

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Via v. Beckett

217 W. Va. 348 (2005) · Decided July 7, 2005

SUMMARY

The West Virginia Supreme Court of Appeals affirmed dismissal of William R. Via’s trespass and boundary dispute against Ralph and Joan Beckett. The court held that identical calls in the deeds describing the common boundary as N 10° 30' W for 150 feet established the boundary as a monument and left no genuine issue of material fact. The court concluded that summary judgment for the Becketts and dismissal of the case were proper.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Albright; Justice Files; Justice Starcher
JURISDICTION	West Virginia
DECIDED	July 7, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Via appealed from the Circuit Court of Raleigh County's order dismissing his trespass action after the court granted the Becketts partial summary judgment concerning the location of a disputed boundary line.
STANDARD OF REVIEW	Appellate review of an order granting partial summary judgment is de novo. Summary judgment is proper when there is no genuine issue of material fact and the record cannot support a finding for the nonmoving party.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	William R. Via v. Ralph Beckett, Joan Beckett

TOPICS

- title disputes
- summary judgment
- trespass
- real estate
- appellate procedure

PRACTICE AREAS

- real estate
- civil procedure
- appellate procedure
- torts

QUESTIONS PRESENTED

1. Whether the circuit court erred in finding that the deed call N 10° 30' W 150 feet was an adjoining-boundary monument establishing the common property line.
2. Whether the circuit court failed to give effect to the original grantor's intent by disregarding deed language describing the boundary as parallel to the Tobin Stover/Daniel Boone lot.
3. Whether identical courses and distances in deeds to adjoining tracts may establish the common boundary as a monument.
4. Whether summary judgment was proper where the established boundary showed no encroachment by the Becketts and therefore no trespass claim.

HOLDINGS

1. The identical call of N 10° 30' W 150 feet in the deeds for the adjoining Beckett and Simpson-Via parcels established the common boundary line.
2. Construing the deeds as a whole, the original grantor's intent was to place the mutual boundary at N 10° 30' W 150 feet, rather than to create a parallel-sided Beckett parcel.
3. Summary judgment for the Becketts was proper because the established boundary did not result in encroachment by the Becketts onto Via's property, leaving Via unable to establish trespass.

KEY QUOTATIONS

“Calls in a deed for an adjoining tract of land are calls for a monument, and where the location of such adjoining tract of land is certain it becomes a monument of the highest dignity.” (at 356)

“Having established that there remains no issue of material fact to be determined through trial or any other issues to sustain Via’s complaint, this Court finds that, it was not error for the Circuit Court of Raleigh County to enter an Order dismissing the case based upon its entry of an Order Granting Partial Summary Judgment in favor of Appellees. Affirmed.” (at 357)

FACTUAL BACKGROUND

The Becketts owned a parcel adjoining property later acquired by Via. Both the Beckett deed and the deed describing the Simpson-Via lot identified the common boundary by the identical call, N 10° 30' W 150 feet, although one surveyor believed other language in the Beckett deed supported a different, parallel boundary. The competing surveys produced differing conclusions about whether buildings encroached on the adjoining properties. The court concluded that the shared deed call established the boundary and that the Becketts' buildings did not encroach on Via's property.

PROCEDURAL HISTORY

Via filed suit on July 24, 2000, alleging that the Becketts trespassed by encroaching on the Simpson-Via lot. The circuit court granted the Becketts partial summary judgment on September 30, 2002, ruling that the identical deed call of N 10° 30' W 150 feet established the common boundary and that no genuine issue of material fact

existed. After the parties treated that ruling as effectively resolving Via's requested relief, the circuit court entered an order of dismissal on February 26, 2004. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 (1995)
- State ex rel. Smith v. Kermit Lumber & Pressure Treating Co., 200 W. Va. 221, 488 S.E.2d 901 (1997)
- Bowers v. Wurzburg, 205 W. Va. 450, 519 S.E.2d 148 (1999)
- West Virginia Department of Transportation, Division of Highways v. Robertson, No. 31770, 2005 WL 1124401 (W. Va. May 10, 2005)
- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Andrick v. Town of Buckhannon, 187 W. Va. 706, 421 S.E.2d 247 (1992)
- Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995)
- Kiser v. Caudill, 215 W. Va. 403, 599 S.E.2d 826 (2004)
- Matheny v. Allen, 63 W. Va. 443, 60 S.E. 407 (1908)
- West Virginia Pulp & Paper Co. v. J. Natwick & Co., 123 W. Va. 753, 21 S.E.2d 368 (1941)
- Maddy v. Maddy, 87 W. Va. 581, 105 S.E. 803 (1921)
- Belcher v. Powers, 212 W. Va. 418, 573 S.E.2d 12 (2002)
- Somon v. Murphy Fabrication & Erection Co., 160 W. Va. 84, 232 S.E.2d 524 (1977)
- Gauley Coal Land Company v. O'Dell, 144 W. Va. 730, 110 S.E.2d 833 (1959)
- Vandal v. Casto, 81 W. Va. 76, 93 S.E. 1044 (1917)
- Westover Volunteer Fire Department v. Barker, 142 W. Va. 404, 95 S.E.2d 807 (1956)