

IN THE COURT OF APPEALS OF IOWA

No. 6-297 / 05-0236
Filed June 28, 2006

**RITA M. MEHAFFEY and
RAYMOND C. MEHAFFEY,**
Plaintiffs-Appellants,

vs.

CITY OF ATLANTIC, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Cass County, Timothy O'Grady,
Judge.

Rita and Raymond Mehaffey appeal from a district court ruling that denied their request for appointment of a commission of surveyors to establish a boundary. **AFFIRMED.**

Deborah L. Petersen of Reilly, Petersen, Hannan & Dreismeier, P.L.C.,
Council Bluffs, for appellants.

Robert W. Goodwin of Goodwin Law Office, P.C., Ames, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Rita and Raymond Mehaffey appeal from a district court ruling that denied their request for appointment of a commission of surveyors to resolve a boundary dispute. We affirm the district court.

The City of Atlantic owns the Atlantic Municipal Airport. The Mehaffeys own land that abuts the airport. The City sought to acquire a portion of the Mehaffeys' land for a runway extension project. Negotiations for the purchase of the Mehaffeys' land were not successful, and the City served a notice of condemnation on the Mehaffeys on April 15, 2004. The City's Acquisition Plat uses a N¼ Corner on the North line of Section 12, Township 76 N, Range 23 in Cass County as the reference point to describe the Mehaffeys' property and the portion of land being condemned from the Mehaffeys' property.

The Mehaffeys filed an action seeking injunctive relief in May 2004. Among other things, they alleged the legal description of the land the City was seeking to acquire from them was inadequate. That action is still pending, but is not part of this appeal.

The matter giving rise to this appeal commenced on January 3, 2005, when the Mehaffeys filed an amendment to their existing action, adding an additional count. Count II of their amended petition relied upon Iowa Code Chapter 650 (2005), Disputed Corners and Boundaries. The amended petition alleged there was a discrepancy in the measurement of the north line of the Mehaffeys' property and requested that the court enter an order requiring the City to provide an accurate legal description for the property sought to be condemned and the remaining portion of the Mehaffeys' property.

By agreement of the parties, a hearing was held only on Count II of the Mehaffey's amended petition. At the hearing, the Mehaffeys asserted the reference point for the City's Acquisition Plat should be moved, and they requested that a commission of surveyors be appointed under authority of section 650.7 to resolve a boundary dispute. After considering the testimony of Ray Mehaffey, representatives of the City, and several surveyors, the court declined to appoint a commission of surveyors and accepted the Acquisition Plat submitted by the City for acquisition of the Mahaffey's land by eminent domain. The Mehaffeys have appealed.

The Mehaffeys contend the district court erred in failing to appoint a commission of surveyors to locate a disputed corner and boundary. An action brought under chapter 650 is an action at law reviewable on assigned errors. *Davis v. Hansen*, 224 N.W.2d 4, 5 (Iowa 1974).

In its ruling, the trial court explained in some detail the circumstances leading up to the hearing. We quote the court's language and adopt it as our own:

J. E. Spangenberg had prepared the original Acquisition Plat for the airport. For that plat, Spangenberg established the N $\frac{1}{4}$ Corner as the west boundary of the right of way of Galveston Road, which intersects with G-30 north of the subject property. After the condemnation hearing was continued from June 18, 2004, both parties had the disputed Quarter corner surveyed. The City had its surveyor, J.E. Spangenberg, review the subject property. Spangenberg is a Licensed Land Surveyor in the State of Iowa. Monuments for the NW corner and NE corner of section 12 were located. Spangenberg did not locate a monument for the N $\frac{1}{4}$ Corner marker of Section 12. Spangenberg found that the last survey for the subject property was filed with the Cass County Recorder in 1946. The 1946 survey established the N $\frac{1}{4}$ Corner in question. Spangenberg revised the Acquisition Plat on June 3, 2004, but the N $\frac{1}{4}$ Corner remained as located in the original

Acquisition Plat. Spangenberg revised the Acquisition Plat on November 18, 2004 and again on January 6, 2005, but the N $\frac{1}{4}$ Corner still remained in the same location in each of the revisions.

Using a GPS, Spangenberg determined that the distance between the NW corner and the NE corner of the Section is less than original surveys indicated. Spangenberg also determined that the North boundary for the Quarter Sections of Section 12 are not equidistant. The North boundary of the Quarter Sections of Section 12 were equidistant in the initial survey of 1852. Spangenberg could not account for exactly how or when the discrepancy crept into the records. Even given that discrepancy, Spangenberg opined that the N $\frac{1}{4}$ Corner was accurately established in the Acquisition Plat, in accord with surveying standards and practices. Spangenberg did not find any evidence in the field that would justify moving the N $\frac{1}{4}$ Corner marker to make the Quarter Sections equal. Spangenberg opined that leaving the N $\frac{1}{4}$ Corner in the location set in the Acquisition Plat would not impede the Mehaffey's ability to convey their property, would not impede the Mehaffey's ability to describe their property, would not negatively affect the Mehaffey's boundaries with their neighbors, and would not make any difference in the tract of land sought by the airport.

The City agreed to work with any acquisition plat provided by the Mehaffey's, if a licensed Land Surveyor retained by them was able to describe the subject property using a different reference point. The Mehaffey's retained Lloyd Wilson to survey the disputed Quarter Corner. Wilson is a Licensed Land Surveyor for the State of Iowa, with more than thirty years experience. Wilson reviewed the Acquisition Plat prepared by Spangenberg. Wilson opined that it is appropriate to rely on the N $\frac{1}{4}$ Corner, as it is located on the Acquisition Plat, using accepted surveying practices. Wilson testified that such discrepancies are common. Wilson opined that the parcel to be taken can be adequately described using the N $\frac{1}{4}$ Corner as located in the Acquisition Plat. Wilson opined that the property remaining in the Mehaffey's possession can be adequately described using the N $\frac{1}{4}$ Corner as located in the Acquisition Plat. Wilson testified that moving the N $\frac{1}{4}$ Corner, as requested by the Mehaffey's would affect the boundary with the property owner to the west of the Mehaffey's.

After giving careful consideration to the evidence presented, the trial court reached the following conclusions:

The Mehaffey's presented some evidence to support Ray's belief that the N $\frac{1}{4}$ Corner, as established on the Acquisition Plat, is in a different location than as originally surveyed in 1852. The survey in 1852 showed the N $\frac{1}{4}$ Corner marker to be equidistant

between the NW Corner and NE Corner of Section 12. An 1878 survey showed the east half of the section to be 21 feet shorter than the 1852 survey. An 1897 survey showed the east half of the section to be 19 feet shorter than the 1852 survey, but the Quarter Sections were still equidistant in 1897. The 2004 survey shows the North boundary of Section 12 as 12.76 feet shorter than the 1852 survey, and the east half of Section 12 as 13.83 feet shorter than the 1852 survey. Moving the N $\frac{1}{4}$ Corner 7.49 feet west to make the Quarter Sections equidistant, would move the survey boundary line between the Mehaffey's land and the [neighbors'] land more in line with an existing fence. This evidence supports Ray Mehaffey's belief that the N $\frac{1}{4}$ Corner, as established on the Acquisition Plat, is in a different location than established in recorded nineteenth century surveys.

Despite the evidence supporting Ray Mehaffey's opinion about the disputed Quarter Corner, the Mehaffey's have not presented sufficient evidence to persuade the Court that Licensed Land Surveyors should be compelled to move the disputed Quarter Corner, contrary to accepted surveying practices. The Mehaffey's presented no evidence to support their fear that the disputed Quarter Corner affects the marketability of their property or their ability to convey that property. The Mehaffey's presented no evidence that moving the disputed Quarter Corner will resolve a boundary dispute with the City, Cass County, the Municipal Airport or their neighbors to the east or the west. The Mehaffey's have presented no evidence that would allow the Court to conclude that failing to move the disputed Quarter Corner will change the amount of land they own. The Mehaffey's have presented no evidence that moving the disputed Quarter Corner will resolve any existing or foreseeable problem. Lloyd Wilson, the surveyor hired by the Mehaffey's, found that there was not enough evidence in the field to move the N $\frac{1}{4}$ Corner. The Mehaffey's' request that the Court order relocation of the N $\frac{1}{4}$ Corner of Section 12 should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiffs' request that the Court direct Licensed Land Surveyors to relocate the N $\frac{1}{4}$ Corner of Section 12 is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Acquisition Plat as submitted by the City of Atlantic for acquisition of the Mehaffey's' land by eminent domain is accepted.

Upon careful review of the record, we find no reason to disagree with the trial court's conclusions. The point of reference used by the surveyor in preparing the Acquisition Plat to condemn a portion of the Mehaffey's' property was a N $\frac{1}{4}$ Corner that has been in existence and recognized since 1946. The

Mehaffeys' own surveyor testified the City's Acquisition Plat does not affect the Mehaffeys' ability to provide a legal description for their remaining property. The existing fences and resulting corners have been in their present locations since 1926. The record further reveals it would not be proper survey practice to reestablish the N¼ Corner at issue here. Accordingly, we affirm the judgment of the district court.

AFFIRMED.