

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (4th) 180387-U

NO. 4-18-0387

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 26, 2019

Carla Bender

4th District Appellate Court, IL

PAMELA S. McWETHY, a/k/a PAMELA S. MORRISSEY,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Douglas County
CAROLINE J. MAST, n/k/a CAROLINE J. LUTH,)	No. 16CH18
Defendant-Appellant,)	
and)	
MARK B. HELMUTH and UNKNOWN)	
OCCUPANTS of 804 NORTH CARICO, TUSCOLA, ILLINOIS,)	Honorable
Defendants.)	Gary A. Webber,
)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Cavanagh and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's decision was not against the manifest weight of the evidence where the court properly declined to apply the apportionment rule.

¶ 2 In May 2016, plaintiff, Pamela S. McWethy, a/k/a Pamela S. Morrissey, brought an action for forcible entry and detainer to resolve a dispute over the boundary between the adjoining properties of plaintiff and defendants, Caroline J. Mast, n/k/a Caroline J. Luth, Mark B. Helmuth, and unknown occupants of 804 North Carico, Tuscola, Illinois. Plaintiff obtained a temporary restraining order (TRO) from the court, staying further construction of defendants' new garage on the property at issue. Subsequently, defendants filed a countercomplaint alleging in part a claim for quiet title. In April 2017, plaintiff amended her original complaint to add a

claim for quiet title. Following a November 2017 bench trial, the circuit court found plaintiff was the owner in fee simple and entitled to possession of the property in question. Specifically, the court found plaintiff's ownership extended to the west wall of the garage constructed by defendants.

¶ 3 Defendants appeal, arguing a deficiency in property in the block where the property in question is located required application of the apportionment rule. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties' properties are located in a part of block one of Finney and Wallace's Subdivision, a part of Mather's Northeast Addition to the City of Tuscola. The Ziegler family owned lot one, lot two, and the east 15 feet of lot three except the south 82 feet thereof from a date prior to 1947. In 1956, William Ziegler and Dora Mary Ziegler divided the property and deeded the east 15 feet of lot three and the west 62 feet of lot two except the south 82 feet thereof to Elmo G. Ziegler and Ethel Irene Ziegler. In 1973, Dora Mary Ziegler deeded the remainder of the property to Elmo G. Ziegler and Ethel Irene Ziegler. In 1978, Elmo G. Ziegler and Ethel Irene Ziegler deeded lot one except the south 82 feet thereof and lot two except the south 82 feet and the west 62 feet thereof to Larry D. Quick and Deborah F. Quick. In 2001, Ethel Irene Ziegler deeded the east 15 feet of lot three and the west 62 feet of lot two except the south 82 feet thereof to plaintiff. In 2006, the Quicks deeded their property—lot one except the south 82 feet therefore and lot two except the south 82 feet and the west 62 feet thereof—to defendants.

¶ 6 In July 2015, defendants started repairs on an old detached garage on their property. At that time, a dispute arose between defendants and plaintiff with regard to the property line. Specifically, the controversy existed as to where plaintiff's east property line ended and where defendants' west property line began. Plaintiff argued she possessed the

property up to the west wall of defendants' old garage. Subsequently, defendants hired a land surveyor, M. Wayne Parsley, to determine the exact boundary line between plaintiff's and defendants' properties.

¶ 7 Parsley found less property than described in the deeds. Parsley measured only block one and stated, "The overall measurement of the block seemed to be less than the record measure shown on the original plat." Specifically, Parsley found a deficiency in the dimensions of defendants' property of 10 to 12 feet, where 8 feet of defendants' property was in use by plaintiff. Parsley based his legal description and block measurements on an east section line. He did not measure using a west section line. Parsley stated that a legal description is determinable using more than one section line.

¶ 8 In April 2016, defendants decided to demolish the old detached garage and construct a new garage in its place. When defendants started digging footing for the new garage—moving it several inches westward—plaintiff initiated proceedings in the circuit court. Plaintiff received a TRO from the court staying further construction of the new garage. In June 2016, plaintiff commissioned a surveyor, Robert Cox, to perform a land survey of her property as well as defendants' property, with Cox being aware that there was an active boundary-line dispute.

¶ 9 Cox, an expert in land surveys and land research, testified that section lines are fixed points used to determine the starting point for a legal description. For the property in question, Cox surveyed and analyzed boundary lines originating from the west section line as well as the east section line, but his block measurements of all four blocks—including block one—utilized a west section line starting point. Specifically, Cox located a survey marker at the northwest corner of block three, and the northwest and northeast corners of block four, which he

stated matched up with the west section line starting point. Cox located an iron pipe on the west side of plaintiff's property that he took to mark the northwest corner of her property.

Additionally, Cox identified a cut metal fence post located near the northwest corner of defendants' garage as the northeast corner of plaintiff's property. Cox testified that placing an iron pipe is common practice to mark a boundary line. Cox found the survey markers in the four blocks were consistent with the west section line starting point he used.

¶ 10 Cox testified that in his experience, a surveyor must analyze "what's actually on the ground" when faced with competing origination points for boundary lines. Cox found using the west section line appropriate because plaintiff's shed, fence, and driveway are within her property when measured with a west section line but they are not on plaintiff's property according to Parsley's east section line measurement.

¶ 11 Both surveyors used the measurements found in the original 1888 plat of survey of Mather's Northeast Addition to Tuscola. While discrepancies in the measurements of the 1888 plat led to some confusion, Cox found the record dimensions of plaintiff's east to west property of approximately 77 feet supported his measurements of plaintiff's property. Ultimately, Cox concluded that defendants' new garage overlapped the correct property line by "a foot or a little bit more to the west." Cox stated the fact that his measurements were within a foot of the plat of 1888 was "pretty good." Cox testified that in a perfect scenario a surveyor measuring from the west or the east would come up with the same number of feet; however, that is not always the case.

¶ 12 Also, in June 2016, defendants filed a countercomplaint alleging in part a claim for quiet title. In April 2017, plaintiff amended her original complaint to add a claim for quiet title. The trial court held a bench trial on two consecutive days in November 2017 where the

court heard and considered the oral and documentary evidence discussed above. Following the bench trial, the court found plaintiff was the owner in fee simple and entitled to possession of the property in question. Specifically, plaintiff's ownership extends to the west wall of a new garage constructed by defendants

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendants argue that a deficiency in property in block one required application of the apportionment rule.

¶ 16 A. Standard of Review

¶ 17 Here, following a bench trial, our standard of review asks whether the decision is against the manifest weight of the evidence. *Wade v. Stewart Title Guaranty Co.*, 2017 IL App (1st) 161765, ¶ 59, 82 N.E.3d 763. " 'A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence.' " *Id.* (quoting *Eychaner v. Gross*, 202 Ill. 2d 228, 252, 779 N.E.2d 1115, 1130 (2002)). "The manifest weight of the evidence standard affords great deference to the [circuit] court because the [circuit] court is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony." *Id.*

¶ 18 B. The Apportionment Rule

¶ 19 "The law is well established that where a tract of land is subdivided into lots, title to which becomes vested in different persons, and the actual aggregate dimensions of such lots are either less or more than the aggregate dimensions called for in the plat, the deficiency or excess is borne by all the lots in proportion to their areas as indicated by the plat." *Evers v.*

Watkins, 72 Ill. App. 3d 113, 115, 390 N.E.2d 612, 614 (1979). "This is the so-called apportionment rule and its application necessarily requires the changing of the boundaries of all of the lots in the block to apportion the shortage or excess to each, thereby unsettling all lot lines." *Id.* at 116.

¶ 20 Defendants argue a deficiency exists in block one where their property is located. Therefore, the apportionment rule applies and the court should allocate the deficiency among all property owners in block one. Plaintiff disagrees and argues the evidence failed to show a deficiency in property existed. We agree with plaintiff.

¶ 21 Cox, the land surveyor commissioned by plaintiff, surveyed and analyzed boundary lines originating from the west section line and the east section line but ultimately utilized a west section line starting point to conclude that defendants' new garage overlapped over the correct property line by "a foot or a little bit more to the west." Cox stated the fact that his measurements were within a foot of the plat of 1888 was "pretty good." Cox found the survey markers in the four blocks consistent with the west section line starting point he used. Specifically, Cox located a survey marker at the northwest corner of block three, the northwest and northeast corners of block four, and an iron pipe on the west side of plaintiff's property—in block one—to mark the northwest corner of her property.

¶ 22 While discrepancies in the 1888 plat led to some confusion, Cox found the record dimensions of plaintiff's east to west property of approximately 77 feet supported his measurements of plaintiff's property. Cox testified that in his experience, a surveyor must analyze "what's actually on the ground" when faced with competing origination points for boundary lines. Cox found the west section line survey fit to the parties' usage of their properties best where plaintiff's shed, fence, and driveway are within her property when measured with a

west section line but they are not on plaintiff's property according to Parsley's east section line measurement.

¶ 23 Defendants question Cox's testimony by asserting that Parsley, the land surveyor commissioned by defendants prior to this action, found less property than described in defendants' deed. However, Parsley measured only block one and based his legal description and block measurements on an east section line. He did not measure using a west section line. Parsley also acknowledged that there could be more than one section line from which a legal description can be determined. Defendants argue this court should reverse and remand with directions to allow defendants to initiate further proceedings to apply the apportionment rule and join other necessary block one property owners.

¶ 24 The application of the apportionment rule affects all lots; therefore, "relief cannot be provided until all interested and necessary parties are joined in one action." *Id.* Defendants argue the holding in *Evers* is analogous to their case. In *Evers*, the reviewing court reversed and remanded to provide the litigants the opportunity to join necessary parties as to warrant the application of the apportionment rule. *Id.* The court determined that it was not clear how the surveyor completed his survey and arrived at his results. *Id.* at 115. The surveyor readjusted the location of the boundaries of the block on his survey and apportioned the deficiencies among the several lots on a *pro rata* basis. *Id.*

¶ 25 We find *Evers* distinguishable. Here, Cox gave extensive testimony about how he arrived at his boundary line. Moreover, his line determinations failed to change previously accepted lines. The circuit court heard testimony from both Cox and Parsley regarding their surveys. Neither Cox nor Parsley, in their surveys, apportioned deficiencies among property owners in block one.

¶ 26 Defendant fails to persuade where the circuit court found absent any property deficiency in block one where the property in question is located. The court considered oral and documentary evidence and concluded that plaintiff was the owner in fee simple of the property in question. According to the trial court, plaintiff's ownership extends to the west wall of a new garage constructed by defendants. Therefore, the apportionment rule is not applicable. We give deference to the court's credibility determinations and conclude the court's decision was not against the manifest weight of the evidence.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the circuit court's judgment.

¶ 29 Affirmed.