), *review denied* (Minn. Apr. 18, 1985). Findings of fact are clearly erroneous "only if they are not reasonably supported by the evidence," which is viewed in the light most favorable to the prevailing party. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999); *Theisen's, Inc. v. Red Owl Stores, Inc.*, 309 Minn. 60, 66, 243 N.W.2d 145, 149 (1976). The determination of a boundary line is "awarded the same deference as any other factual determination." *Allred*, 362 N.W.2d at 376.

Where, as here, the location of a boundary line is based upon the construction of a deed, we consider whether the district court clearly erred by determining the boundary line actually described in the deed. The primary objective in construing a deed is to ascertain and give effect to the parties' intent. *Dittrich v. Ubl*, 216 Minn. 396, 406, 13 N.W.2d 384, 390 (1944). When the parties' intent is apparent from the language of the deed alone, the proper construction of a deed is a question of law. *Mollico v. Mollico*, 628 N.W.2d 637, 641–42 (Minn. App. 2001). But if the written description is ambiguous, the proper construction of the deed is a question of fact. *See Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979) (applying rule in the interpretation of an ambiguous contract). At oral argument, the parties agreed that the relevant language of the Jones deed was unambiguous.² We therefore consider whether the

² The parties acknowledged that surveyor testimony was necessary to depict the boundary described by the deed, but agreed that this testimony did not constitute extrinsic evidence necessary to interpret the deed description.

district court erred as a matter of law in establishing the boundary lines actually described by the unambiguous deed.

Here, the second portion of the relevant language in the Jones deed conveyed: “. . . This land having a frontage of ninety-eight (98) feet along the shore of Stuart Lake in a southeasterly direction from a point on the shore ninety-eight (98) feet from the northwest corner of Lot 22.” But the district court expressly disregarded this language in the deed in determining the boundary line. The district court found that giving effect to this language “would result in a consistently changing portion of land conveyed by the grantor to the [respondents],” determined that the remaining language of the deed description was “most reasonably construed as a straight line,” and found that the survey prepared by respondent’s surveyor was the more “practical” interpretation of the parties’ deeds. The district court concluded that the boundary proposed by respondents’ survey was “the most reasonable construction of the intent of the grantors.”

We disagree with the district court’s conclusion. Here, a boundary line consistent with the deed description as a whole extends from the common corner of Lots 20 and 21 to a point on the shore, which provides respondents 98 feet of shoreline.³ But the district court’s designation of the boundary line plainly contradicts the second portion of the historic deed description and instead provides respondents over 180 feet of shoreline instead of 98 feet. Nothing in the plain language of the Jones deed or subsequent conveyances indicates that the grantors intended to convey shoreline greater than 98 feet.

³ This interpretation of the deed description is best depicted by the survey prepared by appellant’s surveyor, which is exhibit six.

We therefore conclude that the district court erred in establishing the boundary lines described by the unambiguous Jones deed.⁴

We acknowledge the district court's legitimate concerns regarding the effect that fluctuations in water level may have on boundaries that are based upon points located on a shoreline. But these small fluctuations do not materially affect the conveyance of lakefront property and should not alter a court's interpretation of an otherwise unambiguous deed. And here, each party's surveyor testified that recognized methods exist to determine boundary locations while accounting for the fluctuations of any given lake. We encourage courts to use these methods to ensure that boundary lines are determined consistent with the plain language of deeds.

Because the district court's determination of the boundary line is inconsistent with the unambiguous language of the Jones deed, we conclude that its determination of the boundary line was clearly erroneous. We therefore reverse the judgment of the district court and remand for the district court to issue an order determining the boundary line consistent with our interpretation of the deed. We also note that respondents raised additional claims to the district court that were not addressed in the district court's order. Because we have reviewed the record and concluded that our ruling is dispositive of these issues, the district court need not address respondents' remaining claims on remand.

⁴ In addition, our interpretation of the Jones deed is consistent with the prior owner's description of West Baden Common and is supported by the location of the iron shaft in Jahner's second survey. Although this evidence is not dispositive of our analysis, it does support appellant's assertion that the grantors intended that the boundary line extend to Stuart Lake at a southwest angle.

II

Appellant also argues that the district court's findings of fact related to his adverse-possession claim are insufficient and unsupported by the evidence. To establish ownership by adverse possession, a party must demonstrate actual, open, hostile, exclusive, and continuous possession for the statutory period of 15 years. Minn. Stat. § 541.02 (2012); *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W.2d 458, 462 (1972). The burden is on the party seeking title to prove these elements by clear and convincing evidence. *Ehle*, 293 Minn. at 189, 197 N.W.2d at 462. Whether the elements of adverse possession are satisfied is a question of fact, which this court reviews for clear error. *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. App. 2003).

Here, the district court determined that there was “insufficient evidence to establish [appellant’s] claim of adverse possession to that portion of Lot 21” At trial, the parties offered conflicting testimony regarding the location of the gravel road and the year that the road was constructed. This testimony is relevant to establishing whether appellant exercised actual possession of respondents’ property and whether he did so continuously for 15 years. Whether the elements of adverse possession are met is largely fact-intensive and based heavily on the weight and credibility given to witnesses’ testimony. *Ganje*, 659 N.W.2d at 269. We give great deference to the district court’s credibility determinations. Minn. R. Civ. P. 52.01. Given the conflicting evidence offered on this claim, we cannot conclude that the district court clearly erred by finding that appellant failed to meet his burden of proof. We therefore affirm the district court’s decision to deny appellant’s claim for adverse possession.

Affirmed in part, reversed in part, and remanded.