

1977

## Stanley K. Florence et al v. Hiline Equipment Company et al : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

STANLEY K. FLORENCE and  
BARBARA J. FLORENCE,

Plaintiffs and Respondents,

vs.

Case No.  
15166

HILINE EQUIPMENT COMPANY,  
JAMES SARACINO, CAROL  
SARACINO, CLINTON C. GROLL,  
BONNIE C. GROLL, PAUL L.  
WESTBROEK, and BECKY L.  
WESTBROEK,

Defendants and Appellants.

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BRIEF OF RESPONDENTS

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Appeal from the judgment of the Second District Court  
for Weber County, Honorable Calvin Gould presiding.

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WESTBROEK,

Defendants and Appellants.

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BRIEF OF RESPONDENTS

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STATEMENT OF THE NATURE OF CASE

An appeal from a declaratory judgment on a  
disputed strip of ground.

DISPOSITION IN LOWER COURT

The Honorable Calvin Gould, sitting without a  
jury, found that the doctrine of boundary by acquiescence  
did not apply and that the equities of the respective  
parties would best be served by awarding to each party

their legally described tract.

#### RELIEF SOUGHT ON APPEAL

Respondents request this Court to uphold the decision of the trial court.

#### STATEMENT OF FACTS

Respondents purchased a twenty acre parcel of land in May of 1976 from Ray W. Whiting. (R-50) Mr. Whiting had purchased the property approximately twenty-three years prior to that. (R-57) At the time of Mr. Whiting's purchase, a fence ran along the east side of the property. (R-57)

During the time Mr. Whiting owned the property, he had a survey performed and was aware that the fence along his east boundary was not the true boundary line according to the legal description. (R-58) The survey also showed that the west boundary line coincided with the fence line and was correct. (R-58)

Approximately four years prior to the initiation of the legal action, the Appellant James Saracino purchased the land for subdivision purposes. It was purchased from Hilene Equipment Company. (R-75) Saracino hired a surveyor, Jesse Allen, to mark the exact boundaries for his proposed subdivision, the Mountain Valley Ranchettes. (R-76)

At the time of the survey it was learned that the east boundary of the Respondents' land, as per the legal description, was in fact the west boundary of the Appellants' land as per their legal description.

(R-45) It was also determined, however, that the fenceline separating the two parcels was located substantially into the Respondents' property. For the 1,000 feet depth of their respective boundaries, there was a variance between the fenceline and the true legal description as indicated by the survey of between ten and twenty-eight feet. (R-47)

Shortly after the survey had been conducted, Mr. Whiting, and subsequently the Respondents, constructed a chainlink fence using the Appellants' survey markers as the dividing line between the two parcels. (R-50, 51) The fence was constructed to keep children from the orchard and the large holding pond on Respondents' property. (R-51)

The subdivision plat drawn by Appellants' surveyor used the legal description, rather than the fence line, as the west boundary. (R-12) Clinton C. Groll, an Appellant and owner of subdivision lot number six, testified he got all property conveyed to him by his Deed and would not lose anything by the

legal description of Appellants and Respondents being used as the true boundaries. (R-72) In fact, he has Respondents' new chainlink fence on the west side of his lot as his west boundary and has used that fence to construct his own fence on both the north and south sides of his property going east towards the front of his property. (R-71, 72)

Judge Gould found that there was no evidence of any of the traditional boundary by acquiescence doctrines being present and that decreeing to each party their legally described tracts would be most equitable. (R-18)

#### ARGUMENT

THE DOCTRINE OF BOUNDARY BY ACQUIESCENCE DOES NOT APPLY AND THE RESPECTIVE PARTIES SHOULD BE AWARDED THEIR LEGALLY DESCRIBED TRACTS.

Hobson v. Panguitch Lake Corporation, 530 P.2d 792 (1975), is the most recent Utah boundary by acquiescence case. Hobson cites many of the previous Utah cases involving boundaries claimed by acquiescence.

The doctrine of boundary by acquiescence arises when the location of the true boundary between adjoining parcels of land is unknown, uncertain or in dispute, and the respective owners, by parol agreement, establish the

boundary line which must thereafter be acquiesced to by all parties involved for a substantial period of time. Brown v. Milliner, 232 P.2d 202.

In Hobson, the owners of adjoining tracts of land established their boundary by parol agreement. Subsequent owners, through a survey, learned that the agreed-to boundary line did not match the true legal description and a dispute arose. This Court in Hobson held that the doctrine of boundary by acquiescence did not apply. The Court stated,

We cannot see the circumstances as justifying a conclusion that the parties acquiesced in regarding this fence as a boundary for the sufficiently long period of time, nor that any greater injustice will result in rectifying the error and establishing the boundary in accordance with the true survey line as described in the Deeds, than would result from depriving the defendants of the property conveyed to them. at page 795.

The Appellant Saracino had purchased the property approximately four years ago for subdivision purposes and used the true survey line as the west boundary for all subdivision lots. At no time did any of the Appellants make any claim, representation, or indicate any reliance on the fenceline as their



boundary. It was not until the Respondents started construction of the chainlink fence that the Appellant Saracino apparently saw some opportunity to gain some land and voiced an objection to the fence being constructed. There is no evidence that any of the purchasers of lots in the subdivision ever relied on anything other than the true survey line. In fact, the Appellant Groll used the Respondents' chainlink fence on his west boundary as the beginning point for his own fences on the north and south sides of his property running to the east.

On the other hand, the Respondents' west boundary, as marked by a fence, matches the true survey line taken by their predecessor in interest several years ago and if they are to be held to the fenceline as their east boundary, it will result in a loss to the Respondents of approximately 20,000 square feet of land. As stated in Hobson, no injustice will result to the Appellants if the Respondents are awarded their legally described parcel since all of the Appellants relied on the true survey line anyway.

There is no evidence in this case as to how the fenceline came to be located where it is or if it was ever intended to be a boundary. Respondents recognize

that presumptively this might possibly create a boundary line had there been some evidence of reliance. The evidence in this case shows the Appellants did not rely on the fenceline and equity would best be served by awarding to each, their respective legally described parcels.

#### CONCLUSION

The Appellants constructed a subdivision plat relying on a true survey line as their west boundary and the Respondents would lose a substantial portion of deeded real property if their east boundary did not conform to the true survey line and equity would best be served by each party being awarded their legally described parcels.

Respectfully submitted,

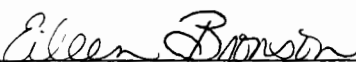
FLORENCE AND HUTCHISON



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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Respondents, postage prepaid, to Arden E. Coombs, Attorney for Defendants-Appellants, at 2910 Washington Blvd., Suite 300, Ogden, UT 84401, on this 30<sup>th</sup> day of December, 1977.

  
EILEEN BRONSON, Secretary