

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001382-MR

SHERLEY MCDONALD AND
GEANERIE H. MCDONALD

APPELLANTS

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE R. CLETUS MARICLE, JUDGE
ACTION NO. 96-CI-00383

LEON PARROTT, WAYNE BAKER,
WILLIAM H. STEELE, ROBERT WINE, AND GLENN
W. CAMPBELL, TRUSTEES OF THE RICHLAND
CHRISTIAN CHURCH

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

DIXON, JUDGE: Sherley and Geanerie McDonald (“McDonalds”) own a tract of land in Knox County adjacent to a parcel owned by the Richland Christian Church. A dispute arose as to ownership of a narrow piece of land between the two tracts. In October 1996,

¹ Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

the Trustees of the church (“Trustees”) filed a civil complaint against the McDonalds to quiet title. The McDonalds filed an answer and counterclaim, alleging they were the legal owners of the parcel. During the course of litigation, each party hired a private surveyor to determine the boundary line between the tracts. However, the conclusions of the two surveyors were vastly different. In 2002, after additional negotiations, both the McDonalds and the Trustees moved the trial court to appoint Robert Moses, a licensed surveyor, to survey the disputed property. In October 2002, the trial court issued an agreed order:

Both parties having moved the Court to appoint Robert Moses, a licensed surveyor, to make a survey of the property line and determine the boundary line between the parties;

IT IS HEREBY ORDERED AND ADJUDGED that the motion of the parties is sustained and Robert Moses is appointed to survey and determine the boundary line between the parties. He shall prepare a plat showing his determination of the boundary line between the parties. The parties shall equally split the cost of Mr. Moses' survey and preparation of the plat.

The agreed order was signed by both parties. Two years passed while the parties continued negotiations in an attempt to resolve the dispute without incurring the expense of the Moses survey. Ultimately, in July 2004, upon motion of the Trustees, the court enforced the agreed order. Thereafter, Moses surveyed the property and filed the survey report with the court. The parties equally shared the total cost of \$9,805.50 for the survey. The Trustees then moved the court to enter judgment pursuant to the agreed order, accepting the Moses survey as the legal boundary and resolving the dispute. The

McDonalds objected and moved the court to set a trial date. The McDonalds contended the court was required to hold a trial and consider the Moses survey as evidence.

In May 2006, the court issued findings of fact and conclusions of law. The court found the parties were bound by their agreement and entered judgment establishing the legal boundary designated by the survey.

The McDonalds now appeal to this Court, alleging the trial court improperly delegated its judicial decision making authority to the surveyor, Moses, and denied their right to a jury trial pursuant to Kentucky Rules of Civil Procedure (CR) 38.01. The Trustees argue that the McDonalds agreed for the Moses survey to resolve the dispute, as memorialized in the agreed order issued by the court. As such, the Trustees contend, the McDonalds should not be allowed to rescind the agreement.

We first note that it appears the parties went through numerous negotiations in an attempt to settle their dispute. This litigation spanned nearly ten years in circuit court, during which time three different judges presided over the case, and the McDonalds were represented by three different attorneys.

On appeal, the McDonalds do not deny that they agreed to hire Moses for the purpose of determining the boundary line. Instead, they contend that it was the trial court's responsibility to refuse to enforce the agreement and hold a trial to resolve the dispute. We disagree.

The McDonalds fail to cite any persuasive authority to support their argument. They primarily rely on *Rose v. Council for Better Education, Inc.*, 790 S.W.2d

186 (Ky. 1989), which held the state's common school system unconstitutional. In *Rose*, the Court found that the circuit court exceeded its authority by appointing a “special committee” to advise the court on how the legislature could remedy constitutional deficiencies in the common school system. *Id.* at 215.

We find the McDonalds' reliance on *Rose, supra*, misplaced. In the case at bar, both parties were represented by counsel and negotiated an agreement to hire Moses to determine the boundary. The trial court accepted the agreement reached by the parties; it did not *sua sponte* appoint a surveyor to resolve the dispute against the parties' wishes. As such, the McDonalds' obligation under the agreement must be upheld.

'The fairness of an exchange is legally irrelevant. So long as a man gets what he has bargained for, and it is of some value in the eyes of the law, the courts will not inquire whether it is of any value to him, or whether its value is in any way proportionate to his promise given in return. The reason for the rule is not far to seek. Persons must be free to contract; and it is for the law to enforce the agreement they have made, not to make it or to correct it for them.'

Ligon v. Parr, 471 S.W.2d 1, 4 (Ky. 1971) quoting *Simpson on Contracts*, 2d., at 86.

For the reasons stated herein, the order of Knox Circuit Court is affirmed.

ABRAMSON, JUDGE, CONCURS.

ROSENBLUM, SENIOR JUDGE, DISSENTS.

ROSENBLUM, SENIOR JUDGE, DISSENTING: I respectfully dissent from the majority opinion which holds that it was not the trial court's responsibility to conduct a trial in order to resolve the dispute herein. The agreed order entered October 25, 2002 appoints Robert Moses to determine the boundary line between the parties but

does not establish that the parties would accept his determination of the boundary line to the exclusion of any other evidence which might be introduced. The appellants' right to a trial has not been waived and the trial court committed reversible error in denying the appellants this right. Accordingly, I would reverse and remand this case to the trial court with directions to conduct a trial in this matter.

BRIEFS FOR APPELLANTS

Thor H. Bahrman
Corbin, Kentucky

BRIEF FOR APPELLEES

David S. Hoskins
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