

NOV 24 1981

CLERK SUPREME COURT

Filed November 24, 1981

RONALD R. MAHONEY and SUZANNE)
MARIE MAHONEY, Husband and Wife,)

Plaintiffs-Appellees,)

vs.)

WILLIAM L. HAYNIE and KATHRYN)
HAYNIE, Husband and Wife,)

Defendants-Appellants.)

1-278
2-65390

Appeal from Pottawattamie District Court - Leo F. Connolly, Judge.

Defendants appeal from trial court's decree determining the boundaries between their property and that of plaintiffs asserting 1) that trial court should have dismissed plaintiffs' petition, brought under section 650.7, The Code, because the action is based on an erroneous survey, and 2) that the findings of the surveyor commission appointed to locate the disputed boundary lines were based on an erroneous application of the surveying principal of "excess and deficiency." AFFIRMED.

Richard D. Crotty, Council Bluffs, Iowa, for defendants-appellants.

Joseph F. McGinn of McGinn & McGinn, Council Bluffs, Iowa, for plaintiffs-appellees.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendants, William L. and Kathryn Haynie, appeal from trial court's decree determining the boundaries between their property and that of plaintiffs', Ronald R. and Suzanne Marie Mahoney's property. Defendants assert 1) that trial court should have dismissed plaintiffs' petition, brought under section 650.7, The Code, because the action is based on an erroneous survey, and 2) that the findings of the surveyor commission appointed to locate the disputed boundary lines were based on an erroneous application of the surveying principal of "excess and deficiency." We affirm trial court's judgment.

Plaintiffs and defendants own adjoining properties in Pottawattamie County, Iowa. On April 18, 1978, plaintiffs filed a petition seeking resolution of a boundary dispute between the parties. Both parties engaged the services of professional surveyors in an effort to determine the boundary lines. When the results from the two surveys differed as to the location of the boundaries, the parties, on March 9, 1979, filed a joint application for appointment of a surveyor commission pursuant to section 650.7, The Code, to locate the boundaries in dispute. On the same date, trial court ordered the appointment of a surveyor to determine the location of the disputed boundaries. The commission report, filed June 30, 1979, recommended a location for the boundary line between the properties. On April 14, 1980, defendants filed an application to reopen the matter to present testimony, by way of deposition, concerning the surveys of the property. Plaintiffs filed an answer and resistance to the application. Trial court, however, sustained the application to reopen and the deposition was presented at a hearing on May 12, 1980.

In that deposition, Norman Van Sickle, a surveyor, stated that the original survey conducted for the plaintiffs was faulty because it did not close. Van Sickle also stated that the commission's report incorrectly applied the surveying principle of excess and deficiency. On May 22, 1980, trial court entered a decree establishing the boundaries of the property in question as determined in the commission's report. This appeal followed.

L. Scope of Review. Actions under chapter 650 of the Code are special proceedings and are reviewed on appeal as ordinary actions on assignment of error only. Dart v. Thompson, 261 Iowa 237, 240, 154 N.W.2d 82, 84 (1967). Trial court's findings of fact are binding on this court if supported by substantial evidence. Id.

II. Preservation of Error. Plaintiffs assert that defendants have failed to preserve error on either of the issues raised on this appeal. Because we agree, we will not address defendants' arguments on the merits.

Section 650.12, The Code, provides:

Within twenty days after such report is filed, any party interested may file exceptions thereto and the court shall hear and determine them, hearing evidence in addition to that reported by the commission, if necessary, and may approve or modify such report, or again refer the matter to the same or another commission for further report.

Trial court, in its decree accepting the report of the commission, found that defendant had raised no objections in this case and that the report of the commission should be approved. We conclude the record establishes the correctness of trial court's finding on this matter. Having failed to properly file an objection as required by statute, defendants have failed to preserve their record for appeal.

We also concur in plaintiffs' assertion that defendants have failed to preserve any record allowing this court to review the propriety of dismissal of plaintiffs' petition due to an erroneous survey. This issue was never raised by appropriate motion in the trial court. This court cannot review issues which are not preserved. Beltz v. Horak, 271 N.W.2d 755, 759 (Iowa 1978). Judgment of trial court is affirmed.

AFFIRMED.