

STATE OF MICHIGAN
COURT OF APPEALS

BENJAMIN J. GALE and LUANNE M. GALE,

UNPUBLISHED
August 20, 1996

Plaintiffs-Appellants,

v

No. 181572
LC No. 93-95 CH

LORA STAMPER,

Defendant-Appellee.

Before: Murphy, P.J., and O’Connell and M.J. Matuzak,* JJ.

PER CURIAM.

In this property dispute stemming from conflicting surveys, plaintiffs appeal as of right the order of the circuit court upholding the boundary line claimed by defendant. We reverse.

In the 1930s, William Armstrong, the surveyor for the Washtenaw County Road Commission, surveyed property in Washtenaw County and established the southwest corner of section 18, Ypsilanti Township. Armstrong placed a monument in the form of a piece of iron pipe at the point he determined to be the true location of the corner of the township. We will refer to this as the Armstrong point hereinafter.

The Armstrong point was used regularly for many years and, by all accounts, “ha[d] a very good chain of record” Twice during the 1970s, land recordation certificates were filed “monumenting” the Armstrong point as the southwest corner of section 18, Ypsilanti Township.

In 1976, William Lokey surveyed the property that is the focus of this dispute. Lokey did not use the Armstrong point as the starting point for his survey. In fact, the manner in which Lokey determined the starting point for his survey is unclear from the record before us. In any event, Lokey

* Circuit judge, sitting on the Court of Appeals by assignment.

independently determined the southwest corner of section 18, Ypsilanti Township. We will refer to this as the Lokey point.

Needless to say, the Lokey and Armstrong points do not correspond. It appears that no surveyors, other than Lokey himself, have used or relied upon the Lokey point as the starting point for any survey.

In 1978, defendant purchased the property that is the subject of this dispute. Defendant's perception of her property is based on a survey conducted using the Lokey point as the starting point. In 1991, plaintiffs purchased the neighboring property. Their perception of the expanse of their property is based on a survey using the Armstrong point as the starting point.

The surveys overlap. In late 1991, defendant erected a fence on the Lokey boundary line. Plaintiffs objected, contending that defendant had erected a fence on their property as described in the survey they had had done based on the Armstrong point.

Plaintiffs brought suit. The circuit court ruled that the disruption of established boundary lines should be avoided, and proceeded to establish the Lokey monument as the true corner of section 18, Ypsilanti Township. The court failed to explain why it found surveys based on the Lokey point to be more "established" than surveys based on the Armstrong point. Plaintiffs have appealed. We review the lower court's findings of fact for clear error and its conclusions de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993).

It has long been the rule that settled boundaries shall be allowed repose and shall not be disturbed. *Daley v Gruber*, 361 Mich 358, 362; 104 NW2d 807 (1960). As set forth in *Adams v Hoover*, 196 Mich App 646, 651-652; 493 NW2d 280 (1992), quoting 12 Am Jur 2d, Boundaries, § 61, p 599 (emphasis added by *Adams*),

In surveying a tract of land according to a former plat or survey, the surveyor's only duty is to relocate, upon the best evidence obtainable, the courses and lines at the same place where originally located by the first surveyor on the ground. In making the resurvey, he has the right to furnish proof of the location of the lost lines or monuments, not to dispute the correctness of or to control the original survey. *The original survey in all cases must, whenever possible, be retraced, since it cannot be disregarded or needlessly altered after property rights have been acquired in reliance upon it.* . . . the stability of boundary lines is more important than minor inaccuracies or mistakes.

In short, because incalculable mischief would be worked by reliance upon subsequent monuments deemed to be more accurate, a surveyor should direct "his attention to the ascertainment of the actual location of the original landmarks . . . and if those were discovered they must govern." *Diehl v Zanger*, 39 Mich 601, 605 (1878).

In the present case, we find the circuit court's determination that the Lokey point should be preferred over the Armstrong point to be clearly erroneous. *Gorte, supra*. The Armstrong point was

first recognized in the 1930s; in contrast, the Lokey point was first used in the 1970s. The Armstrong point has been relied upon by many surveyors for decades; the Lokey point appears to have used only by Lokey himself, and in only a handful of surveys. Given the lengthy history of the Armstrong point and the many surveys conducted in reliance on it, reliance on the Armstrong point would disrupt far fewer surveys than reliance on the Lokey point. Therefore, given the record evidence, we conclude that the circuit court clearly erred in preferring the Lokey point to the Armstrong point. Accordingly, we reverse.

Plaintiffs also contend that defendant did not acquire rights in the disputed tract of land through adverse possession. Given that the lower court made no finding that defendant had adversely possessed the land, plaintiff's argument appears to have been raised in anticipation of defendant raising such an issue on appeal. However, because the circuit court did not address this issue and because defendant has not raised the issue on appeal, we decline to address it.

Reversed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Michael J. Matuzak