2024 IL App (5th) 230091-U

NO. 5-23-0091

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| CHARLES R. CARNAHAN,<br><br>Plaintiff and Counterdefendant-Appellee,<br><br>v.<br><br>BRINDA F. STEPPING,<br><br>Defendant-Appellant,<br><br>and<br><br>TRACY L. ARANICO,<br><br>Defendant and Counterplaintiff-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the<br>Circuit Court of<br>St. Clair County.<br><br>No. 20-CH-261<br><br><br><br><br><br>Honorable<br>Julie K. Katz,<br>Judge, presiding. |

JUSTICE MOORE delivered the judgment of the court.
Justice McHaney concurred in the judgment.
Presiding Justice Vaughan concurred in part and dissented in part.

**ORDER**

¶ 1 *Held*: The judgment of the circuit court is affirmed in part and vacated in part. The trial court did not err in determining plaintiff was the owner of the disputed property and defendants did not establish adverse possession. The court erred in ordering damages when the issue of damages had been reserved for further hearing by agreement of the parties and the trial court.

¶ 2 The defendant, Brinda F. Stepping, and the defendant and counterplaintiff, Tracy Aranico, appeal the January 18, 2023, judgment of the circuit court of St. Clair County that found in favor

of the plaintiff and counterdefendant, Charles R. Carnahan. For the reasons that follow we affirm in part and vacate in part.

¶ 3 I. BACKGROUND

¶ 4 The following facts are relevant to this appeal. If necessary, additional facts will be presented with the analysis.

¶ 5 On September 1, 2020, Charles R. Carnahan filed a complaint for trespass against Brinda F. Stepping[1] and Tracy L. Aranico. On June 17, 2021, Tracy Aranico filed a counterpetition to quiet title and for ejectment pursuant to adverse possession. The matter proceeded to a bench trial.

¶ 6 The bench trial began on August 22, 2022. Carnahan was the first witness, and he testified on his own behalf. He testified that he lived at 276 Edding Lane since he purchased it in November 1996. At the time he purchased 276 Edding Lane, the neighboring property at 266 Edding Lane was owned by Jim Jones. In 1997, Carnahan had a discussion with Jones about mowing. Carnahan thought Jones was mowing property that was owned by Carnahan.

¶ 7 Jones sold the neighboring property to a man named Jeff (Carnahan was unable to recall Jeff's last name). Carnahan testified that when Jeff acquired the property, he had a discussion with him about the disputed tract of land. The discussions were similar to those with prior owner Jones, that the property being mowed belonged to Carnahan. Jeff had a concrete driveway and retaining wall poured sometime after he acquired the property in 2007. Jeff sold the property to Guy Jackson.

¶ 8 In March of 2015, after having disagreements with neighbors about mowing, Carnahan hired Thouvenot, Wade, and Moerchen (TWM) to survey his property. Guy Jackson owned the neighboring property at the time the survey was completed. Prior to having the survey completed, Carnahan had a conversation with Jackson about Jackson's truck and trailer that was parked

[1]Carnahan filed a complaint to quiet title against Brinda F. Stepping in St. Clair County case No. 18-CH-471. The matter was voluntarily dismissed by Carnahan on October 23, 2019.

halfway over the property line onto Carnahan's property. There was a later discussion about Jackson wanting to park a camper in the same area. Jackson was outside when the survey was completed and was aware of it; however, Carnahan testified that he did not have any further discussions with Jackson about the property line after the survey was completed. Carnahan testified that after the 2015 survey was completed, he used a metal detector to find the underground pins and then marked them with rebar.

¶ 9 Stepping purchased the property from Jackson in January 2017. Carnahan testified he introduced himself to his new neighbors within weeks of them moving in. Carnahan testified that in January 2017, Neil Carlock, Stepping's son, advised he was going to install a fence. Carnahan asked that they have a survey completed before putting in a fence.

¶ 10 In March 2018, Carnahan contacted the Fairview Heights police regarding a tree that was cut down by Carlock. After the tree was cut down, the dog pen was installed. After the dog pen was installed and a pin and rebar were removed, Carnahan contacted TWM again who referred him to Dan Crawford for a subsequent survey.

¶ 11 Carnahan testified that before Stepping purchased the property, the only complaints he had with the neighbors were regarding mowing.

¶ 12 Stepping was the second witness to testify on August 22, 2022. She was called as an adverse witness by Carnahan. Stepping testified that she first encountered Carnahan when she was placing a decoration at the end of her driveway and he said it was on his property. The next time she had an interaction with Carnahan was regarding mowing the grass.

¶ 13 Stepping testified that in March 2018 her family obtained a dog and hired someone to install a dog pen fence. She testified that the "fence guy" took care of looking at the property from

the courthouse and knew where the boundaries were located when installing the pen. Stepping hired Richard Maxwell to conduct a survey.

¶ 14 The bench trial was continued until September 27, 2022. At that time, Carnahan called Tracy Aranico as an adverse witness. Arancio testified that she began renting the property from Stepping in late 2018, between Christmas and New Years. Aranico later purchased the property on June 30, 2020. Aranico lives at the residence with her two sons and daughter.

¶ 15 Aranico testified that she first spoke to Carnahan while dog sitting. The dogs had gotten loose and she went to retrieve them from Carnahan's property. She spoke to him another time when she passed his house, and he was outside performing yard work. She complimented his yard work and proceeded on her way.

¶ 16 Aranico testified that while she was renting the property, she was aware of the dispute between Carnahan and Stepping regarding the dog pen. However, she testified that the previous lawsuit regarding the issue had been dismissed so she believed the issue had been resolved. She purchased the property and the current lawsuit followed.

¶ 17 Aranico testified that she sometimes cuts the grass on her property and sometimes her 19-year-old son does. As to the grass cutting, Aranico testified that:

> "if we were to cut it first, we cut to a certain point which was where the stakes were in the yard. And if he cuts it first he cuts it over a little bit. But it really just gets cut. I don't know that there was any animosity towards who cut that part of the grass. So if he cuts first he does cut over a litter farther than we do."

The stakes were located north of the light pole and north of the dog pen.

¶ 18 The next witness called in Carnahan's case was Joseph Moerchen. Moerchen testified that he was a professional land surveyor and has been since he was licensed in Illinois in 2005. He is

employed by TWM. Moerchen testified that TWM was hired by Carnahan to verify the boundary of his property. Moerchen reviewed exhibit 10 and identified it as a survey from October 1976 that TWM created.

¶ 19 Moerchen testified that when hired to complete a survey, TWM first does a record search to locate the deed and any survey records for the address to be surveyed. Then a surveyor goes to the property to locate the monuments, *e.g.*, iron rod, iron pin, concrete monument, cornerstone, or iron pipe. Once a monument is located in the field, it would be marked.

¶ 20 Moerchen identified exhibit 9 as the survey he prepared in 2015. He testified regarding the creation of exhibit 9.

¶ 21 On cross-examination, Moerchen was asked to review the Eddings Place assessment plat created on August 24, 1945. Moerchen testified that he did not consider the assessment plat when preparing his survey because the assessment plat was for tax purposes.

¶ 22 Moerchen's testimony was consistent with the survey prepared by TWM in 2015.

¶ 23 The bench trial was continued until September 30, 2022. The next witness called by the plaintiff was Daniel Crawford. Crawford testified that he has been employed as an Illinois professional land surveyor since 1962. Crawford identified exhibit 14 as the land survey he prepared after being hired by Carnahan. He testified he began work on the survey on May 21, 2018, and completed the survey on May 23, 2018.

¶ 24 Crawford testified that he contacted TWM because he knew they had prepared a previous survey, and he obtained a copy of that survey. Crawford then retraced the survey prepared by TWM and checked the points they used. Crawford testified that the survey he prepared "matches TWM's survey pretty—real close, and I agree with it."

¶ 25 The plaintiff rested after Crawford's testimony.

¶ 26 The first witness called for the defense was Richard Maxwell. Maxwell testified that he has been a professional land surveyor in Illinois and Missouri for 30 years. Maxwell testified that he was contacted by Stepping to complete a survey on her property in March 2019.

¶ 27 Maxwell testified that he reviewed the survey prepared by Crawford prior to completing a site visit. Maxwell testified that Crawford's survey showed "corners not anywhere near the line." Maxwell's survey used an "old possession line" and reached a different result as to the boundaries than the TWM and Crawford surveys.

¶ 28 Maxwell did not create a new legal description for Steppings property; however, he disagreed with the surveys created by TWM and Crawford.

¶ 29 The final day of the bench trial was completed on October 11, 2022. Stepping testified on her own behalf. Stepping testified consistent with her earlier testimony and additionally testified regarding the title policy that was required when she purchased the property. An exception to the title policy was a "possible encroachment of a retaining wall on the northwesterly corner of the property." Stepping also testified that her son cut down a dead tree, and Carnahan complained because he said the tree was on his property.

¶ 30 Aranico also testified on her own behalf. Her testimony was consistent with her earlier testimony. Carnahan was called as an adverse witness. In addition to testimony consistent with his earlier testimony, Carnahan testified regarding his neighbors burning at their property.

¶ 31 At the conclusion of testimony on October 11, 2022, the trial court entered the following agreed order, that stated, *inter alia*:"The Court finds: testimony heard. Both sides rest. Both sides reserve issue of damages." The parties submitted written closing arguments to the court on December 30, 2022.[2]

[2]A duplicate copy of defendant's closing argument was filed on January 9, 2023.

¶ 32 On January 18, 2023, the trial court entered its judgment. The relevant portions, state as follows:

"1. That the Plaintiff, CHARLES CARNAHAN (hereinafter referred to as 'Plaintiff'), is the owner of fee simple title to the property he alleges to have received by deed recorded on November 18, 1996. (Plaintiff's Exhibit 1), commonly referred to as 276 Edding Lane, Fairview Heights, Illinois. Surveys completed by Thouvenot, Wade & Moerchen (hereinafter referred to as 'TWM') in 2015 (Plaintiff's Exhibit 9), and Daniel W. Crawford in 2018 (Plaintiff's Exhibit 14), verify the boundaries of the Plaintiff's property described in the Warranty Deed he received in 1996.

* * *

4. That the surveys referred to in paragraph one (1) above, particularly that of Daniel W. Crawford (Plaintiff's Exhibit 14), specify that the dog pen installed by Defendant Stepping on or about the 28th day of March, 2018, is partially on her property and a portion intruded onto the Plaintiff's property. Plaintiff's Exhibit 14 precisely describes the extent of the intrusion.

5. That, likewise, Plaintiff's Exhibit 14 describes an intrusion of the concrete retaining wall at the front of the property now owned by Defendant Aranico as intruding on the property of the Plaintiff in the approximate dimension of .8 feet. According to the Plaintiff, that retaining wall was built in 2007 by someone who owned the property prior to Defendant Stepping.

6. That the Plaintiff's claim of trespass against Defendant Stepping and Defendant Aranico by virtue of the presence of the retaining wall on a portion of his property, however, is barred by the statute of limitations. Although the Plaintiff argues that the

presence of the retaining wall is a continuing trespass, the Court does not agree with that position. ***

7. That the Defendants argue that there is a strip of land, depicted on Plaintiff's Exhibit 14, that is between the southern boundary of the Plaintiff's property and the northern boundary of the Defendants' property that has been acquired by the Defendants through adverse possession. They argue that the property was treated as belonging to the residents of 266 Edding Lane by maintaining the ground, removing vegetation, mowing grass, removing bushes, parking vehicles, etc. from 1996 until 2018 when the Plaintiff filed an action to quiet title.

8. That the Plaintiff testified that he did not realize where his property lines were until he had the survey conducted in 2015. Any usage of the disputed property by the residents of 266 Edding Lane, therefore, was not adverse until 2015 because the usage was done with the permission of the Plaintiff and his predecessors in title. *** Because the usage was not hostile or adverse until 2015, the Defendants have not met the requisite twenty (20) year period of time in order to acquire title by adverse possession.

9. That, because the Plaintiff never lost title of the disputed strip of land through adverse possession, he had the authority to bring a trespass action against the defendants.

10. That the Plaintiff established through the testimony of surveyors Joseph Moerchen from TWM and Daniel W. Crawford that the dog pen intrudes onto the property of the Plaintiff. Crawford found that the dog pen intruded onto the Plaintiff's parcel at two corners, 1.24 feet at one corner and .44 feet at the other corner, along a cyclone fence 27.22 feet long.

11. That the Court finds that, like the erection of the retaining wall, the placement of the dog pen on a portion of the Plaintiff's property was a single overt act by Defendant Stepping in 2018 and not a continuing trespass. *** As a result, Defendant Aranico is not liable for the trespass. ***

12. That Defendant Stepping did commit an act of trespass in 2018 when she placed the dog pen on a portion of the property owned by Plaintiff."

¶ 33 The defendants filed a timely notice of appeal.

¶ 34 II. ANALYSIS

¶ 35 On appeal, the defendants present seven issues for review. The first five issues argued by the defendants involve the property lines established by the testimony and exhibits and adverse possession. The final three issues argued by the defendants involve the trial court's damages award.

¶ 36 A. Adverse Possession

¶ 37 "The standard of review in a bench trial is whether the judgment is against the manifest weight of the evidence." *Camelot, Inc. v. Burke Burns & Pinelli, Ltd.*, 2021 IL App (2d) 200208, ¶ 50. When sitting as the trier of fact in a bench trial, the trial court makes findings of fact and weighs all of the evidence in reaching a conclusion. *Nokomis Quarry Co. v. Dietl*, 333 Ill. App. 3d 480, 483-84 (2002). "When a party challenges a trial court's bench-trial ruling, we defer to the trial court's factual findings unless they are contrary to the manifest weight of the evidence." *Id.* at 484. When applying this standard of review, we give great deference to the trial court's credibility determinations, and we will not substitute our judgment for that of the circuit court " 'because the fact finder is in the best position to evaluate the conduct and demeanor of the witnesses.' " *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35 (quoting *Samour*,

*Inc. v. Board of Election Commissioners*, 224 Ill. 2d 530, 548 (2007)). "A factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based on evidence." *Samour*, 224 Ill. 2d at 544. The trial court's findings and judgment will not be disturbed "if there is any evidence in the record to support such findings." *Brown v. Zimmerman*, 18 Ill. 2d 94, 102 (1959).

¶ 38 "The doctrine of adverse possession is to be taken strictly" and "cannot be made out by implication or inference." *Tapley v. Peterson*, 141 Ill. App. 3d 401, 405 (1986). "The essence of the doctrine of adverse possession is the holding of the land adversely to the true titleholder." *Joiner v. Janssen*, 85 Ill. 2d 74, 80 (1981). Adverse possession is established by the concurrent existence of five elements: (1) continuous, (2) hostile or adverse, (3) actual, (4) open, notorious, exclusive, and (5) under claim of title inconsistent with that of the true owner for the required 20-year period set forth in section 13-101 of the Code of Civil Procedure (735 ILCS 5/13-101 (West 2022)). *Id.* at 81. "Presumptions are in favor of the titleholder and the burden of proof on the adverse possessor requires that each element be proved by clear and convincing evidence." *Beverly Trust Co. v. Dekowski*, 216 Ill. App. 3d 732, 736 (1991). "In a case where an adverse possessor is claiming to a mistaken or disputed boundary he bears the burden of establishing by clear and convincing proof the location of the boundary." *Joiner*, 85 Ill. 2d at 83.

¶ 39 We have thoroughly reviewed the record on appeal in this matter. The trial court was in the best position to consider the testimony and exhibits offered by the parties as to the boundary line. The trial court's determination that the TWM and Crawford surveys were correct versus the Maxwell survey offered by the defendants was not against the manifest weight of the evidence. As the adverse possessor bears the burden of establishing the boundary line, pursuant to this finding, the adverse possession claim fails.

¶ 40 Further, the testimony presented by all the parties, Carnahan, Stepping, and Aranico, was that whichever neighbor was mowing the grass first, would mow the disputed strip of land. Carnahan testified that this had been the practice regarding mowing since he purchased the property in 1996. It was not until a dog pen was erected in 2018 that Carnahan objected to the use of his property. Accordingly, the required 20-year period of time for adverse possession has not passed.

¶ 41 We note that the trial court found that there was no adverse usage until 2015 when Carnahan learned of the boundaries of his property. This was an error of law. As cited by the defendants in their brief, a titleholder's actual knowledge that he holds title to the land is immaterial to the 20-year period for adverse possession. *Daily v. Boudreau*, 231 Ill. 228, 230 (1907). However, "a reviewing court can uphold the decision of the circuit court on any grounds which are called for by the record regardless of whether the circuit court relied on the grounds and regardless of whether the circuit court's reasoning was correct." *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 192 (2007). Accordingly, we affirm the ultimate judgment of the trial court that affirmed Carnahan's property rights and found defendant Aranico did not meet the requirements for adverse possession.

¶ 42 B. Damages

¶ 43 The trial court's judgment issued rulings on damages in paragraphs 13 through 19 of the judgment. The parties had previously agreed to reserve the issue of damages and the court entered an order to this effect. At oral argument, the parties agreed that the issue of damages should be returned to the trial court. Accordingly, we vacate the trial court's judgment contained in paragraphs 13 through 19 and remand the matter to the trial court for further proceedings on damages only.

¶ 44 III. CONCLUSION

¶ 45 For the foregoing reasons, we affirm in part and vacate in part the trial court's judgment of January 18, 2023.

¶ 46 Affirmed in part, vacated in part, and remanded for further proceedings.

¶ 47 PRESIDING JUSTICE VAUGHAN, concurring in part and dissenting in part:

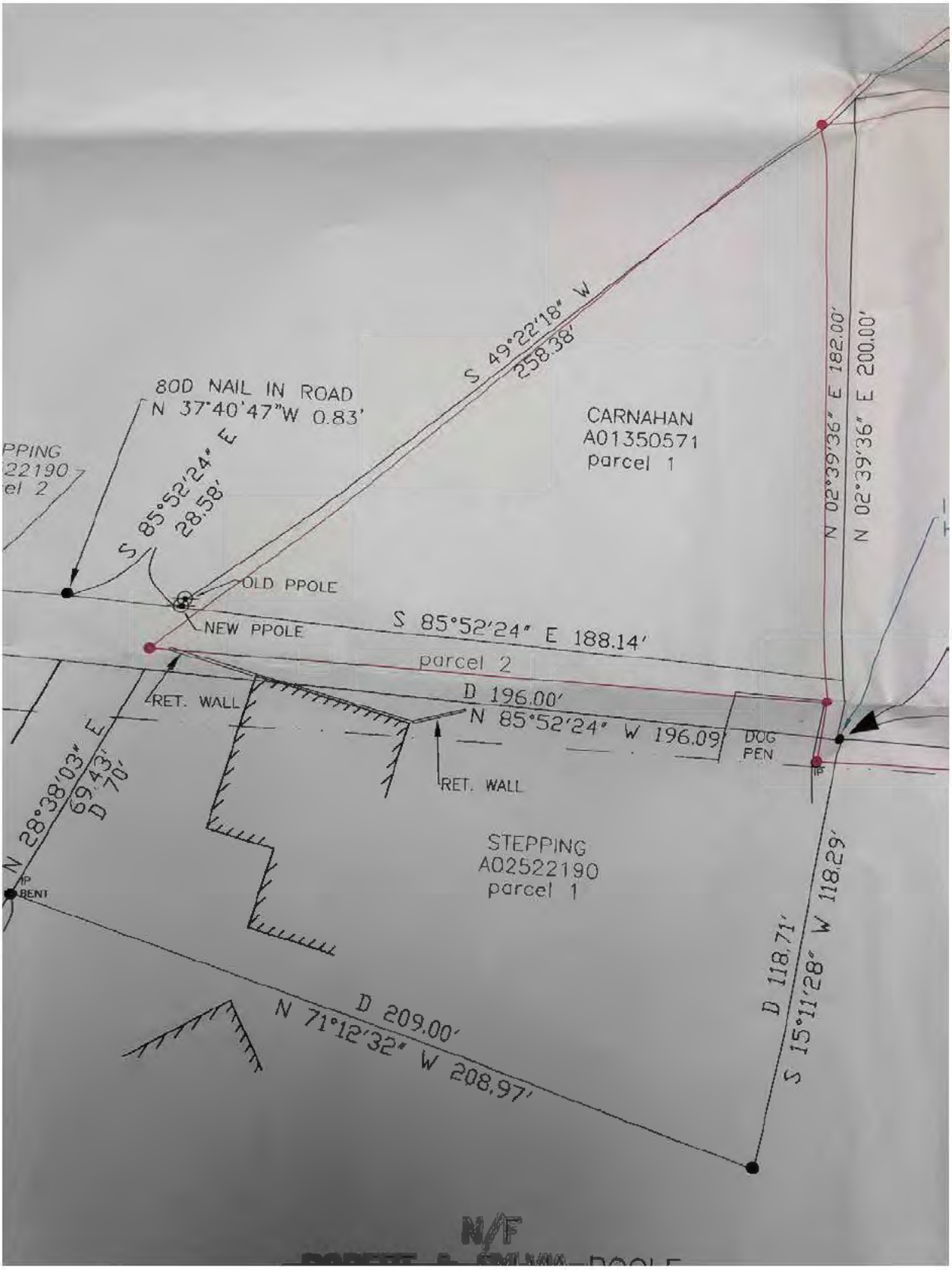
¶ 48 I agree with my colleagues that the trial court's finding related to adverse possession was erroneous as a matter of law and the award of damages must be vacated. However, I dissent from the remainder of my colleagues' decision because to accept their decision would require me to ignore well-settled principles of law regarding how property boundaries are established by monuments found on the property by surveyors. Accepting the majority decision would also require me to find that Ms. Aranico's house, that was built in 1932, was built on Mr. Carnahan's property, and the language in parcel 4 of Mr. Carnahan's deed—providing an easement solely for ingress and egress in 1970 to what is now Ms. Aranico's property—would have no meaning.

¶ 49 As my colleagues note, "the trial court found that there was no adverse usage until 2015 when Carnahan learned of the boundaries of his property. This was an error of law." *Supra* ¶ 41. Unfortunately, this was not the only error of law made by the trial court and my colleagues' affirmation of the trial court's findings merely perpetuates the errors of law commenced by the trial court.

¶ 50 The majority decision never addresses the trial court's finding that Mr. Carnahan was the "owner of fee simple title to the property he alleges to have received by deed recorded on November 18, 1996." It appears they simply adopted the finding with no analysis despite the fact that Ms. Aranico's counterclaim included a quiet title action and, only in the alternative, made a claim for adverse possession.

¶ 51 On November 15, 1996, Mr. Carnahan purchased property commonly known as 276 Edding Lane, Fairview Heights, Illinois. The deed consummating the transfer of property to him contained four parcels, two of which are at issue here. Parcel one was comprised of what could best be described as a right triangle with the hypotenuse extending from the northernmost point in a southwesterly direction 258.38 feet. The southern boundary then extended east 188.12 feet. The eastern boundary then ran north 182 feet to the starting point. Parcel four was an easement solely for "ingress and egress" that was comprised of a rectangle that ran contiguous with the southern boundary of the right triangle described in parcel one. Starting at the eastern point where the vertical and horizontal lines met in parcel 1, the easement contained boundaries that extended 15 feet south of the southern border line of parcel 1, turned west extending 216.72 feet and then north 15 feet to the southern boundary line of parcel 1.

¶ 52 In order to better illustrate the basis of the dispute, I include a photograph of the most relevant portion of defendant's exhibit 12, which was the only survey that included the boundary lines claimed by both parties based on the surveys performed.


80D NAIL IN ROAD
N 37°40'47"W 0.83'
S 49°22'18" W
258.38'
CARNAHAN
A01350571
parcel 1
N 02°39'36" E 182.00'
N 02°39'36" E 200.00'
S 85°52'24" E
28.58'
OLD PPOLE
NEW PPOLE
S 85°52'24" E 188.14'
parcel 2
D 196.00'
N 85°52'24" W 196.09'
DOG
PEN
RET. WALL
RET. WALL
N 28°38'03" E
69.43'
D 70'
STEPPING
A02522190
parcel 1
D 209.00'
N 71°12'32" W 208.97'
D 118.71'
S 15°11'28" W 118.29'
N/F

In the photograph above, parcel 1 of Mr. Carnahan's property is depicted as the red triangle with the southernmost boundary (as determined by his surveyors) running just below the words "parcel 2." The northernmost boundary of parcel 4 of Mr. Carnahan's property uses the same southernmost boundary line of parcel 1. The southern boundary of parcel 4 is depicted in the photograph (as determined by Mr. Carnahan's surveyors) by the dashed line running from west to east (through the northernmost portion of Ms. Aranico's house). Three of the four corners of parcel 4 are marked with blackened circles. Two are found marking the north and south boundaries on the east side of the parcel (which is also the line marking the east side of the dog pen) and one is marked in the northwest corner of parcel 4.

¶ 53 Testimony relevant to the issue of actual ownership revealed the following. Mr. Carnahan testified that approximately six to nine months *after* he purchased his property in December 1996, Jim Jones—the then-owner of 266 Edding Lane—purchased the property classified as the easement in parcel 4 of Mr. Carnahan's deed for back taxes. Mr. Carnahan testified that he was angry about the purchase because when he called to ask about purchasing the property, he was told the property could not be sold because it was an easement. However, contrary to Mr. Carnahan's testimony, the record revealed that Jim Jones purchased the "easement property" on October 4, 1995, over a year *before* Mr. Carnahan purchased his property as evidenced by the original deed transferring the property to Mr. Jones.

¶ 54 Joe Moerchen, a professional land surveyor who received his license in 2005 and was employed by TWM, Inc., testified that Mr. Carnahan hired TWM to perform a survey and verify his boundary line in 2015. He stated that TWM previously surveyed the property in 1976. Mr. Moerchen explained that prior to the current survey, he obtained the deeds and the prior 1976 TWM survey. He then proceeded to the location and stated that his goal was to try to find the

monuments and mark them in the field. He testified that his survey was based on the markers he found based on the prior October 1976 survey showing those monuments. However, he did note a difference with one deed saying the property went 312 feet and the other saying 316 feet.

¶ 55 On cross-examination, Mr. Moerchen admitted that he did not know about the previous land dispute that also encompassed a different part of Mr. Carnahan's property. He further admitted that he did not review all the documents related to the property including the November 1976 plat survey. Upon review of the document, Mr. Moerchen testified that there was a difference between the top pipe and the bottom pipe and explained that was "significant" in the current dispute because "it appears that there is *** about 24 feet between them." He was shown a TWM survey from June 1977. He stated that he also considered the Morski survey that revealed new pins were set after 1976 and agreed that it was possible that something was different. He was then shown the Madison County Surveyor's 1992 survey and was asked about the "line of occupation." Plaintiff's counsel objected to use of the term "line of occupation." The trial court overruled the objection stating that the Madison County Surveyor's 1992 survey showed a gap in the south line of parcel two and somebody determined there was a discrepancy in the two lines. The court further stated that the line on that survey stated, "line of occupation" and that the "line of occupation depicts the discrepancy between the two properties."

¶ 56 Mr. Moerchen testified that he also reviewed the final plat of the January 12, 2000, Ranks subdivision. He testified that Edding Lane went to the possession line which was different than the TWM survey. He further agreed that the "old possession line" had some significance and that one of the surveys was "flawed." When asked to explain the gap, Mr. Moerchen stated, "It's random. It's—it doesn't follow the 18-foot strip. It's—I mean it's just a dashed—random line." When asked what made it a random line, Mr. Moerchen replied, "I guess it was a line that the surveyor at the

time saw in the field." He agreed it could be the old fence as described in the 1976 survey from TWM. He testified that the survey either labeled the stone or the possession line wrong. Mr. Moerchen then reviewed the Caseyville Township plat and identified the stone, the parcels, and the old possession line that was severed in the middle of the 18-foot strip parcel. He agreed that based on that survey, Edding Lane ended at the old possession line. He further agreed that the Ranks subdivision plat also stopped Edding Lane at the boundary line of the old possession line and did not go through the 18-foot strip. He stated that the 1976 TWM easement drawing stopped at what would be the quarter line.

¶ 57 On redirect, Mr. Moerchen agreed that none of the deeds referenced a possession line, and if that part of the property were transferred, it would reference the possession or occupancy line. As to other monuments that might be found on a property, he stated that, "Quite often we might find multiple stakes in the field, iron rods, pipes, pins, etc., based on—and that's evidence. And based on the record documents, the deeds, we would make a judgment on which point is on the line and which one might not be on the line." He stated that he doubted the 1976 survey would have shown a fence on the survey if it was not in the field but there was no fence when he was at the property.

¶ 58 On recross, Mr. Moerchen agreed that there were two different lines. The line to the north was the old possession line. The section line was to the south. He agreed that one of the surveys referenced a physical feature of the fence. He did not know which one of the pins was a TWM pin in the 1976 survey and agreed there could have been other pipes that TWM did not find. He further agreed that some of the points were not referenced in the survey performed by Daniel Crawford.

¶ 59 Daniel Crawford, a professional land surveyor, licensed in 1979, also provided testimony. He stated that he performed a survey on behalf of Mr. Carnahan on May 21, 2018, solely to

determine the south line of Mr. Carnahan's property. He contacted TWM to get a copy of their survey. He stated that he set a pin in the southwest corner of Mr. Carnahan's property because no point was found in that corner. He stated the open circles were ones he found. He used the TWM survey and the courses in Mr. Carnahan's deed to build it in the computer and calculate the bearings and angles. He started at the stone and got coordinates for the points he found and ran lines between those points and checked the distance. If points were missing he would use the angle of the line to get to the new point. If the measured and recorded distances were within an inch he would use the pin. He found a pin 312 feet west of the stone. He stated that was the lower right corner of the dog pen. He then went 200 feet north and found another pin which was really close to the measured record. Based on his survey he said one corner of the dog pen was 0.44 feet over the line and the other end of the dog pen was 1.24 feet over the line. The concrete retaining wall encroached 0.83 feet onto Mr. Carnahan's property. He stated that he did not put in any pins or rods by the dog pen. As a surveyor he had a reasonable degree of certainty that his survey matched TWM's survey and believed that his conclusion about the dog pen being over the property line was precise and correct.

¶ 60 On cross-examination, Mr. Crawford agreed that if the TWM survey was incorrect, his survey was also incorrect. He stated that he found other surveys, but they were no help to him, so he relied on the TWM survey. He was not aware that TWM had surveyed the property three times before him. He thought he used the 1976 TWM survey. However, when he looked at that survey he stated that he had no idea where the pins were in the 1976 drawing. He did not know if TWM set the points or if they were already there. He just knew they matched the survey. Mr. Crawford also changed his prior testimony to state that he set one of the pins at the top of the dog pen. He further testified that the three circles at the west end of the property could not be matched up to anything. Two were on the southerly line and one was due south of the farthest one on the southerly

line. He was shown numerous other surveys and said he had either not seen them before or did not rely on them.

¶ 61 On redirect, Mr. Crawford stated that if there were points to the north and south, he would have been interested in searching for them. He agreed that in this case, there were three points, and it was "which one [are] you going to use." As to these three points, he said whichever one checked from there to the stone would be the one to use. He was satisfied with his survey because it checked with the point he found. On recross, Mr. Crawford confirmed that he did not find the old pipe and did not verify which pipe TWM used.

¶ 62 Richard Maxwell, a professional land surveyor for 30 years, performed a survey at Ms. Stepping's request in 2019. He stated that he reviewed Mr. Crawford's survey and because some of the points were unaccounted for, he did his own survey, "because clearly there was a discrepancy." He started by researching the section line and then did some reconnaissance of the property. He recalled seeing the TWM survey and spoke with Mr. Carnahan who provided him with a copy of the 2015 survey. He stated that Mr. Carnahan told him it was the 1976 survey and TWM had not done a new drawing in 2015 because the old drawing was good enough.

¶ 63 He also spoke with Mr. Ranks, who lived west of the property line. He went about a quarter of a mile in that direction looking for markers. Mr. Ranks also provided a survey for the Ranks subdivision plat dated January 13, 2000. Mr. Maxwell found that document relevant because Mr. Koch, who conducted that survey, included the old possession line. Knowing that, Mr. Maxwell set out to determine where the old possession line was located, if that possession line was relative to Ms. Stepping's property, and whether that answered the question about why there were no markers on the corner.

¶ 64 Mr. Maxwell testified that the old possession line was pertinent because that possession line was a property line, not a section line. He stated that his opinion was based on survey law because this was a monumented line. He explained that a possession line was not just a line, it was a monumented line and Mr. Koch found markers on that line. The markers included a stone, two iron rods, a two-inch pipe, and a bent pipe that all lined up as a monumented possession line. He stated that Ms. Stepping's property ended, on both the surveys, at the possession line. Based on this information, he completed a survey as well.

¶ 65 Mr. Maxwell testified that the second page of his survey showed why Ms. Stepping's corners did not match up to Mr. Crawford's survey. He explained that the second page of his survey showed both survey lines with Mr. Crawford's survey line delineated with the red line. Mr. Maxwell opined that the marker on the possession line (the third marker) was the boundary line for both Mr. Carnahan's deed and Ms. Stepping's deed. He stated that the points would only match up for Ms. Stepping's property if the third marker was used. He said those same points were noted in the other surveys and should have been investigated. He believed those points were very similar to what he found on the old possession line. Mr. Maxwell also explained that if the section line was used as the boundary line, the line would go through the Stepping house by 15 or 20 feet and would effectively cut off the northern end of the house. Mr. Maxwell believed Mr. Crawford's survey was flawed because Mr. Crawford failed to investigate the discrepancies.

¶ 66 On cross-examination, Mr. Maxwell was provided copies of the Carnahan and Stepping deeds and agreed that both stated, "section line." Mr. Maxwell stated that at the time the deeds were prepared, the deed preparers did not know the property line was on the possession line instead of the section line. He said the section line was supposed to be the property line, but the property line was never on the section line. He explained that, in 2000, when Mr. Koch did his survey, he

noted the old corners. In the 2000 survey, the possession line matched the deeds on Ms. Stepping's corners and Mr. Baumgartner's corners on the other side of Edding Lane. Mr. Baumgartner's deed and his corners also matched the possession line, so that was the way it always was. The boundary line was never on the section line. The section line mentioned in the deeds was the possession line. The boundary was never on the straight line. While the deed said section line, that was not what was in the ground.

¶ 67 Mr. Maxwell again explained that if Ms. Stepping's property was not based on the old possession line, the section line claimed as the property line in the Crawford and TWM surveys would run through her house. Mr. Maxwell stated that section lines were routinely wrong and were not always property lines. When plaintiff's counsel stated that the Koch document was merely a plat describing where a subdivision would be, Mr. Maxwell disagreed and said the Koch survey was provided after a dispute wherein the court decided where the lines were. That survey revealed that the section lines were not the property lines.

¶ 68 Here, the trial court's finding regarding Mr. Carnahan's ownership was based on the surveys performed by TWM in 2015 and Crawford in 2018. The trial court found those surveys "verify the boundaries of Plaintiff's property described in the Warranty Deed he received in 1996." However, the trial court's initial finding of ownership was clearly against the manifest weight of the evidence because the parties and the surveyor's agreed that parcel 4 contained in Mr. Carnahan's deed was no longer in existence at the time Mr. Carnahan purchased his property. Therefore, the TWM and Crawford surveys could not, as a matter of law, "verify the boundaries" of Mr. Carnahan's property. As noted by the majority, "[a] factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based on evidence." *Samour*, 224 Ill. 2d at 544.

¶ 69 In addition to this error, the trial court's reliance on the TWM and Crawford surveys was in error based on the testimony provided by the surveyors. "[I]t is well settled that monuments, when found, must control as against courses and distances given on field notes, when determining boundary lines." *Pliske v. Yuskis*, 83 Ill. App. 3d 89, 94 (1980) (citing *England v. Vandermark*, 147 Ill. 76 (1893); *Sawyer v. Cox*, 63 Ill. 130 (1872); *McClintock v. Rogers*, 11 Ill. 279 (1849)). Here, it is undisputed that there are three monuments in the same general area that could be used to establish the property line. The record contained copies of all of the deeds, the surveys performed on the properties at issue from 1976 to the present, as well as the testimony of three of the surveyors who conducted surveys in this matter. What becomes obvious is that the dispute stems from what was classified as the "old possession line" in surveys issued long before the ones procured by the parties in the instant case and whether the section line or the possession line was the proper boundary line between the properties located at 266 and 276 Edding Lane.

¶ 70 The language in Mr. Carnahan's deed for parcel 4—providing for the easement—is extremely relevant to this issue. The 1970 parcel 4 language revealed that the easement was solely a "non-exclusive easement for egress and ingress." An ingress and egress easement gives "the dominant estate holder the right to use the servient estate to enter and leave its property." *Downing v. Somers*, 2023 IL App (4th) 220900, ¶ 18. It was undisputed that the purpose of the 1970 easement was to allow the owners at 266 Edding Lane access to and from their property.

¶ 71 Therefore, the real issue is the location of the boundary line at the time the easement was provided. Mr. Maxwell's survey was the only survey to include the house located at 266 Edding Lane within the survey. The second page of the Maxwell survey also superimposed the boundaries found by Mr. Crawford's survey that was based on the TWM survey and is the photograph included above. Considering the possible boundary lines, in conjunction with the limiting language

of the ingress and egress easement, only the third marker associated with the old possession line is true to the 1970 easement language and comports with the purpose stated therein. Neither the TWM survey nor the Crawford survey adhere to the required use of the easement. In fact, using the boundary lines formed in those two surveys, Ms. Aranico's house, which was built in 1932, would have been 15 to 20 feet over her boundary line placing a substantial portion of the home squarely on the 276 Edding Lane property *prior to* the designation of the easement rendering the "ingress and egress" language in the easement meaningless. This reality is another reason why the trial court's finding of ownership by Mr. Carnahan is against the manifest weight of the evidence.

¶ 72 Additionally, the minimum standards of practice established in Illinois require the surveyor to physically search for all monuments "in a methodical and meticulous fashion" and also locate and evaluate other "evidence that could influence the location of the lines or corners of the survey." 68 Ill. Adm. Code 1270.56(b)(10)(B), (C) (eff. Jan. 5, 2023). Both Mr. Moerchen and Mr. Crawford agreed that the older survey revealed a third marker, and at least one of the surveyors wished he had "investigated" that marker. Both essentially testified that when additional markers were found they would just "make a judgment call" as to which would be used. However, making a "judgment call" is contrary to the minimum standards of practice established for surveyors which requires them to locate and evaluate "[o]ther evidence that could influence the location of the lines or corners." *Id.* § 1270.56(b)(10)(C).

¶ 73 Mr. Crawford confirmed that he failed to search for, and therefore never found, the old pipe despite its presence in the 1976 survey and also never verified which pipe TWM used in the survey he was relying on. Mr. Crawford and Mr. Moerchen also testified that if the wrong marker was used, both the TWM survey and Mr. Crawford's survey would be incorrect. More importantly, neither surveyor evaluated obvious evidence that could influence the lines or corners in the survey,

*i.e.*, the markers found that seemed to have no purpose. Therefore, in addition to being the only survey that comports with the language of the 1970 easement, Mr. Maxwell's survey is the only survey that comports with the requirement that surveyors investigate markers that seem to have no purpose.

¶ 74 The evidence also revealed that only the third marker stemming from the old possession line allowed both properties to remain as described in the deeds. For example, the third marker is exactly 118.71 feet from marker found on the southeasterly corner of Ms. Aranico's property and therefore perfectly comports with the land described as parcel 1 of her deed. Similarly, the third marker comports with the required distance from the northernmost marker of Mr. Carnahan's parcel 1 property, when the 18 feet width[3] of parcel 2 is subtracted from the measurement.

¶ 75 The third marker also explains the "unexplained markers" seen on Mr. Crawford's survey as it related to Ms. Aranico's property. Notably, two "unimportant markers" seen on Mr. Crawford's survey become the actual southeasterly and southwesterly markers of Mrs. Aranico's property, as set forth in her deed, when the third marker is used. Conversely, if the marker used by Mr. Crawford as the starting point is used, neither of the southern markers of Ms. Aranico's property have any meaning.

¶ 76 "The importance of the ascertainment of the original monuments is clear" and longstanding. *Dorsey v. Ryan*, 110 Ill. App. 3d 577, 580 (1982). "Even where a resurvey shows an error in the location of the original monuments, the latter are still controlling even if inconsistent with calls for directions and course in a survey." *Id.* at 580-81 (citing *Ely v. Brown*, 183 Ill. 575,

[3]As noted above, the easement was negated by Mr. Jones's purchase of the parcel in 1995. The purchased parcel was substantially larger than the easement listed in Mr. Carnahan's deed. The purchased parcel encompassed a rectangular parcel that ran 18 feet north of the original property line boundary (as depicted by the third marker), proceeded west a distance of 622.88 feet, proceeded south 18 feet, and then proceeded east 622.88 feet to end at the original starting point.

589-90 (1899); Clark, Surveying and Boundaries § 298, at 367 (4th ed. 1976)); see also *Westgate v. Ohlmacher*, 251 Ill. 538, 541-42 (1911). Here, only Mr. Maxwell considered all the monuments in the area, as well as the adjoining properties, to determine which was the proper boundary marker. The third marker was associated with the old possession line that was previously delineated by a stone, two iron rods, a two-inch pipe, and a bent pipe that all lined up as a monumented possession line and was listed in the other surveys. As such, the Maxwell survey is the only one consistent with minimum standards of practice regarding surveys in Illinois and complies with requirement that the older monuments are controlling in determining the boundary. Here, when the legal property descriptions are reviewed in conjunction with the easement, the surveys, the testimony of the surveyors, the regulatory minimum requirements for surveyors, and law in Illinois establishing which monument must be used, it becomes clear that only the third marker stemming from the "old possession line" meets the required criteria and two of the three surveyors failed to adhere to either the minimum requirements for surveyors or Illinois law.

¶ 77 Using the older monuments, as this court is required (and the trial court was required) to do (see *Dorsey*, 110 Ill. App. 3d at 580-81), the trial court's reliance on the TWM and Crawford surveys to find that the disputed parcel belonged to Mr. Carnahan was both against the manifest weight of the evidence and contrary to law. As shown by the oldest monuments, the disputed parcel at issue belonged to Ms. Aranico because it stemmed from a monumented line established prior to 1976. Based on that monumented boundary line, an easement for ingress and egress for the 266 Edding Lane property was required. That easement became part of the 266 Edding Lane property, as evidenced by Mr. Jones's purchase of the parcel in 1995 and remained part of the property of 266 Edding Lane as shown by the deeds exhibiting the chain of title running from Mr. Jones to Ms. Aranico.

¶ 78 For the above-stated reasons, I would vacate all of the trial court's findings. I would also remand the case back to the trial court with directions to grant—as a matter of law—Ms. Aranico's claim of quiet title and require removal of the pins set by Mr. Crawford during his survey, because the true and correct property boundary was established by the monuments placed long before the surveys obtained for this litigation, and those monuments remain the only true and correct property boundaries based on Illinois law.

¶ 79 For these reasons, I concur, in part, and dissent, in part.