

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 2332

HARVEY FAMILY INVESTMENTS, L.L.C.

*KW*  
*BR*  
*JDD*

VERSUS

RICHARD C. HOWELL, MICHAEL F. HOWELL  
AND HENRY C. HOWELL, IV

Judgment Rendered: September 14, 2007

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Appealed from the  
Twentieth Judicial District Court  
In and for the Parish of West Feliciana, Louisiana  
Trial Court Number 18,089, Division A

Honorable L.J Hymel, Judge Ad Hoc

\* \* \* \* \*

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Harvey Family Investments,  
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Defendants -- Appellants  
Richard C. Howell, Michael F.  
Howell, Henry C. Howell, IV,  
Mary M. Howell Boudreaux,  
and Ola Mae W. Howell

\* \* \* \* \*

BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

WELCH, J.

In this boundary dispute, the defendants, Richard C. Howell, Michael F. Howell, Henry C. Howell, IV, Mary Margaret Howell Boudreaux, and Ola Mae W. Howell (collectively referred to as “the Howells”), appeal a judgment in favor of the plaintiff, Harvey Family Investments, L.L.C. (“Harvey Family”). Finding no manifest error in the judgment of the trial court, we affirm in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

The properties owned by Harvey Family and by the Howells are situated on opposite sides of Thompson Creek, a non-navigable stream that forms the boundary between East Feliciana Parish and West Feliciana Parish. The property owned by Harvey Family is described in various conveyance documents as being “bounded on the ... [e]ast by what is known as the Old Chambers Bluff, formerly Thompson Creek....” The property owned by the Howells is described as being bound on the north by Thompson Creek.

During the past 185 years, the location of Thompson Creek has moved within its established meander lines and it is presently on the western edge of the meander line. This boundary dispute between Harvey Family and the Howells arises out of a westward change in the course of Thompson Creek that occurred after December 1941, and at issue is the ownership of a piece of property situated between the centerline of an existing channel that lies within the 1941 channel of Thompson Creek (as shown on the plat of survey by Walter C. Snyder dated October 18, 1980) and the current channel of Thompson Creek.

On May 28, 2003, Harvey Family initiated this proceeding by filing a Petition to Establish Boundary alleging it owned immovable property in West Feliciana Parish adjacent to and contiguous with immovable property owned by the Howells in East Feliciana Parish. Harvey Family claimed that the common boundary between the properties had never been established with certainty, and

therefore requested that it be judicially established. The Howells answered the petition and alleged that the description of the property owned by them was incomplete and insufficient and that the acreage set forth in their property description was no longer accurate due to the westward movement of Thompson Creek. The Howells admitted that the properties were adjacent, but claimed that their properties were not contiguous, specifically pleading that their common boundary was Thompson Creek in its present location. The Howells claimed that alluvion and dereliction had altered the course and location of Thompson Creek, and therefore, had altered the boundary line between the respective properties in their favor. Thereafter, the Howells amended their answer to claim possession of the disputed area by adverse possession or acquisitive prescription.

Louisiana Civil Code article 792 provides that “[t]he court shall fix the boundary according to the ownership of the parties; if neither party proves ownership, the boundary shall be fixed according to limits established by possession.”

Harvey Family asserted to the trial court that the present channel of Thompson Creek was the result of an avulsion by artificial means due to gravel mining operations in the area from 1942 through the 1960’s. As such, Harvey Family argues that La. C.C. art. 503 should be used to determine the ownership of the land at issue.

Louisiana Civil Code article 503 provides: “When a river or stream, whether navigable or not, opens a new channel and surrounds riparian land making it an island, the ownership of that land is not affected.” Thus, Harvey Family contended that the ownership of the land between the existing channel that lies within the 1941 channel of Thompson Creek and the current channel of Thompson Creek was unaffected, and therefore, the boundary between Harvey Family’s property and the Howells’ property was unaffected by the movement of the creek.

Accordingly, Harvey Family contended that it should be declared owner of the land at issue and that the common boundary between their property and the Howells' property should be judicially established as the centerline of the existing channel that lies within the 1941 channel of Thompson Creek.

On the other hand, the Howells contended to the trial court that the westward movement of Thompson creek was the result of accretion and dereliction, and therefore, La. C.C. art. 499 should be used to determine ownership of the land at issue. Louisiana Civil Code article 499 provides:

Accretion formed successively and imperceptibly on the bank of a river or stream, whether navigable or not, is called alluvion. The alluvion belongs to the owner of the bank, who is bound to leave public that portion of the bank which is required for the public use.

The same rule applies to dereliction formed by water receding imperceptibly from a bank of a river or stream. The owner of the land situated at the edge of the bank left dry owns the dereliction.

Thus, the Howells contended that the land between the centerline of the 1941 channel of Thompson Creek and the current channel of Thompson Creek constitutes alluvion and dereliction, which inures to their ownership. Therefore, the Howells submitted that they should be declared owner of the land at issue and that the common boundary between their property and the Howells' property should be judicially established as the centerline of the current channel of Thompson Creek.

Alternatively, the Howells argued that since both parties agree that Thompson Creek is a non-navigable stream, La. C.C. art. 506 should be used to determine the ownership of the land at issue. Louisiana Civil Code article 506 provides: "In the absence of title or prescription, the beds of nonnavigable rivers or streams belong to the riparian owners along a line drawn in the middle of the bed." As such, the Howells contended that the boundary between each party's respective "riparian" property should be judicially established by a line drawn in

“the middle of the bed,” with the “bed” of Thompson Creek defined as its historical meander lines.

A trial on these issues was held on June 1, 2006,<sup>1</sup> and thereafter, on July 20, 2006, the trial court issued written reasons for judgment. In its reasons for judgment, the trial court established the boundary between Harvey Family’s property and the Howells’ property as the centerline of the existing channel that lies within the 1941 channel of Thompson Creek as shown on the survey of Walter C. Snyder dated October 18, 1980, and declared Harvey Family the owner of property between the current channel of Thompson Creek and the boundary it established. A judgment in conformity with the trial court’s ruling was signed on August 9, 2006, and it is from this judgment that the Howells have appealed.

On appeal, the Howells contend that the trial court erred in failing to fix the boundary of the riparian properties along the line drawn in the middle of the bed pursuant to La. C.C. art. 506, and in not determining the bed of Thompson Creek as being that portion of the stream covered in its ordinary state of water between the banks depicted as the historical meander lines of Thompson Creek.

The location of a boundary is a question of fact, and the determination of its location by the trial court should not be reversed absent manifest error. **Secret Cove, L.L.C. v. Thomas**, 2002-2498, p. 6 (La. App. 1<sup>st</sup> Cir. 11/7/03), 862 So.2d 1010, 1016, writ denied, 2004-0447 (La. 4/2/04), 869 So.2d 889. When the trial court’s factual findings are based on determinations regarding the credibility of witnesses, the trier of fact’s findings demand great deference and are virtually never manifestly erroneous or clearly wrong. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989).

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<sup>1</sup> On July 2, 2004, at a hearing on an injunction in these proceeding, numerous exhibits were introduced into evidence and several witnesses testified regarding title, ownership, and possession of the property in dispute. By joint motion of the parties, the exhibits and the transcript of the testimony of the witnesses were introduced into evidence at the trial on these issues.

In determining that the location of the boundary between Harvey Family's property and the Howells' property was the centerline of the existing channel that lies within the 1941 channel of Thompson Creek as shown on the survey of Walter C. Snyder dated October 18, 1980, the trial court noted in its reasons for judgment that "[o]ne of the major issues at trial was the cause and nature of the course change of Thompson's [*sic*] Creek in the early 1940's. That is, was it a slow natural change or a sudden man-made change." The trial court concluded that the course change of Thompson Creek "was caused over a short period of time by the operations of the Holloway Gravel Company" and that it was not changed "'successively and imperceptibly' as envisioned by [La. C.C. art.] 499." This conclusion is supported by the testimony of Margaret Beauchamp, A.C. McKowen, Jr., and George Alexander, all of whom were raised or lived on or around the property of Harvey Family, observed the gravel mining operations of the Holloway Gravel Company, and recalled that the change in the course of Thompson Creek was sudden and occurred over a short period of time.

The trial court's conclusion is also supported by the testimony of George J. Castille, III, Ph.D., an expert in geography and aerial photograph interpretation, who opined that "the shift of the channel [of Thompson Creek] from the eastern portion to the western portion was an avulsion," that it "occurred over a very short period of time," that it was "artificial," and that it was caused by the gravel mining operation. Considering this evidence, along with the other evidence contained in the record, particularly the aerial photographs of the property at issue dated December 28, 1941, March 23, 1959, and September 23, 1996, we cannot say that the trial court's factual finding in this regard was manifestly erroneous.

As we have found no error in the trial court's factual finding that the westward change in the course of Thompson Creek was a sudden man-made change, we also find that the trial court's application of La. C.C. art. 503 to this

dispute was proper. As such, the boundary between Harvey Family's property and the Howells' property was unaffected by the westward movement of Thompson Creek. Thus, the trial court's determination that Harvey Family was the owner of the property situated between the centerline of the existing channel that lies within the 1941 channel of Thompson Creek and the current channel of Thompson Creek, and its determination that the location of the boundary between Harvey Family's property and the Howells' property was the centerline of the existing channel that lies within the 1941 channel of Thompson Creek is supported by the record. Accordingly, we hereby affirm the August 9, 2006 judgment of the trial court in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

All costs of this appeal are assessed to the defendants/appellants, Richard C. Howell, Michael F. Howell, Henry C. Howell, IV, Mary Margaret Howell Boudreaux, and Ola Mae W. Howell.

**AFFIRMED.**