

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARK F. NYE and LINDA L. NYE
Plaintiffs,

v.

DILLON T. SHIPMAN
Defendant,

MARK F. NYE and LINDA L. NYE
Plaintiffs,

v.

DILLON T. SHIPMAN, JAMES R. SHIPMAN,
DENISE J. NEFF and RANGE RESOURCES
– APPALACHIA, LLC.,
Defendants

CIVIL ACTON NO. 15 - 187

[CONSOLIDATED WITH]

CV NO.: 16 - 790

OPINION AND VERDICT

Before the Court is an action to quiet title and for ejectment filed by Mark F. Nye and Linda L. Nye, Plaintiffs, as to their property in Lewis Township, known as Lycoming County Tax Parcel No. 24-268-173B (“Nye Parcel”). At issue is the location of part of the southern boundary line from of the Nye Parcel which is also the northern boundary of the adjoining property known as Lycoming County Tax Parcel No. 24-268-173 (“Shipman Parcel”).

Defendant Dillon T. Shipman, owns the surface of the Shipman Parcel and shares ownership of the subsurface rights to that parcel with his parents, Defendants James T. Shipman and Denise J. Neff. Both properties come from a parent parcel. The area in dispute consists of approximately 2.2 acres (the “Disputed Area”). Following a non-jury trial held on June 14, 2017 and upon consideration of briefs submitted after trial, the Court makes the following findings of fact, conclusions of law and verdict.

FINDINGS OF FACT

1. The Court adopts the findings of fact submitted by stipulation of the parties, as amended

on the record, and incorporates those stipulations of fact by reference as if fully set forth here. However, the Court restates some of stipulations of fact here as findings for ease of reference.

2. The legal description is the same in the Deeds in the chains of title for both the Defendants' Property and the Plaintiffs' Property, as follows:

“...thence along the North line of said road [Upper Bobst Mountain Road] in an Easterly and Northerly direction to a wooden light pole in said road; thence in an Easterly direction at right angles to said road to a point in line of land now or formerly of Phelps or the Goodwill Hunting Club...” [emphasis added]

3. Michael Maneval, a professional licensed surveyor and expert for the Nyes, credibly testified as to the boundary line.
4. There are no course or distances or metes and bounds in the deed description.
5. There are no natural monuments.
6. The deed description was not ambiguous.
7. The deed calls for a monument, a wooden light pole in the road.
8. The wooden light pole is a man-made monument.
9. All relevant deeds indicate a 58 acre quantity, more or less, for the Nye parcel.
10. Maneval credibly opined that the wooden light pole referred to in the Deed is an electric pole in the circumstances of this case.
11. Maneval credibly opined that the wooden light pole referred to in the Deed is the first electric pole you first come to traveling North on the right hand side of the road or East side of the road.
12. Maneval credible opined that there is no other utility pole which he believes to be the correct monument.

13. To determine acreage, everything on the West side of the road is added up and the East side of the road is calculated to obtain the correct acreage.
14. Using the first electric pole you come to traveling North on the right hand side of the road yields nearly 58 acres.
15. There was insufficient evidence that Defendant Range Resources-Appalachia, LLC has asserted a claim as to the disputed area.
16. There was insufficient evidence to support the counter-claim.

CONCLUSIONS OF LAW

1. The Nyes met their burden of proof of showing that the boundary line is as described by the testimony of their expert.
2. The deed description was not ambiguous.
3. Where no course or distances or metes and bounds or natural monuments are in the deed description, the man-made monuments and acreage amounts specified in the deed are significant in determining the boundary line.
4. The wooden light pole referred to in the Deed is the first electric pole you first come to traveling North and is shown on the Vassallo sketch as "NYE CLAIMED LINE." on the right hand side of the road or East side of the road and is consistent with the deed description.
5. There was insufficient evidence that Defendant Range Resources-Appalachia, LLC has asserted a claim as to the disputed area.
6. There was insufficient evidence to support the counter-claim.

DISCUSSION

In an action to quiet title, plaintiff has the burden of proving title by a “fair preponderance of the evidence.” Doman v. Brogan, 405 Pa. Super. 254, 263, 592 A.2d 104, 108 (Pa. Super. 1991). For ejectment, the party must establish the right to immediate exclusive possession. Id. In boundary disputes, typically the language of the deed controls, unless the deed is ambiguous. “[W]here there is a conflict between courses and distances or quantity of land and natural or artificial monuments, the monuments prevail.” Plum Hallow Hunting Club, Inc. v. Fraker, Nos. 40 of 2009-C, 376 of 2008-C, 274 of 2006-C, 2014 Pa. Dist. & Cnty. Dec. LEXIS 2794, at *57 (Pa. C.P. Franklin Feb. 6, 2014), citing, Doman[v. Brogan], 405 Pa. Super. 254, 257,] 592 A.2d [104] at 110 [(Pa. Super. 1991)] (quoting Roth[v. Halberstadt], 258 Pa. Super. 401, 392 A.2d [855] at 857[(Pa. Super. 1978)]. While typically not material to a boundary dispute, acreage becomes a greater and at times material factor when there are no course or distances or metes or bounds or natural monuments in the deed. See, e.g., Hoover v. Jackson, 362 Pa. Super. 532, 542, 524 A.2d 1367, 1371-72 (Pa. Super. 1987)

In this case, a fair preponderance of the evidence supports the finding that the correct location of the boundary line in dispute is shown on the Vassallo sketch as “NYE CLAIMED LINE” as determined by the wooden pole claimed by Plaintiffs. A common sense reading of the deed description in this case supports the credible testimony of Mr. Maneval that the first light pole perpendicular to Upper Bobst Mountain Road triggers the right angle and boundary line to the Goodwill Hunting Club property. The Deed description does not dictate that the light pole be on the East or West of Upper Bobst Mountain Road. No course or distances or metes and bounds or natural monuments are in the deed so that acreage described in the deed provides support for Maneval’s opinion.

Accordingly, the Court enters the following verdict.

VERDICT

AND NOW, this 30th day of June 2017, for the foregoing reasons, the Court finds in favor of Plaintiffs Mark F. Nye and Linda L. Nye and against Defendants Dillon t. Shipman, James R. Shipman and Denis J. Neff. Plaintiffs have established that the correct location of the boundary line in dispute is shown on the Vassallo sketch as “NYE CLAIMED LINE,” with the western end being located at the wooden utility pole claimed by the Plaintiffs.

The Court finds in favor of Plaintiffs Mark F. Nye and Linda L. Nye and against Defendants Dillon t. Shipman, James R. Shipman and Denis J. Neff on the counterclaim.

The Court finds in favor of Defendant Range Resources-Appalachia, LLC and against Plaintiffs, Mark F. Nye and Linda L. Nye. However, the Court notes that res judicata or claim preclusion may bar a future assertion of a claim to the disputed area.

BY THE COURT,

June 30, 2017
Date

Richard A. Gray, J.

c: Kristine Waltz, Esquire
Bret Southard, Esquire
Michael K. Reer, Esquire
Harris, Finley & Bogle, PC
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