

DAVID H. BATEMAN et al.

v.

BART LILLIS

Submitted on Briefs December 1, 2010

Decided December 21, 2010

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, and JABAR, JJ.

#### MEMORANDUM OF DECISION

David H. and Robin J. Bateman appeal from a judgment entered in the Superior Court (York County, *Fritzsche, J.*) finding in favor of Bart Lillis as to each count of the Batemans' amended complaint and declaring the location of the common boundary between the Bateman and Lillis properties.

Contrary to the Batemans' contentions, the court applied the correct legal standards in determining the location of the common boundary. *See Lloyd v. Benson*, 2006 ME 129, ¶¶ 8, 11-13, 910 A.2d 1048, 1051-52 (discussing the de novo standard of review as to deed interpretation and the legal analysis applicable when a deed contains a latent ambiguity); *Lawton v. Richmond*, 1997 ME 34, ¶ 9, 690 A.2d 953, 955 (stating that, when a deed contains a latent ambiguity, the court must determine the grantor's intent from contemporaneous circumstances and the rules of construction). Additionally, the record contains competent record evidence to support the court's factual findings relating to the location of the common boundary on the earth, and we do not disturb those findings. *See Wells v. Powers*, 2005 ME 62, ¶ 2, 873 A.2d 361, 363 (stating that a determination of where a boundary exists on the surface of the earth is a question of fact that is reviewed for clear error); *Tremblay v. DiCicco*, 628 A.2d 141, 143 (Me. 1993) (holding that the location of monuments and boundaries are factual findings that will not be disturbed on appeal unless there is no competent record evidence to support them); *Ricci v. Godin*, 523 A.2d 589, 592 n.4 (Me. 1987)

(observing that it is settled Maine law that the fact-finder has sole province to evaluate the credibility and weight of expert surveyors' testimony and was not required to accept either surveyor's testimony in establishing the common boundary line at issue). To the extent either party believes clarification is needed as to the court's determination of the boundary line on the face of the earth, such a request must be addressed to the trial court.

We affirm the court's judgment with respect to the Batemans' remaining issues on appeal.<sup>1</sup>

The entry is:

Judgment affirmed.

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York County Superior Court docket number CV-2008-195  
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<sup>1</sup> Lillis challenges the court's declaration of the location of the common boundary in his appellate brief and requests that we remand the case in that respect, but we do not consider his argument because he did not file a notice of appeal. See *Wister v. Town of Mt. Desert*, 2009 ME 66, ¶ 1 n.1, 974 A.2d 903, 905; M.R. App. P. 2.