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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WILLIAM F. BEST,

Plaintiff and Appellant,

v.

LINDA BREAKER,

Defendant and Respondent.

D057675

(Super. Ct. No. 37-2009-00070359-
CU-BC-EC)

WILLIAM F. BEST,

Plaintiff, Cross-defendant and
Appellant,

v.

LINDA BREAKER, as Successor Trustee,
etc.

Defendant, Cross-complainant and
Respondent;

KELLY CARPENTER,

Defendant and Respondent.

D058302

(Super. Ct. Nos. IE031750, 37-2008-
00063135-CU-OR-EC)

CONSOLIDATED APPEALS from judgments of the Superior Court of San Diego County, Eddie C. Sturgeon, Judge. Affirmed.

These appeals arise out of three cases concerning the boundary between two adjacent properties, one owned by William F. Best and the other by Linda Breaker, as the successor trustee of the LaVelle Kelly Russell Trust. After a consolidated bench trial on two cases, the trial court quieted title to the disputed property in favor of Breaker based on the agreed boundary doctrine. The trial court later sustained Breaker's demurrer to Best's third complaint based on the doctrine of res judicata. Best appeals the judgments, contending: (1) the elements establishing an agreed boundary were not satisfied because: (a) the fence at which the trial court set the boundary was built when the properties were part of one parcel, and (b) the fence was not built to resolve uncertainty; (2) the fence does not qualify as a boundary fence because its location departs substantially from the legal description of the properties; (3) he is not subject to any previously agreed boundary because a tax deed in his chain of title cleared any encumbrances on the property; (4) the agreed boundary violates the Subdivision Map Act (Gov. Code, § 66410 et seq.); (5) the agreed boundary does not meet the requirements of good faith and fairness; (6) the trial court lacked jurisdiction over a portion of the case; and (7) the trial court erred in sustaining Breaker's demurrer to his third complaint based on res judicata.

We reject Best's arguments and affirm the judgments.

FACTUAL AND PROCEDURAL BACKGROUND

In 1956, Breaker's mother, LaVelle Russell, purchased real property in Alpine, California, identified as APN 403-220-23-00 (Lot 23). When Russell purchased Lot 23, there was a fence running north and south between Lot 23 and the neighboring property, identified as APN 403-220-22-00 (Lot 22). Russell discussed the boundary line separating the properties with her neighbors on Lot 22, the Crosses, and they agreed that the fence was the boundary. The fence, however, was located on Lot 22. A well and water storage tank were also located on Lot 22, but were on Russell's side of the fence. The well was the only water source for one of the two homes on Lot 23 and provided irrigation for all of Lot 23. Believing that the fence was the boundary, Russell also built storage sheds on Lot 22 near the well.

In 1974, Robert E. Golladay acquired Lot 22 through a tax deed from the State of California. In 2006, Golladay sold Lot 22 to Best for \$55,000. Lot 22 was an undeveloped parcel of land.

In April 2006, Best filed a limited jurisdiction action against Russell for "declaratory relief" (the First Action), claiming that someone who resided on Lot 23 "removed survey monuments . . . and/or erected a fence." Best alleged that the fence encroached on his property. He sought a determination by the court regarding the location of the boundary between Lots 22 and 23 and declarations that the fence encroached onto Lot 22, that he had a right to place survey monuments between the properties, and that previously existing survey monuments were improperly removed.

Russell died in March 2008. A month later and while the First Action was still pending, Best filed a complaint against the successor trustee of the LaVelle Kelly Russell Trust (the Second Action). This case involved the same disputed boundary and alleged causes of action for quiet title, ejectment, public nuisance, private nuisance, and trespass. Breaker, as the successor trustee, cross-complained, asking the court to quiet title to the disputed land in her favor or for an easement to access the well, water tanks, and storage sheds.

The First and Second Actions were consolidated for trial. After a bench trial, the court entered judgment in favor of Breaker and against Best in both cases. Based on the agreed boundary doctrine, the court concluded that the area of land between Lot 23's surveyed property line and the fence was part of Lot 23. Thus, the court quieted title to the disputed land in favor of Breaker and found Best's claims for quiet title, ejectment and trespass had no merit.

In October 2009, before the First and Second Actions were tried, Best filed a complaint for breach of contract against Breaker, as the successor trustee of the LaVelle Kelly Russell Trust (the Third Action). In the Third Action, Best alleged that he reached an agreement with Russell to settle the First Action and that Russell breached that settlement agreement by failing to sign and return the settlement documents. Breaker demurred to the Third Action and the trial court sustained the demurrer on the basis of *res judicata*. Accordingly, the trial court entered judgment dismissing the case.

DISCUSSION

I. *Agreed Boundary Doctrine*

Best's first two arguments challenge the trial court's findings that the elements establishing an agreed boundary between Lots 22 and 23 were satisfied. He specifically argues the requirements of an agreed boundary were not met because: (a) the fence existed when Lots 22 and 23 constituted one parcel, owned by one person; and (b) the fence was not built to resolve uncertainty regarding the boundary because it was built before the property was divided. We conclude the trial court's findings were supported by substantial evidence.

Generally, our power as a reviewing court "begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trial court. [We] will accept as true all evidence tending to establish the correctness of the findings and judgment, and where . . . the evidence is conflicting in many details [we] will construe and resolve every substantial conflict as favorably as possible in support of the judgment. [Citation.]" (*Wurzl v. Holloway* (1996) 46 Cal.App.4th 1740, 1754.) We do not reweigh the evidence and are bound by the trial court's credibility determinations. (See *Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367, 1384.)

The agreed boundary doctrine is an exception to the general rule that gives legal effect to the description of land contained in a deed (*Bryant v. Blevins* (1994) 9 Cal.4th 47, 54 (*Bryant*)), and exists to secure repose, stabilize title and prevent litigation

concerning boundaries. (*Ibid.*; *Minson Co. v. Aviation Finance* (1974) 38 Cal.App.3d 489, 494.) In order to prove an agreed boundary has been established, the claimant must show there is: "[1] an uncertainty as to the true boundary line, [2] an agreement between the coterminous owners fixing the line, and [3] acceptance and acquiescence in the line so fixed for a period equal to the statute of limitations or under such circumstances that substantial loss would be caused by a change of its position.' [Citation.]" (*Bryant*, at p. 55.) The boundary so agreed on becomes the legal boundary, regardless of its accuracy to the originally described boundary. (*Id.* at pp. 54-55.) An implied agreement can serve to establish an agreed boundary. (*Roberts v. Brae* (1936) 5 Cal.2d 356, 359; *Vella v. Ratto* (1971) 17 Cal.App.3d 737, 740-741.)

Here, there was evidence that there was a fence on the subject properties possibly as far back as 1909 and that during that time, Lots 22 and 23 were part of one contiguous parcel with one owner. Based on this evidence, Best contends that the agreed boundary doctrine does not apply because the doctrine exists to resolve uncertainty between "adjoining property owners." We are not persuaded that the existence of the fence at the time when Lots 22 and 23 were part of one contiguous parcel with one owner precludes application of the agreed boundary doctrine.

The evidence showed that after Russell purchased Lot 23 in 1956, she and the neighboring land owner were uncertain of the boundary and agreed to accept the fence as the line. Even Best testified that Russell informed him that she and the prior owner of Lot 22 did not know the location of the boundary. Over the years, the fence deteriorated and needed repairs. Russell's son, Kelly Carpenter, performed those

repairs and maintained the fence as close as possible to its original location. We have not found and Best did not cite to any authority stating that an existing fence cannot in any circumstances constitute the location of an agreed boundary. Where, as here, there was evidence of uncertainty, an express agreement regarding the boundary line, and maintenance of the fence in its agreed location, we conclude the agreed boundary doctrine is applicable and substantial evidence supported the trial court's findings.

II. *Departure from Legal Description*

Relying on *Staniford v. Trombly* (1919) 181 Cal. 372 (*Staniford*) and *Grants Pass Land etc. Co. v. Brown* (1914) 168 Cal. 456 (*Grants Pass*), Best argues that the fence cannot be the boundary line because its location departs substantially from the legal description of the properties. Specifically, Best contends that the fence cannot be the boundary because Lot 23's legal description shows the property is essentially rectangular whereas the fence is not a straight line and instead turns at an angle around its midpoint. We reject Best's argument.

Best's reliance on *Staniford* and *Grants Pass* is misplaced because those cases are easily distinguishable. In those cases, the evidence showed that the fences were built to prevent cattle from straying, rather than to resolve uncertainty regarding boundaries. (*Staniford, supra*, 181 Cal. at p. 373; *Grants Pass, supra*, 168 Cal. at p. 461.) Further, the alleged agreed boundaries created irregular parcels. For example, in *Staniford*, the fence in question did not extend all the way across the property and instead ended at a creek. (*Staniford*, at p. 373; see also *Grants Pass*, at p. 461 [fence did not run the full length of the property].) The alleged agreed boundary would have

resulted in giving defendants a triangular strip of land. (*Staniford*, at pp. 374-375.) Notably, in both *Staniford* and *Grants Pass*, the claimants sought to extend the boundary beyond the fence line to areas that were not a part of any agreement. (*Staniford*, at p. 374; *Grants Pass*, at p. 461.) The court noted that the resulting irregular parcels indicated that the builders were fixing a line for occupancy rather than title. (*Staniford*, at p. 375; *Grants Pass*, at p. 461.)

Here, although the fence line might not be straight, we do not find it created an irregular parcel. More importantly, however, there was evidence of an express agreement between Russell and the Crosses to accept the fence as the boundary between the properties. No such agreement existed in *Staniford* and *Grants Pass*. "[W]hen [adjoining] owners, being uncertain of the true position of the boundary so described, agree upon its true location, . . . such line becomes, in law, the true line called for by the respective descriptions, regardless of the accuracy of the agreed location, as it may appear by subsequent measurements." (*Young v. Blakeman* (1908) 153 Cal. 477, 481.)

III. *Effect of Tax Deed on Agreed Boundary*

Best next argues that he is not bound by the agreed boundary because the tax deed from the State to Golladay conveyed new, complete, paramount title free of all encumbrances. We disagree.

"[A] title granted by a tax deed pursuant to a valid sale of the property for nonpayment of taxes, conveys not merely the title of the person assessed, but a new and complete title under an independent grant from the state." (*Helvey v. Sax* (1951)

38 Cal.2d 21, 24.) However, when adjoining landowners agree upon a boundary, the line is binding upon them and their successors in title. (*Ross v. Burkhard Investment Co.* (1928) 90 Cal.App. 201, 208.) "The line so agreed on becomes in legal effect the true line, the agreement as to the line may be in parol and it does not operate to convey title to the land which may lie between the agreed line and the true line, but it fixes the line itself and the description carries title up to the agreed line regardless of its accuracy; the agreement as to the line is not in violation of the statute of frauds, because it does not transfer title; the parties hold up to the agreed line by virtue of their original deeds and not by virtue of the parol agreement; "the division line when thus established attaches itself to the deeds of the respective parties and simply defines not adds to, the lands described in the deeds," and if more is thus given to one than the calls of his deed actually require he "holds the excess by the same tenure that he holds the main body of his land."'" (*Price v. De Reyes* (1911) 161 Cal. 484, 486-487 (*Price*).

Here, the boundary line fixed by the agreement between Russell and the Crosses attached itself to the deeds of the parties and Russell held the disputed land by virtue of her deed in the same way that she held the rest of her parcel. (See *Price, supra*, 161 Cal. at pp. 486-487.) The agreement simply defined Lots 22 and 23 and thus was not an encumbrance on either property. A tax deed, like any other deed, can only convey the property defined by the deed. In this case, the land defined in the tax deed included a boundary agreement. Thus, the issuance of a tax deed on Lot 22 had

no effect on the disputed strip of land because that strip was included in Lot 23 through the boundary agreement.

IV. *Subdivision Map Act*

Best argues the agreed boundary violates the provisions and purpose of the Subdivision Map Act. We reject this argument.

Best does not cite to any specific provisions of the Subdivision Map Act or provide any relevant authority or legal argument demonstrating why the agreed boundary in this case violates that Act. Further, Best does not reference any portion of the record to support his argument. "An appellate court is not required to examine undeveloped claims, nor to make arguments for parties." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) Our role is to evaluate "legal argument with citation of authorities on the points made." (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Thus, we reject Best's argument.

V. *Good Faith and Fairness*

Best contends the agreed boundary in this case does not meet the requirements of good faith and fairness. We disagree.

"[W]hen it appears that an agreement adjusting a disputed boundary line has been fairly and definitely made between [adjoining land owners], and they have occupied their lands accordingly for a period longer than the statutory period of limitation, such agreement is conclusive no matter whether they were mistaken or not in their belief that they were locating it along the true line. It is quite obvious that if the fact merely that the parties were mistaken as to where the true line lay could

invalidate their agreement, there never could be any stability attached to such an agreement unless the line agreed on was in truth the exact line. The policy of the law, however, is to give stability to such an agreement as a method adopted in good faith by the parties themselves to settle the controversy, and because it is the most satisfactory way whereby a true boundary line may be determined, and tends to prevent litigation." (*Loustalot v. McKeel* (1910) 157 Cal. 634, 642-643.)

Here, Best contends the boundary was not agreed upon in good faith because it deviates substantially from the true line. This argument misconstrues the requirement of good faith. When adjoining land owners have "equal knowledge of the facts and no deception or fraud was practiced[,] . . . it is entirely immaterial whether the parties were right or wrong in believing that the true line was exactly where it should be as they established it." (See *Loustalot v. McKeel, supra*, 157 Cal. at p. 642.) Here, there was no evidence presented that the agreement between Russell and the Crosses was the result of fraud or deception. Rather, the evidence showed that the parties agreed to set the boundary at the fence line and acquiesced in its location. Under these circumstances, we reject Best's argument that the boundary does not meet the requirements of good faith and fairness.

VI. *Jurisdiction*

Best contends the trial court lacked jurisdiction over the First Action because pursuant to Code of Civil Procedure section 580, subdivision (b), a determination of title to real property and declaratory relief cannot be granted in a limited civil case. We agree with this premise but reject Best's argument.

"'Lack of jurisdiction' is a term used to describe situations in which a court is without authority to act. [Citation.] In its most fundamental sense, 'lack of jurisdiction' means an entire absence of power to hear or determine the case, i.e., an absence of authority over the subject matter or the parties. [Citation.] 'Lack of jurisdiction' is also applied more broadly to a situation where, though the court has jurisdiction over the subject matter and the parties in a fundamental sense, it has no power to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites. [Citation.] Thus, acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are described as acts in 'excess of jurisdiction.'" (*Wozniak v. Lucutz* (2002) 102 Cal.App.4th 1031, 1040, disapproved on other grounds in *Le Francois v. Goel* (2005) 35 Cal.4th 1094.)

""On unification of the trial courts in a county, all causes [are] within the original jurisdiction of the superior court. . . . In a county in which the courts have unified, the superior court has original jurisdiction of limited civil cases, but these cases are governed by economic litigation procedures, local appeal, filing fees, and the other procedural distinctions that characterize these cases in a municipal court."" (*Wozniak v. Lucutz, supra*, 102 Cal.App.4th at p. 1039, quoting *Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 763, fn. 2.)

Here, regardless of the First Action's designation as a limited case, the superior court clearly had jurisdiction over the matter in the fundamental sense. The prayer or

demand of the complaint determines jurisdiction. (*Engebretson & Co. v. Harrison* (1981) 125 Cal.App.3d 436, 444.) In the First Action, Best prayed for a determination by the court regarding the location of the boundary between Lots 22 and 23 and declarations that the fence encroached onto Lot 22, that he had a right to place survey monuments between the properties, and that previously existing survey monuments were improperly removed. These were properly matters within the jurisdiction of the superior court. In fact, Best sought identical relief in his Second Action and consented to having the two cases tried together. Thus, the Second Action essentially subsumed the First Action. We conclude that the designation of the First Action as a limited civil jurisdiction case did not preclude the superior court from rendering a decision on the matters raised therein, especially because they were identical to matters raised in the Second Action. Under the unique circumstances of this case, where the two actions seeking the same relief were tried together and Best has not pointed to any errors resulting from the superior court's consideration of the First Action, we reject Best's argument that the court lacked jurisdiction.

VII. *Res Judicata*

Best argues the trial court erred in sustaining Breaker's demurrer to his Third Action based on res judicata. We disagree.

We review an order sustaining a demurrer without leave to amend de novo (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318), assuming the truth of all properly pleaded facts as well as facts inferred from the pleadings, and give the complaint a reasonable interpretation by reading it as a whole and its parts in context. (*Palacin v.*

Allstate Ins. Co. (2004) 119 Cal.App.4th 855, 861.) However, we give no credit to allegations that merely set forth contentions or legal conclusions. (*Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 768-769.) A complaint will be construed "liberally . . . with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) If the complaint states a cause of action on any possible legal theory, we must reverse the trial court's order sustaining the demurrer. (*Palestini v. General Dynamics Corp.* (2002) 99 Cal.App.4th 80, 86.) Whether a plaintiff will be able to prove its allegations is not relevant. (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496.)

A court may sustain a demurrer based on res judicata when the facts showing the doctrine applies are within the allegations of the complaint or matters subject to judicial notice. (*Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1299.) "The doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration." (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 334, p. 938 (Witkin).) "If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could

have been raised, on matters litigated or litigatable." (*Sutphin v. Speik* (1940) 15 Cal.2d 195, 202.) "[W]here the causes of action and the parties are the same, a prior judgment is a complete bar in the second action." (*Id.* at p. 201; 4 Witkin, *supra*, Pleading, § 36, p. 101.) "A single cause of action cannot be split, i.e., an entire claim cannot be divided and made the basis of several actions." (4 Witkin, *supra*, Pleading, § 45, p. 108.)

"[T]he key issue is whether the same cause of action is involved in both suits. California law approaches the issue by focusing on the "primary right" at stake: if two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery.'" (*Henry v. Clifford* (1995) 32 Cal.App.4th 315, 321.) The most significant factor is the harm the plaintiff suffered. (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 954, disapproved of on another ground in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 574, fn. 4; *Craig v. County of Los Angeles* (1990) 221 Cal.App.3d 1294, 1301.) Complaints commonly designate each theory of recovery on a single primary right as a separate "cause of action." "[T]he phrase 'cause of action' is 'often used indiscriminately to mean what it says and to mean *counts* which state differently the same cause of action, . . .'" (*Slater v. Blackwood* (1975) 15 Cal.3d 791, 796.)

We conclude the doctrine of res judicata barred the Third Action. In the Third Action, Best alleged that he reached an agreement with Russell to settle the First Action and that Russell breached that settlement agreement by failing to sign and

return the settlement documents. Through the Third Action, Best sought to have possession of the disputed property returned to him. Even though Best's particular cause of action for breach of contract was not litigated in the First and Second Actions, each case involved the same primary right, namely Best's right to the disputed property. Further, Best could have raised his breach of contract claim in the Second Action but failed to do so. We find that this case falls squarely within the policy behind the doctrine of res judicata to prevent multiple actions involving the same controversy. (7 Witkin, *supra*, Judgment, § 334, p. 938.) Any cause of action which is based on Best's contention that he had a contract right to the disputed property is barred by the doctrine of res judicata because the issue could have been litigated and determined in the prior actions.

DISPOSITION

The judgments are affirmed. Breaker is entitled to costs on appeal.

McINTYRE, J.

WE CONCUR:

McDONALD, Acting P. J.

AARON, J.