IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00712 COA

ROBERT WARREN

CROSS-APPELLEE APPELLANT/

v.

CINDA ALBRIGHT

APPELLEE/CROSS-APPELLANT

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. CHARLES D. THOMAS

COURT FROM WHICH APPEALED: ALCORN COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

CHARLES R. WILBANKS

ATTORNEY FOR APPELLEE: GERALD L. MCLEMORE

NATURE OF THE CASE: CIVIL-BOUNDARY DISPUTE

TRIAL COURT DISPOSITION: APPELLEE IS OWNER OF FENCE

BEFORE FRAISER, C.J., DIAZ, AND KING, JJ.

DIAZ, J., FOR THE COURT:

This appeal arises from a boundary dispute between owners of adjoining property. Cinda Albright (Albright), the Appellee alleged sole ownership of a brick fence separating her property from Robert Warren's (Warren), the Appellant. Warren claimed half ownership of the fence. Warren had

constructed a driveway up to and touching the fence. Albright sought injunctive relief from the court requiring Warren to remove the portion of the driveway touching the fence, and enjoining Warren from removing or destroying the fence. Warren filed a counterclaim and sought an injunction against Albright from claiming his portion of the fence. He also asked the court to establish the center of the fence as a dividing line between the two properties. Warren sought punitive damages plus attorney's fees in defense of his action.

The Chancellor found Albright to be sole owner of the brick fence in question. The Chancellor also found that part of the fence was encroaching on the Appellant's property and gave Albright thirty days to alleviate the problem. In the event she failed to do so, Robert Warren (Warren), the Appellant, was given the right to fix the encroachment. The court denied Albright's request to remove the driveway touching the fence, as well as Warren's request for punitive damages and attorney's fees. Aside from alleviating the encroachment onto his property, Warren was not to remove, destroy or "otherwise deal" with the fence. From the decision, Warren appeals asserting that the Chancellor erred in his decision in finding Albright the sole owner of the fence. Albright cross-appeals asserting that the Chancellor erred in finding that Warren was not required to remove the portion of the driveway that touched her fence. Finding no reversible error, we affirm.

FACTS

Albright testified that her and Mr. Warren's problems began in 1991 when he complained that the roots of a tree located on her property were damaging his fence. Several confrontations ensued more or less surrounding the issue of the fence. Albright hired Danny Miller (Miller), a surveyor to determine the boundaries of her property. Miller testified that the survey revealed that the fence was on Albright's property.

On the other hand, Warren contends that he was eleven years old when his father brought his property. After consulting with the predecessor in title to Ms. Albright, Warren contends that his father built the fence in 1945 at his own expense. The understanding was that the center of the fence would be the dividing line between the two properties.

DISCUSSION

Our standard of review of findings of fact is limited in that we will not set aside a chancellor's findings of fact as long as they are supported by substantial credible evidence. *In the Matter of Davidson v. Davidson*, 667 So. 2d 616, 620 (Miss. 1995). A chancellor's ruling on findings of fact will not be disturbed unless manifestly wrong or clearly erroneous. *Bank of Miss. v. Southern Memorial Park, Inc.*, 677 So. 2d 186, 191 (Miss. 1996). Where there is conflicting evidence, we must give great deference to the fact finder. *In the Matter of Extending Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So. 2d 548, 553 (Miss . 1995). Where questions of law are raised, we will conduct a de novo review. *Bank of Miss.*, 677 So. 2d at 191.

Our standard of review requires us to give great deference to the Chancellor's findings of facts in this case. Therefore, we do not find that the Chancellor was manifestly wrong in concluding that the fence belonged solely to Albright. Furthermore, we find no merit to the issue on cross-appeal. The lower

court refused to force Warren to move his driveway and a drainage pipe that controlled water flow on his property. His reasoning behind his decision was that removing the small portion of the driveway which touches the fence would cause additional damage to the fence.

The Chancellor determined that Albright was the sole owner of the fence. We do not find any mention in the record that states anything on the other side of the fence belongs to Albright. In fact, the surveyor's testimony reflected that Albright's property is bordered by the fence. That seems to imply that anything on the other side of the fence is Warren's property. Accordingly, we find that

the Chancellor was correct in not compelling Warren to remove his driveway. Finding no merit to this appeal, we affirm the judgment.

THE JUDGMENT OF THE ALCORN COUNTY CHANCERY COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE TO BE DIVIDED EQUALLY BETWEEN THE APPELLANT AND THE CROSS-APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.