

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
April 8, 2008 Session

**BART LAY ET AL. v. HOWARD HOLMES ET AL.**

**Appeal from the Chancery Court for DeKalb County  
No. 2005T071 Ronald Thurman, Chancellor**

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**No. M2007-01978-COA-R3-CV - Filed August 12, 2008**

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In this boundary dispute, the trial court had to choose between conflicting surveys. After a trial, the court determined that the survey for the defendants was correct due to the failure of the plaintiffs' surveyor to locate a landmark beech tree. We affirm.

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

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Frank Buck, Smithville, Tennessee, for the appellants, Bart Lay and wife, Lisa Lay.

J. Hilton Conger, Smithville, Tennessee, for the appellees, Howard R. Holmes and wife, Anna R. Markham Holmes.

**OPINION**

The Dispute

This case involves a boundary dispute in a rural area of DeKalb County. Like many such disputes, it contains conflicting evidence, the recollections of elderly members of the community, errors in deeds, deeds describing the property boundaries by who borders the property rather than by landmarks, and boundary descriptions using landmarks such as trees which may or may not exist today.

The appellants, Bart and Lisa Lay, purchased their property from Maurene Gillette on January 13, 2005. The property description in their deed is as follows:

Beginning on a cedar near the Reynolds Mill Road between Med Neely and W. R. Neely house, and thence south with said road to A. M. Neely's corner, Roy Allen's corner; thence with said Allen's line to a stone; thence eastward with Neely and

Jones' line to a hickory in J. M. Webb's line; thence northward with Webb's and Jones' line to a white oak; thence westwardly with Monroe Jones' line to the hollow; thence with said hollow to a beech tree near the Boles Spring; thence northward to a sugar tree; thence northeastwardly to a stone where the sassafras used to stand; thence westward with J. M. Barnes' line to a white oak, thence southwestwardly to stone; thence southwestwardly with said Barnes' line to a white oak stump on the south side of Turkey Branch; thence westward with Barnes' line to a post oak in J. C. Cantrell's line to a hornbeam bush on east side of branch; thence eastward with Roy Allen's and A. M. Neely's line to the beginning, containing 273 acres, more or less.

This is the same description that is used in all the deeds for this property from 1937 to the present. Pre-1937 deeds contain one difference. The pre-1937 deeds read, "thence with said hollow to a beech tree near the Boles Spring; thence **northwestward** to a sugar tree," while the 1937 deed and those thereafter read, "thence with said hollow to a beech tree near the Boles Spring; thence **northward** to a sugar tree." (Emphasis added). The appellees, the Holmeses, contend that this wording change is a mistake.

To the north and east of the Lay property is the property of Howard and Anna Holmes. Their deed is a "bounded deed;" that is, it defines the property by who owns the property next to it. The description from the Holmes deed reads:

Bounded on the north by the lands of Cadis Luna; bounded on the south by the lands of J. M. Moore and C. L. Gillette; bounded on the east by Pedigo; and bounded on the west by Barnes, containing by estimation 49 acres, more or less.

The deed does contain a detailed description of a tract of land encompassed within the property's boundary description that had previously been sold and was therefore not included with the property. In the early 1960s, Vernon and Katie Adcock Hupper purchased what is now the Holmes property from her brothers, Manuel and Albert Adcock. When Vernon and Katie Hupper divorced in 1972, she sold her interest in the land to Vernon, but retained ownership of 1½ acres where their house was located. This is the tract described in the deed as not being included in the Holmes property. The deed in which Katie conveyed the property to Vernon allows her to use the water from the spring located on the property being conveyed to Vernon. They drew their water from a spring which Vernon "blasted out with dynamite" in Boles Hollow. Vernon built a spring house over the spot and used a pump to send water to their house.

The land in dispute is the boundary between the Lay (formerly Gillette) property and the Holmes (formerly Hupper/Adcock) property. Boles Hollow runs in a roughly north-south direction. Holmes has a survey prepared by Sam Denny that places the property line to the west of Boles Hollow. Lay has a survey prepared by David Bradley that places the property line to the east of Boles Hollow along an old fence line. The chancellor held a day long trial on this matter and concluded that the correct boundary line was as shown in the Denny survey.

## Standard of Review

This action was brought pursuant to Tenn. Code Ann. § 16-11-106, subsection (a) of which provides the chancery court with jurisdiction to hear and to determine boundary disputes. Subsection (b) provides that “it shall be sufficient to establish title in complainant where the complainant proves clearly that the complainant is the true owner of the lands described in the complainant’s bill.” “This simply means that the complainant must prove that he is the true owner or that he had become entitled to the possession of land adjacent to the boundary which he undertakes to have established....” *Carr v. Wilbanks*, 324 S.W.2d 786, 792 (Tenn. Ct. App. 1958).

The question of where the correct boundary lies is generally a question of fact. The factual findings of the trial court are reviewed de novo on the record with a presumption of correctness. Tenn. R. App. P. 13(d). The trial court’s evidentiary findings should be affirmed unless the preponderance of the evidence is against those findings. *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). “Any conflict of testimony requiring a determination of the credibility of witnesses rests in the first instance with the trial court and will be given great weight by the appellate court, unless other real evidence compels a contrary conclusion.” *Franks v. Burks*, 688 S.W.2d 435, 437-38 (Tenn. Ct. App. 1984). Conclusions of law are subject to de novo review with no presumption of correctness. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996).

## The Evidence

The trial transcript is bulging with testimony attempting to apply the deed descriptions to the properties in question. “Parol evidence is admissible to ‘apply’ the description contained in the written instrument....” *Parsons v. Hall*, 199 S.W.2d 99, 101 (Tenn. 1947); *see also Grand Valley Lakes Prop. Owners Ass’n, Inc. v. Cary*, 897 S.W.2d 262, 266-67 (Tenn. Ct. App. 1994). “If the agreement itself shows that some particular tract was intended, then parol proof is admissible to show the location and boundaries of the tract mentioned, and to enable the Court to find it.” *Parsons*, 199 S.W.2d at 101 (quoting *Dobson v. Litton*, 45 Tenn. 616, 619 (Tenn. 1868)). The testimony, which is lengthy, wandering, and contradictory, is summarized as follows:

Katie Pauline Adcock (by deposition). She owned the Holmes property from the early 1960s to 1972. Bob Jones and then another person owned the property before Ms. Adcock’s brothers, Manuel and Albert Adcock, bought it. Ms. Adcock bought Albert’s share and owned it with her brother Manuel. Manuel and Albert cut timber on the property, but not on the west side of the branch. Her husband, Vernon Hupper, bought Manuel’s part. At the time Ms. Adcock owned the property, the Gillettes owned the adjoining property. Because she got tired of “toting water,” Ms. Adcock testified that her husband, Vernon Hupper, went to the spring “and took half of a dynamite and blowed it out and fixed it and built the little old spring house to keep from it a raining and covering it up.” Eventually they ran the water “up to the house.” The spring house was located on their property and the boundary was south of there “a little piece.” She further stated that the boundary line was the branch, known as Boles Branch, that ran “plum down to the Luna farm” and into Sink Creek. Austin Barnes and the Gillettes owned one side, and she and her husband owned

the other. That branch was known as Boles Branch and it was in a steep hollow. They never put up a fence on the east side of the branch. When she and her husband divorced, Ms. Adcock sold her part to him except for an acre and a half where the house was situated. Vernon eventually sold the property to John Baker.

David Bradley. Mr. Bradley surveyed the Lay property. He identified Boles Branch as being in Boles Hollow, which was a big, deep hollow. He also identified the spring coming from the spring house Vernon Hupper built as being Boles Spring, sometimes called Jones Spring. He did not believe the boundary was the Boles Branch because he thought the deed would have said so. In looking for signs of a property line, Mr. Bradley went northward from the Boles Spring, as the Lay deed specified, and found "an old fence line, that runs generally northward." This fence runs up to a pipe and Maple tree that form the corner where, by agreements signed in 1979 (Baker-Luna) and 1983 (Luna-Barnes), the properties of Baker (Holmes's predecessor), Luna, and Barnes meet. The fence had no gates, which led Mr. Bradley to think it was a boundary fence. The fact that the fence led to the location in the boundary line agreements supported this view. Mr. Bradley further testified that the Denny survey does not line up with the boundary agreements. He also estimated that the disputed area was eight to ten acres.

On cross examination, Mr. Bradley explained why he believed that the spring at the spring house was Boles Spring. First, Mrs. Gillette told him so. Second, upspring from the spring house, he found no spring strong enough to support a household. The spring at the spring house ran fervently and there was a household right by it, "the old Jones place." He then noted that the Denny survey does not go near this spring. Furthermore, he did not find the beech tree called for in the deeds. He also admitted that his survey of the Lay property gave it approximately eight more acres than the deed states. On redirect, Mr. Bradley testified that the acreage discrepancy is not unusual, and it is not unusual to be unable to find a beech tree mentioned in a 1931 deed.

Robert Luna. He married Austin Barnes's granddaughter, who is the daughter of Eva Barnes. Eva Barnes is the current owner of the old Austin Barnes property. Mr. Luna had lived in the area most of his life. As a child, he worked on the Barnes property. He testified that the line between Barnes and Gillette ran east-west from the road to near the maple tree where the other properties meet. He also stated that the branch was always known, at least around the Barnes property, to be the Gillette's property. He stated that "You couldn't fence the hollow and the rest of it across Boles Branch to get - - to hold cattle. One would fall off a bluff up there and break their neck." He thought the Gillette property joined up with Baker, Barnes and Luna.

Maurene Gillette. She thought the branch was the boundary and she knew of no dispute over the property line at the time she sold the property to the Lays. She did not claim to own the spring where the spring house was, but she knew it as Boles Spring. She did not know where the beech tree was. She also stated that the Gillettes never maintained any fences on their property.

Johnny Adcock. He is the son of Manuel Adcock and the nephew of Katie Adcock. He understood that Boles Spring and Boles Hollow were on his Aunt Katie's property, but he did not

know where the property lines were. Johnny Adcock testified that his father, Manuel, would have known the boundary lines, but he never heard his father speak of the boundary line agreements between Baker and Luna and between Luna and Barnes.

Bart Lay. He testified that he signed the contract to purchase the Gillette property on December 2, 2004, and that at that time he knew of no dispute over the property line. Mrs. Gillette and Mr. Holmes showed him the spring house soon thereafter. Since he had experience surveying in the military, he was allowed to talk about where he thought the property line was located. He testified that the boundary agreements of Luna, Baker, and Barnes did not match up with the Denny survey prepared for Mr. Holmes in that “Mr. Denny’s survey severed Mr. Barnes from that agreed corner.”

On cross-examination, Mr. Lay admitted he did not know where the boundary lines were when he purchased the property. He also stated that before he closed on the property, Albert Adcock told him, “he thought that the Boles Spring was further up the hollow.” By the time he got the deed to the property, Mr. Lay knew that he and the Holmeses disagreed over the property line.

Albert Adcock. He used to own the Holmes property with his brother, Manuel. They purchased it from Everett Lawson. They cut timber off the property, even going across the branch. He indicated that the spring with the spring house was not Boles Spring. Back then, the spring where the spring house is “just run out in a couple of places or two down through there (pointing<sup>1</sup>). It run out in the branch bed . . . And when Vernon Hupper bought it . . . he cut it down and got the water all coming together where he could put a pump in it. So, the spring - - the way it looks right now, didn’t look like it did whenever we owned it.” When he owned the property, Albert Adcock knew of no boundary fences, and he was not aware of his sister, Katie Adcock, or her husband building any. He stated that he knew where the beech tree that is mentioned in the Lay deed was: “The beech tree is just . . . where the Lilly property joins the branch and joins Mr. Lay.” He described the tree as being two to three feet across and dead, “just a snag now.” Since beech trees grow slowly, he knew it was an old tree. There is a spring near the beech tree out of which his brother, Mitchell Adcock, pumps water. Albert believed the Denny survey was accurate. His brother Manuel knew the property lines.<sup>2</sup> On cross-examination, Albert indicated he did not know of the property line agreements of Luna, Baker, and Barnes. He also said he could not say for sure that the beech he identified was the one mentioned in the deeds. On redirect, he testified that the old fence line identified on the Bradley survey was not there when he owned the property and that John Baker, a subsequent owner, had built it.

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<sup>1</sup>The transcript is replete with instances where the witness points to a survey and the reader has little or no idea of the exact location under discussion. At least in this instance, the spring house is identified by a mark on the survey. When Mr. Adcock was asked the true location of Boles Spring, the transcript reflects he replied, “It’s right up in here (pointing). Right up in this area (pointing).”

<sup>2</sup>The Denny survey relied on Manuel Adcock to locate some of the property line between what are now the Lay and Holmes properties.

Mitchell Adcock. He is the brother of Albert, Manuel, and Katie Adcock. He currently owns what has been called the Lilly property on the Bradley survey, located on the southeastern border of the Holmes property. At the southwestern corner of his property, he corners with the property of Respie Johnson “by an old beech snag.” There is a spring about 150 feet north of the beech from which he pumps his water. When he and his brothers were timbering what is now the Holmes property, there were no fences. When asked who built the old fence line, he replied, “I think John Baker built them. He had some goats and he put the fence up to keep the goats in.” He also stated that he believed that the Boles Spring was the one from which he was pumping water. He had no doubt that the old beech that cornered his property with Repsie Johnson was the beech tree referred to in the Gillette/Lay deeds. He also testified that his brother Manuel should have known the property lines “better than anybody.” On cross-examination, he testified that the spring on the Holmes property was the Jones Spring, named for Bob Jones<sup>3</sup> who ran a shop there when Mitchell was a child. He also said there were several springs around there that ran year round.

Franklin Adcock. He is the brother of Albert, Manuel, Mitchell, and Katie Adcock. He testified about where they cut timber on the property.<sup>4</sup> While they were timbering, Ralph Gillette came by, but “they wasn’t no objections to none of it because they went back and we finished the timber cutting.” As for the property lines, Franklin said that Manuel “knowed it as good as anybody would have knowed it.” He also said that the beech tree that corners Mitchell’s property was the oldest one in the hollow, but he did not know if it was the one mentioned in the deeds or not.

Carolyn Caldwell. She is the daughter of Vernon and Katie Adcock Hupper. She was a little girl when her parents owned the Holmes property. She testified that she understood her parents owned both sides of the spring and both sides of the branch up to a certain point, not all the way to Sink Creek.

Howard Holmes. He purchased the property from John Baker in 1995.<sup>5</sup> He hired Sam Denny to survey the property and helped him conduct the survey. The 1996 Lilly survey, prepared by Larry Knott, indicates that Manuel Adcock showed the line between the Holmes and Lilly properties. Holmes testified that he and Mr. Lilly both agreed that was the line. Holmes further stated that:

A. Well, we got to talking with Manuel and we told Manuel that Mrs. Gillette had not responded to the letter that went out and asked him if he knew the - - remembered the

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<sup>3</sup>The deeds for the property show that Mr. Jones and his wife purchased the southern portion of the property in 1934 and the northern seven acres in 1940 from Shelie and Lula Luna. They sold both tracts together in 1946 to Bill and Bertie Melton. Mitchell Adcock indicated that Mr. Jones was also known as “Monkey-Bob” Jones.

<sup>4</sup>Unfortunately, this testimony, which would be very useful to this court, suffers from the same problem as much of the other testimony – too much pointing and not enough describing. For example, Franklin Adcock testifies: “And on down here we crossed this - - this is the main coming from the spring, isn’t it (pointing). . . We crossed this and we went in here (pointing) and we cut timber out of here (pointing).”

<sup>5</sup>Lynn Adcock, a real estate agent, showed him the property. She is the daughter-in-law of Manuel Adcock.

lines since he owned the property. And he said, yes, I know all those lines. I will show you. I will walk you and show you every single line up there.

Q. And did he do that?

A. Yes, he did.

Holmes also testified that Austin Barnes showed them the line between the Barnes and Holmes properties:

He met with us at 8 o'clock that morning down at Sink Creek, the corner of Sink Creek. He walked with Sam, myself and Sam's helper. We walked down Sink Creek along the bank and he pointed up and said, up there is a maple tree that's got a pin in it. And we told him, yes, we know about the maple with the pin because we found it. We found it and went down and got the boundary line agreement and it matched.

And he said, well, he said, from that maple tree, you come straight down to the bank here. And he said at this spot here, he said, this is where you corner with me. And Sam Denny put the pin horizontally in the side of the bank with Austin Barnes standing there.

. . . .

After we put that pin in the rock, we walked back along the creek and he walked over to the gum on the opposite of our branch. . . . And he said, this is the other corner. This begins the west corner.

Mr. Holmes also pointed out that his deed said he was bounded on the west by Barnes. However, if one applied the Bradley survey, he was not bounded by Barnes at all.

#### The Trial Court Ruling

The court found that the beech tree described in the deed is the one that is contained in Exhibit 17.<sup>6</sup> The court also found that "Boles Spring is actually the spring that Mr. Adcock's got his water flowing from right now." Furthermore, the court determined that the Adcock brothers were "probably in the best position to tell the Court what this property is." In light of these findings, the court determined that Mr. Bradley did not start at the correct place and that the Denny survey was the correct survey. Finally, since the Gillettes were not party to any of the boundary agreements, the Court deemed that the Baker-Luna and Luna-Barnes agreements did not govern this case.

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<sup>6</sup>Exhibit 17 is a picture of the beech tree that identifies the corner of Mitchell Adcock's property and Repsie Johnson's property.

## Analysis

This boundary line case has many features that make it difficult for a court to reach a decision. Boundaries are not well marked, memories fade, landmarks disappear or are very hard to identify. Yet, trial courts are charged with sifting through the evidence, evaluating the testimony, and reaching a conclusion to resolve the dispute. The appellate courts review the trial courts' decisions, governed and constrained by the standards that have already been mentioned.

The trial court found the Adcocks to be the most knowledgeable persons about the boundary lines. The court made a factual determination that the beech tree identified by Albert, Mitchell, and Franklin Adcock in Exhibit 17 was the tree mentioned in the deeds. It is the oldest in the hollow, it is clearly old enough to be the one in the deeds, and it is located near a spring. This is a crucial factual determination that is central to the dispute. Since the evidence does not preponderate against this finding, we affirm it.

The spring located near the beech tree was identified by Mitchell Adcock as Boles Spring. While others identified a spring to the north as Boles Spring, the presence of the beech tree by this spring lends much credence to the trial court's decision that this spring is indeed Boles Spring. We affirm this finding as well, since the evidence does not preponderate against it.

The trial court found the Denny survey to be the accurate survey. Implicit in this finding are two important points. First, this finding is an endorsement of the Holmeses' theory that the change from "northwestward" in the pre-1937 deeds to "northward" in the 1937 and subsequent deeds is a mistake. The Lays offered no testimony to explain this change of direction and no deeds recording any transaction which could have effected this change. Therefore, we concur with this first implicit point.

The second point implicit in the trial court's endorsement of the Denny survey is that the old fence line upon which the Bradley survey relies is not a boundary. Bradley believed it was a boundary because it ran northward as the Lay deed recited, it had no gates, and it ended up around the area where the boundary agreements came together. The error in the deeds undercuts Bradley's first reason. Testimony indicated that the fence was built by Mr. Baker, the prior owner of the property, to fence in his goats. This makes sense, in light of the fact that while a steep hollow may deter cows from wandering, steep terrain will not deter a goat. To keep the goats from wandering away up or down the hollow, a fence was a necessity. The fact that the fence ended up around the area where the boundary agreements came together is not a determinative factor. The apparent lack of gates is not determinative either. We concur with this second implicit point as well as with the trial court's determination that the Denny survey is the correct one.

The boundary agreements provide an interesting wrinkle in this case, but they are ultimately just that — interesting, but not very relevant. Only one agreement, the Baker-Luna agreement, was signed by the Holmeses' predecessor in interest, Mr. Baker. That agreement established the Baker-



Luna boundary. It has nothing to do with the Gillette-Baker boundary, so it has nothing to do with the Lay-Holmes boundary.

For the reasons expressed in this opinion, we affirm the trial court in all respects. Costs of appeal are assessed against the Lays and their surety, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE