

2001

# Levon E. Payne, Addie Payne v. Walter T. Stewart, Ruth Stewart : Brief of Respondent

Utah Supreme Court

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M Dayle Jeffs; Jeffs and Jeffs; Attorney for Respondents.

Walter T Stewart; Appellant-Pro Se.

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UTAH SUPREME COURT

BRIEF

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J. Reuben Clark Law School

IN THE SUPREME COURT OF THE  
STATE OF UTAH

LAVON E. PAYNE and  
ADDIE PAYNE, his wife,

Plaintiffs and Respondents,

vs.

WALTER T. STEWART and  
RUTH STEWART, his wife,

Defendants and Appellants.

Case No. 14349

BRIEF OF RESPONDENTS

Appeal from Judgment of the Fourth  
Judicial District Court of Utah  
County, Honorable Allen B. Sorensen,  
Judge

M. DAYLE JEFFS  
Jeffs and Jeffs  
90 North 100 East  
P. O. Box 683  
Provo, Utah 84601

Attorneys for Plaintiffs  
and Respondents

WALTER T. STEWART  
Defendant - Appellant, Pro se

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

LAVON E. PAYNE and  
ADDIE PAYNE, his wife,

Plaintiffs and Respondents,

vs.

WALTER T. STEWART and  
RUTH STEWART, his wife,

Defendants and Appellants.

Case No. 14349

STATEMENT OF THE NATURE OF THE CASE

This action arises out of a dispute between the plaintiffs and defendants over a section of land. The plaintiffs hold title by deed to a section of land upon which defendants have historically occupied. The defendants also hold title by deed to a section of land which the plaintiffs have historically occupied. This action arises out of the dispute over the section of land which defendants hold title to but which plaintiffs occupy.

Defendants also allege a right-of-way across

this strip of land and a right to a well which lies near the property line which divides the properties of plaintiffs and defendants.

#### DISPOSITION OF THE CASE IN THE LOWER COURT

The trial judge sitting without a jury found a boundary of acquiescence giving title to the disputed area occupied by plaintiffs to them. The trial judge further ordered the defendants to remove the bridges and a cattle guard partially located on the property in dispute. The Court found that defendants had not established a right-of-way over the property in dispute. The trial court further denied defendants an injunction against plaintiffs' use of the well.

#### NATURE OF RELEASE SOUGHT ON APPEAL

Plaintiffs seek affirmance of the trial court's decision.

#### STATEMENT OF FACTS

In 1942 plaintiffs purchased farm property in the Benjamin area, the farm property lying to the west of a farm belonging to Ren Stewart. (Tr. 33, lines 22-27)

At that time there was a fence on the east side of a strip of land on the east side of plaintiffs' title and the Ren Stewart farm as shown on plaintiffs' Exhibit No. 2, a copy of a pertinent portion of the Exhibit is included herein as Figure "1". (Tr. 29, lines 21-30; Tr. 30, lines 1-2; Tr. 34, lines 19-30; Tr. 35, lines 1-9; Tr. 104, lines 12-16) In 1942 plaintiffs occupied their farm property and the green shaded portion on Figure "1". At the time of the plaintiffs' occupancy plaintiffs occupied the green shaded portion on Figure "1" and the defendants occupied the pink shaded portion on Figure "1" and have so occupied the respective areas since that time. The survey shows that the title by deed to the green shaded portion is in defendants as successors in interest to Ren Stewart and the title to the pink shaded portion is in the plaintiffs. (Ex. 2; Tr. 71, lines 17-30; Tr. 72, lines 1-8) The green shaded portion on Exhibit No. 1 and Figure "1" is the area to which plaintiffs claim ownership pursuant to boundary by acquiescence. The testimony of Defendant Walter Stewart indicates that fence lines running on the west and south of the pink shaded area and the north and east side of the green shaded area were placed there over 75 years ago and prior to the time of any

survey. (Tr. 104, lines 12-26; Tr. 19, lines 13-15) In 1942 the plaintiffs purchased the property without survey and began occupying all of the area including the green shaded area. (Tr. 35, lines 5-11; Tr. 41, lines 5-8; Tr. 47, lines 16-27) The testimony of the witnesses indicates that the plaintiffs had exclusive possession between 1942 and 1966 when the defendants moved their residence to the Ren Stewart farm and became the owners thereof. This period of twenty-four (24) years of exclusive occupancy by plaintiffs is unrebutted. (Tr. 27, lines 6-12; Tr. 27, lines 27-30; Tr. 28, line 4) Witness Carl Lindstrom testified that plaintiffs had exclusive occupancy of the green shaded portion of the property and that no one had made use of it except the plaintiffs, other than downstream users of irrigation water to make changes in the water headgates. (Tr. 27, lines 27-30; Tr. 30, lines 15-20) North of the plaintiffs' property and west of the defendants' property the county road is paved and the road makes a slight bend to the west and then stops prior to entry upon the plaintiffs' property. (Ex. 2) At that point a gate is placed for entrance to the plaintiffs' property. That gate has been closed each year during the

entire term since 1942 to the present. Many times during each year and every pheasant season that gate was closed to prevent trespass across the plaintiffs' property. (Tr. 9, lines 4-12; Tr. 92, lines 1-10; Tr. 178, lines 28-30; Tr. 179, lines 1-7) The defendants had maintained a corral for their cattle north of their house for several years. In 1972 the defendants moved the corral to the south end of their property and right next to the fence which bordered the green shaded area. (Tr. 49, lines 5-18) At that time, in 1972, defendants commenced traversing the plaintiffs' property and the green shaded portion of the property to get to their corral instead of building a road each of their house through their own fields and property, to their own corral. (Tr. 49, lines 19-22) They constructed two bridges across the irrigation ditch that runs west of and parallel to the fence on the east side of the green shaded area. (Tr. 49, lines 23-27; Tr. 192, lines 24-30) This action gave rise to this suit.

In approximately 1934 plaintiffs' predecessor in interest appropriated and drilled a well on plaintiffs' property near the section line and near the north end of the green shaded area. (Tr. 164, lines 4-11; Tr. 165,

lines 6-11) That well was not used for a number of years. In 1950 the well was opened and the plaintiffs began drawing their culinary water from the well. (Tr. 208, lines 9-12) Plaintiffs also allowed defendants' predecessor in interest to draw a culinary pipeline from the well. In 1956 the defendants filed an application to drill a culinary well near their house, which application was approved by the State Engineer in 1957. (Tr. 207, lines 13-16) In 1965 plaintiffs filed a change application to convert the 1934 well from irrigation usage to culinary usage, which was approved by the State Engineer. (Tr. 226, lines 1-8) Defendants continued to draw water from the plaintiffs' well. (Tr. 202, lines 8-12) In 1969 the plaintiffs demanded that the defendants disconnect their water pipe from plaintiffs' well and connect to their own culinary well. (Tr. 185, lines 16-21; Tr. 206, lines 14-18; Tr. 207, lines 17-26) Defendants lodged a protest with the State Engineer regarding plaintiffs' use of the well. (Tr. 206, lines 19-22; Tr. 185, lines 26-30; Tr. 186, lines 1-10) In November, 1969, the State Engineer informed them that they should disconnect from the plaintiffs' well and connect to their own culinary well which was an approved application. (Ex. 18; Tr. 186, lines 11-26).

## POINT I

### THE RULING OF THE TRIAL COURT OF A BOUNDARY BY ACQUIESCENCE IS SUPPORTED BY THE EVIDENCE

The first three points of defendants' brief deal with a single question, although framed to appear as three separate questions. The single question being whether or not the evidence presented to the Court supports the Court's finding of a boundary by acquiescence.

The trial court found that the line claimed by plaintiffs has been recognized by the parties and their predecessors in interest as the boundary between the properties since territorial days. (R. 15) Defendant Walter Stewart testified that the fence which lies to the west of the pink shaded area and to the east of the green shaded area is a single continuous fence. (Tr. 12, lines 22-29) Defendant Walter Stewart further admits that this fence lying to the north and east of the green shaded area in Figure "1" was erected some time around the turn of the century. (Tr. 18, lines 5-9 and 26-30; Tr. 104, lines 12-18; Tr. 105, lines 1-5) There is no evidence other than that this fence has been in existence since the turn of the century. (Tr. 36, lines 1-13) The Plaintiff LaVon Payne testified that no survey was made at the time the plaintiffs purchased the property from their predecessors, Tuckers. (Tr. 71, lines 27-28) They

also did not know about the actual title line until years afterward. (Tr. 38, lines 6-11) This occurred when Mr. Tucker took the title through court. (Tr. 71, lines 24-30; Tr. 72, lines 1-8) The Plaintiff LaVon Payne further testified that when plaintiffs bought the property, the fences were in existence, they accepted them and assumed that the property shaded in "green" was theirs. (Tr. 72, lines 1-8) The testimony at the trial adequately supports the findings that the fence was in existence since territorial times and that it was accepted by the predecessors in interest and by the parties as the boundary line between their properties.

The circumstances of entry through plaintiffs' gate across plaintiffs' property to get to the green shaded area, the fact that the road only leads to the plaintiffs' property and has not been used according to Mr. Lindstrom by anyone other than plaintiffs and their guests since 1942 until 1972, placed the factual situation directly in line with the reasoning of the Utah decisions.

There are a number of Utah Supreme Court decisions bearing on the doctrine of boundary by acquiescence. The most recent and clear pronouncement of that is found in Baum v. Defa, (1974) 525 P.2d 725, where the opinion of the Supreme Court, affirmed the judgment of the same

trial judge that tried the case now before the Court.

The Court said at page 726:

Its essence is that where there has been any type of a recognizable physical boundary, which has been accepted as such for a long period of time, it should be presumed that any dispute or disagreement over the boundary has been reconciled in some manner.

This Court went on to define what a long period of time is, by which the boundary by acquiescence may be established when it continued at page 726:

. . .there is no exact period which constitutes such 'long period of time'. However, it has usually been related to the prescriptive period of 20 years which was regarded at common law as the time 'since the memory of man runneth not to the contrary.'

Baum v. Defa, further went on to apply the rule in a factual situation similar to that now before the Court when in the opinion it was said at page 727:

. . . if the property on either side of such a fence is conveyed to separate parties, so that there comes into being separate ownership of the tracts on either side, and the circumstances are such that the parties should reasonably be assumed to accept the fence as the boundary between their properties, then from that time on, the time during which the fence continues to exist, should be regarded as going toward fulfilling the time requirement for the establishment of a boundary by acquiescence.

The evidence is uncontroverted that from 1942 when plaintiffs purchased and occupied their land, until 1966, a period of some 24 years, the circumstances were such that

the parties could reasonably be assumed to accept the fence as the boundary. It was not until 1972, when the defendants herein attempted to cross and make use of the green shaded area, that a dispute arose.

Thus, this fence and the occupancy of the pink shaded area by defendants and their predecessors and the occupancy of the green shaded area by the plaintiffs and their predecessors fall squarely in line with the reasoning and the factual circumstances of Baum v. Defa.

Going back to some of the earlier cases that shed light on the particular fact situation in the case before the Court, we find in Holmes v. Judge, (1906), 31 Utah 269, 87 Pac. 1009, the Court said at page 277:

It is squarely held, however, that long acquiescence in a boundary that is visibly marked, or placed where it can be and is observed by the adjoining owner, is sufficient to establish a boundary from which neither party may depart at will.

The decision in Baum v. Defa really clarified what had been previously announced by the Holmes case.

In Young v. Hyland, (1910), 37 Utah 229, 108 Pac. 1124, the Court clarified that where a fence line or other monument had been placed in before official surveys, that nevertheless would constitute the boundary where it had been acquiesced in for a long period of time saying at page 234:

. . . where the owners of adjoining lands occupy their respective premises up to a certain line which they recognized and acquiesced in as their boundary line for a long period of time, they and their grantees will not be permitted to deny that the boundary line thus recognized is the true line of division between their properties . . . A practical location of a boundary line may be, and often is, agreed upon, fixed, and established, either by an express agreement, or by acquiescence, without surveys. It may be so agreed to and fixed before, as well as after, the making of an official survey.

In 1912, in Farr Development Co. v. Thomas, et al., (1912) 41 Utah 1, 122 Pac. 906, at page 3:

. . . all that is necessary to be, or that can be, said by us on the question that where owners of adjoining lands have occupied their respective premises up to a certain line, which they and their predecessors in interest recognized and acquiesced in as their boundary line for a long period of time, neither they, nor their grantees or privies in estate, will be permitted to deny that the boundary line so recognized and acquired in as the true line of division between their properties.

In Tanner v. Stratton, (1914) 44 Utah 253, 139 Pac. 940, with facts which closely parallel ours, being the occupancy of the land up to the fence line and not beyond, which is exactly the circumstance we have here where plaintiffs occupy the green shaded portion up to the fence line and do not occupy beyond the fence even though they have legal title to the pink shaded portion occupied by the defendants, and upon which defendants' predecessors built half of their house, the Court said at page 255:

There is no direct evidence that the north portion was built on the line with his express consent or by agreement. But it was there for more than twenty years, marking the boundary line. He cultivated and occupied up to the fence, and at no time occupied or claimed any ground beyond it, and located the latter portion of the fence in a direct line with it. All this indicates, not only a mere recognition and acquiescence in the old fence line as and for a boundary line, but consent as well, facts from which consent may be implied.

In the case before the Court it is significant that from 1942 to 1972 until the moving of the corrals by the defendants to the rear of their property, they made no efforts to assert or claim or attempt to make use of the green shaded portion other than the occupation by the respective parties, upon each side of the fence. No altercations over this boundary occurred until 1972, a period of some thirty (30) years after defendants purchased the property from their predecessors, Tuckers. In Provonsha v. Pitman, (1957), 6 Utah 2d 26, 305 P.2d 486, the Court indicated that subsequent grantees (in our case the defendants, from their parents) could not marshal a disagreement created at a later date to disavow the previously established boundary by acquiescence. As pointed out in Lane v. Walker, (1973), 29 Utah 2d 119, 505 P.2d 1199 at page 120:

'Acquiescence' is more nearly synonymous with 'indolence,' or 'consent by silence,'--

or a knowledge that a fence or other monuments appear to be a boundary. . . .

A physical examination of Exhibits 1 and 2 readily shows the physical boundary and the use of the property by the respective parties.

In Olsen v. Park Daughters Investment Co., (1973), 29 Utah 2d 421, 511 P.2d 145, the Court stated at page 425:

Its essence is that where there arises a dispute as to the boundary between properties, and it appears that there is a recognizable physical boundary of any character, which has been acquiesced in as a boundary for a long period of time, the conflict should be conclusively presumed to have been reconciled in some manner.

The lack of a dispute for a long period of time is born out by the testimony of Mr. Carl Lindstrom, Plaintiff LaVon Payne and even by Defendant Walter Stewart, himself, who indicated that until he returned in 1966, although he was residing in Salt Lake City, no efforts were made to disavow the obvious and apparent boundary.

The defendants' citation to Tripp v. Bagley, (1928) 74 Utah 57, 276 Pac. 912, is not appropo since no survey had been made of the property, the title line was not known (Tr. 19, lines 14-16; Tr. 71, lines 17-28) and the plaintiffs testified that from the time of their occupancy until this dispute arose, they had always

understood the boundary to be the fence. (Tr. 72, lines 1-8) The evidence presented to the trial court in light of the citations above quoted clearly support the finding of the trial court of the boundary by acquiescence, and in fact would impell the trial court to no other decision.

#### POINT II

THE ASSERTION THAT PLAINTIFFS-RESPONDENTS ARE ESTOPPED FROM DENYING DEFENDANTS-APPELLANTS ACCESS TO THE LAND IS NOT SUPPORTED BY THE LAW OR EVIDENCE AND THE RULING BY THE TRIAL COURT THAT DEFENDANTS-APPELLANTS DO NOT HAVE A RIGHT-OF-WAY ACROSS PLAINTIFFS-RESPONDENTS' PROPERTY IS IN ACCORDANCE WITH THE EVIDENCE AND THE LAW

In Point IV of the defendants' brief, defendants contend that the plaintiffs were estopped from denying defendants access to the green shaded area. The defendants are in the dubious and inconsistent position of asserting by Points I, II and III, that they claim ownership of the green shaded area, and then in Point IV, alleging that they have established a right-of-way across the green shaded area. In order to make such assertion of an establishment of a right-of-way, there would have to be an acknowledgement that the property does, in fact, belong to the plaintiffs, and proof of the required criteria for establishment of an easement by prescription upon the green shaded portion by defendants. The testimony and finding by the Court as to the use of the green shaded

area by the defendants and their predecessors in interest, is that their only use was by permission of the plaintiffs and their predecessors. Mr. Carl Lindstrom, a resident of the area, testified that there were no bridges across the fence line into the green area from the defendants' property since 1936 when he moved into the area. (Tr. 27, lines 11-16) He also went on to testify that there was no way in which to cross from the green area across the fence, since there were no bridges across the irrigation canal. (Tr. 29, lines 12-30; Tr. 30, lines 1-7) There was also testimony that the fence was present in 1942 when plaintiffs Payne purchased the property (Tr. 34, lines 27-30; Tr. 35, lines 1-9) and that the predecessors in interest of the defendants made no use of this green area during the time which plaintiffs occupied the property. (Tr. 27, lines 27-30; Tr. 30, lines 1-4; Tr. 38, lines 28-30; Tr. 39, line 1)

The uncontroverted testimony in the case established that except for occasional visitors to the plaintiffs, that no one had made use of the green area except the plaintiffs and their predecessors in interest. Defendants moved no equipment down that lane. (Tr. 27, lines 27-30; Tr. 28, lines 1-4; Tr. 43, lines 3-16) There was some testimony to the effect that a Mr. Reynolds had used the lane.

However, this was in connection with his church capacities and was a use with plaintiffs' permission. (Tr. 92, lines 3-25; Tr. 93, lines 11-20) He was an invitee of both the plaintiffs and the defendants. (Tr. 156, lines 15-30; Tr. 157, lines 3-5) Also there was some testimony that a Mr. Harris used the lane. Mr. Harris' use, however, was in connection with his water rights as he was a downstream user of the ditch and, therefore, had a right to use the lane. Also, Mr. Harris had a Mr. Fitzwater who was a hired man who could use the road for access to his ditch. (Tr. 219, lines 7-14) None of these usages were in behalf of defendants and would not create any right in them.

The case law which is pertinent is found in a case decided in 1948, Savage v. Nielsen, (1948), 114 Utah 22, 197 P.2d 117, at page 32, which stated:

. . . A right of way by prescription can only be attained by satisfying certain other requirements. These requirements may, for all practical purposes, be included within the three set out below, although the cases under particular fact situations have emphasized other subdivisions. The three uses are: (1) Continuous; (2) Open; and (3) Adverse under a claim of right.

The court went on to say at page 33:

It is well established as the rule in Utah that the prescriptive period is twenty years as it was at the common law.

The Court, on testimony, very similar to the testimony in the case now before us, cited with approval in the Savage case from Jensen v. Gerrard, (1935), 85 Utah 41, 39 P.2d 1070 at page 1073:

A twenty-year use alone of a way is not sufficient to establish an easement. Mere use of a roadway opened by a landowner for his own purposes will be presumed permissive. An antagonistic or adverse use of a way cannot spring from a permissive use. A prescriptive title must be acquired adversely. It cannot be adverse when it rests upon a license or mere neighborly accommodation. Adverse user is the antithesis of permissive user. If the use is accompanied by any recognition in express terms or by implication of a right in the landowner to stop such use now or at some time in the future, the use is not adverse. (Emphasis supplied)

As stated in Zollinger v. Frank, (1946) 110 Utah 514, 175 P.2d 714 at page 517:

Regardless of the words used to characterize this element of the nature of the use necessary to give rise to a prescriptive easement, it is our opinion that the courts mean that the use must be against the owner as distinguished from under the owner.

The evidence and the finding of the Court was that all usage was permissive.

As stated in Chournos v. Alkema, (1972), 27 Utah 2d 244, 494 P.2d 950, the Court said at page 248:

One cannot claim a right of way as a private one by showing that it has been used by the public; he must show user by himself or by his predecessors of the way to his own lot.

Therefore, the evidence attempted to be utilized by the defendants herein to show that others, such as Harris or Reynolds, use of the right-of-way would not establish any right in the defendants. As stated in Nielson v. Sandberg, (1943), 105 Utah 93, 141 P.2d 696, at page 101:

An easement, being a burden upon the land which it traverses is limited to uses for which, or by which it was acquired, and to the person who acquired it, or for the benefit of the property for which it was acquired. Said the Washington Court in Lund v. Johnson, 162 Wash. 525, 298 Pac. 702, 704:

. . . 'The party claiming the right must show that he has acquired it by his own use independent of others; he cannot make his right depend in any degree upon the enjoyment of a similar right by others.' Jones on Easements, Par. 273; Cox v. Forrest, 60 Md. 74; Dodge v. Stacy, 39 Vt. 558.

The evidence in this case is that the only use by the defendants or people acting in their behalf was a permissive use, such visitors constituted church authorities and other visitors and family members at family reunions that were allowed onto the property. (Tr. 92, Tr. 93) While it is true that Mr. Walter T. Stewart, Jr. stated he had used the green shaded area (Tr. 137, lines 9-14), this had only been within the last seven (7) years and is not sufficient to acquire a prescriptive right, being

less than twenty (20) years.

Another of the uncontroverted facts is that plaintiffs closed the lane area with a gate at least every pheasant season and approximately ten (10) times per year. (Tr. 92, lines 3-11) This was substantiated by the Defendant Ruth Stewart when she stated that the gate was always closed during pheasant season. (Tr. 178, lines 28-30 and Tr. 179, lines 1-7).

The testimony of Defendant Ruth Stewart, herself, supported by the testimony of Plaintiff LaVon Payne shows that the right-of-way could never be established where the way had been closed off several times of every year by the plaintiffs since their occupancy in 1942.

The evidence presented to the trial court as applied to the law shows that the finding and ruling of the Court is in conformity with the law on establishment of right-of-way by prescription and that the defendants failed in their burden of proof on this point in their counterclaim.

### POINT III

THE COURT CORRECTLY RULED THAT THE DEFENDANTS-APPELLANTS HAD FAILED IN THEIR BURDEN OF PROOF ON THEIR COUNTERCLAIM REQUESTING AN INJUNCTION AGAINST THE PLAINTIFFS-RESPONDENTS USE OF WELL

The well was first applied for in 1934 according to defendants' own statement. Defendants had knowledge of

plaintiffs' usage from the well commencing in 1950. (Tr. 208, lines 9-30) Defendants were also using water from the plaintiffs' well. Defendants prepared an agreement and submitted it to plaintiffs for usage of water from plaintiffs' well, but plaintiffs refused to sign the agreement prepared by defendants. (Tr. 203, lines 1-5) Defendants filed their own application number 28237 for a well for water for their own culinary use in 1956, at a time when they were using a water line from plaintiffs' well under a license from plaintiffs. (Tr. 202, lines 8-30) This application was approved in 1957. (Tr. 107, lines 3-16, Ex. 18) In 1965, plaintiffs filed a change application to convert their well claim number 5309 from irrigation to culinary, which was approved by the State Engineer. In 1969, the defendants initiated a protest with the State Engineer. As a result of that protest, the defendants received a letter (Ex. 18) from the State Engineer informing them that they should connect to their own well under appropriated and approved application number 28237, as they had no rights in plaintiffs' well. The defendants claims regarding the use by plaintiffs of the well should have been acted upon pursuant to Title 73, Utah Code Annotated 1953, as amended. The trial court went into this matter specifically and concluded that these water

rights had been used for some twenty-five (25) years and the defendants' claim to a right to injunctive relief against the usage of the well had long since been barred by the statute of limitations. (Tr. 201, lines 7-30; Tr. 202, line 1) The defendants are in the inconsistent position of having made use of the water from 1950 to 1970 under a license from the plaintiffs and now claim to the Court that there has been an abandonment of this water right. If in fact there had been an abandonment of water rights, the water would have been available for appropriation and an application to the State Engineer for appropriation would have brought the matter before the State Engineer for decision pursuant to the procedures outlined in Title 73, Utah Code Annotated, 1953, as amended.

The defendants' failure to pursue their rights under Title 73, Utah Code Annotated, 1953, as amended, with plaintiffs' continuous usage of the well since 1950, bars their claim for an injunction.

Any claim of defendants herein to have the Court grant an injunction has long since been barred by the statute of limitations and the trial court correctly ruled that it did not have jurisdiction or a legal basis on which to act upon the counterclaim asking for injunction.

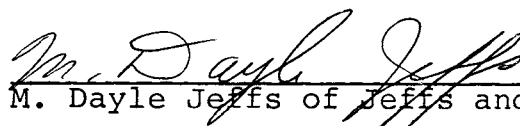
### CONCLUSION

The record (tried to the Court as both the trier of the fact and the law) discloses that the determination by the Court is well supported by not only plaintiffs' evidence, but by the admissions of the defendants of the establishment of the boundary by acquiescence. The trial court ruled correctly in light of all Utah Supreme Court cases that plaintiffs had established their burden of proof and had ownership of the disputed green shaded area by boundary by acquiescence.

The defendants failed to establish proof of the necessary criteria that they had established an easement by prescription over the plaintiffs' property. Defendants failed in their burden of proof to establish any basis upon which the Court would have jurisdiction for or the right to grant their request for an injunction against the plaintiffs' use of the well.

The Court should affirm the trial court in all points in this matter.

Respectfully submitted,

  
M. Dayle Jeffs of Jeffs and Jeffs

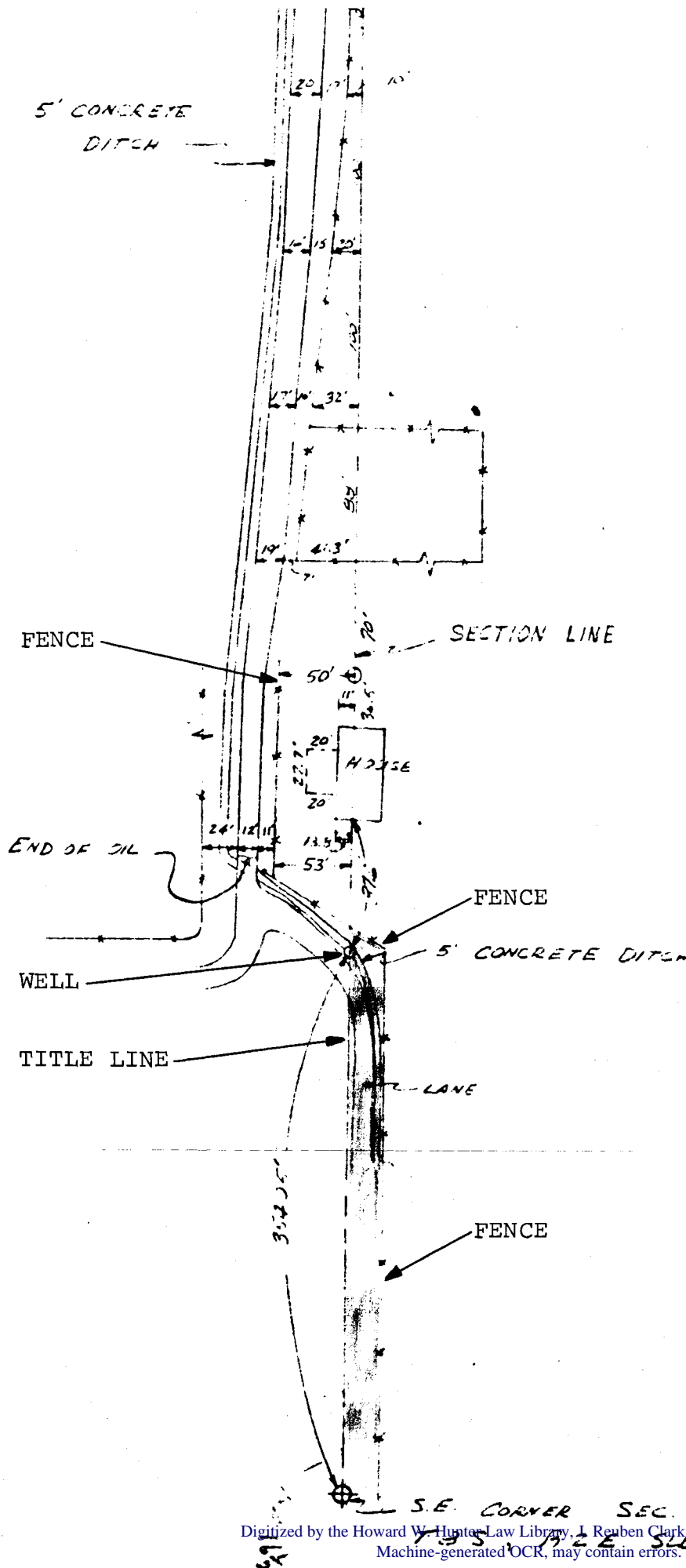


FIGURE "1"



Pltf's Exhibit No. #2

Case No. 40602

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