

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-428

NOVEMBER TERM, 2007

Thomas R. Mansfield and	}	APPEALED FROM:
Sumiko Y. Mansfield	}	
	}	
	}	
v.	}	Windham Superior Court
	}	
	}	
Joseph P. Famolare, Jr. and	}	DOCKET NO. 107-3-03 Wmcv
Sandra B. Famolare	}	

Trial Judge: Karen R. Carroll

In the above-entitled cause, the Clerk will enter:

This case arises from a long-standing dispute between adjacent landowners regarding the location and width of a right-of-way plaintiffs hold across defendants' property. Following a court-negotiated settlement, the court appointed a professional surveyor to implement the terms of the settlement and map the new location of the right-of-way. Plaintiffs filed a motion to modify the final map, arguing that it contradicted the court's order. The superior court denied plaintiffs' motion and plaintiffs appealed. We agree that the map does not properly execute the terms of the settlement order. Therefore, we reverse and remand for the court to make the necessary revisions to the final map.

Plaintiffs hold a right-of-way across defendants' property, which in one area runs close to defendants' roadway. In March 2003, plaintiffs filed an action in superior court for a declaratory judgment as to the location and width of their right-of-way and defendants' nearby road. In September 2004, the parties entered into an oral stipulation in open court and the superior court issued an order implementing the terms of the oral stipulation. The parties were unable to agree on the language of a written stipulation. Following numerous motions, on March 7, 2005, the court issued a written order of settlement. The order described the parties' agreement, and provided in relevant part:

In the area in dispute, the Northern boundary of Defendants' roadway will be moved, at Defendants' expense, two feet to the South allowing for a four foot buffer between this roadway and the Southerly edge of Plaintiffs' roadway. This order concerns only the "area in dispute." This is defined as the area where the two

disputed roadways are presently less than four feet apart. This order does not pertain in any way to any other location.

The order also explained that plaintiffs could move the northern boundary of their roadway two feet north and the southern boundary two feet south, to create a twelve foot roadway. In addition, the order stated that the parties would neither “place any item in the four-foot buffer nor rights of way, including fences, signs, posts, etc., unless the parties agree in writing before hand.” The court appointed a professional surveyor to depict the terms of the settlement.

In April 2006, the surveyor submitted a final version of the survey map to the parties. Plaintiffs filed an objection to the survey map, arguing that the final map extended the restrictions beyond “the area in dispute,” in contravention of the settlement terms. In June 2006, the court denied plaintiffs’ motion, concluding that the map was consistent with the parties’ agreement. In a motion to amend, plaintiffs again argued that the map did not comply with the terms of the settlement. On September 12, 2006, the trial court denied plaintiffs’ motion and approved defendants’ corrected quitclaim deed that incorporated the final map. Plaintiffs appealed.*

On appeal, plaintiffs claim that the court erred in concluding that the map accurately reflects the terms of the settlement agreement because the map differs from the written settlement in two critical ways: (1) the map extends the twelve-foot width restriction to a longer segment of plaintiffs’ road than the settlement intended; and (2) the map portrays the four-foot buffer along a greater portion of the road than the settlement described. Plaintiffs contend that the purpose of the settlement was to ensure that the parties’ existing roadways would be separated by at least four feet. Thus, plaintiffs argue that extending the restrictions contravenes both the court’s written order limiting the restrictions to “the area in dispute,” and the purpose behind the settlement.

“The location of a boundary line is question of fact, to be determined on the evidence.” Okemo Mountain, Inc. v. Lysobey, 2005 VT 55, ¶ 8, 178 Vt. 608. We review the trial court’s findings of fact for clear error. V.R.C.P. 52(a)(2). We will affirm the court’s findings “if there is reasonable and credible evidence to support them.” Economou v. Economou, 136 Vt. 611, 617 (1979).

Even under our extremely deferential standard of review, we cannot affirm the court’s finding that the map reflects the court’s written order. The court’s order unambiguously applies its terms to “the area in dispute”—that is, “the area where the two disputed roadways are presently less than four feet apart.” The map, by contrast, unambiguously applies the terms of the settlement to land outside the disputed area. The map shows plaintiffs’ road with a twelve-foot width the entire length of the roadway, rather than isolated in the disputed area. The map also portrays the four-foot buffer zone beyond the area in which the roads are more than four feet

* Defendants filed a motion to strike portions of the printed case, arguing that any documents received after plaintiffs filed their notice of appeal were not properly part of the record on appeal. See V.R.A.P. 10(a) (defining limits of the record on appeal). Plaintiffs have also filed a motion to strike portions of defendants’ supplemental printed case. Because our decision does not rely on any of the contested material, we deny both motions as moot.

apart. Therefore, we conclude that the court's finding that the map exactly reflects the settlement order is clearly erroneous.

Interestingly, we note that defendants agree that the map is inconsistent with the written order. Rather than argue that the map accurately depicts the terms of the settlement, defendants argue that the inconsistencies are minor and not relevant because the court's written order controls the location of plaintiffs' right-of-way. We are not so confident that the inconsistencies will not cause further ambiguity in the future. As we have explained in the past, when a survey or map is referred to in a conveyance, it is incorporated into the document and if an ambiguity exists in the deed's description, the map will control. See Withington v. Derrick, 153 Vt. 598, 604 (1990). Defendants' proposed corrective deed references the court's order and the survey map. Therefore, the map will be incorporated into the corrected deed and will be important to interpreting the location of plaintiffs' right-of-way in the future. We therefore cannot say that discrepancies between the map and the written order are immaterial.

Reversed and remanded for proceedings consistent with this opinion.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice