

1987

# Mark Halladay and Merle Halladay v. Madge Cluff, Perry K. Bigelow and Norma G. Bigelow : Brief in Opposition to Certiorari

Utah Supreme Court

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UTAH SUPRE  
COURT

JUDGMENT

SECRET 870280 IN THE SUPREME COURT OF THE  
STATE OF UTAH

MACK HALLADAY and MERLE HALLADAY,

Plaintiffs/Appellants.

vs.

MADGE CLUFF, PERRY K. BIGELOW, and  
NORMA G. BIGELOW,

Defendants/Respondents.

Case No. 870280

BRIEF IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI

PETITION FOR REVIEW OF THE JUDGMENT OF THE  
UTAH COURT OF APPEALS

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MACK HALLADAY and MERLE HALLADAY,  
Plaintiffs/Appellants.  
vs.  
MADGE CLUFF, PERRY K. BIGELOW, and  
NORMA G. BIGELOW,  
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Case No. 870280

PETITION FOR REVIEW OF THE JUDGMENT OF THE  
UTAH COURT OF APPEALS

**Attorneys for Respondent Cluff**

Attorneys for Defendants Bigelow  
(Not Participating)

---

BRIEF OF DEFENDANT CLUFF OPPPOSING  
PETITION FOR WRIT OF CERTIORARI

---

PARTIES TO THE PROCEEDING

The parties to this proceeding are those contained in the caption of the case. However, Perry K. Bigelow and Norma G. Bigelow are not party to this petition.

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OPINIONS ISSUED BY THE COURT OF APPEALS

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The opinion of the Court of Appeals in this matter is Halladay v. Cluff, No. 860079-CA filed July 10, 1987, reported as Halladay v. Cluff, 61 Utah Adv. Rep. 41 (Ct. App. 1987). A copy of the opinion is included as Appendix "B".

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JURISDICTION

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The date of the entry of the decision sought by Petitioner to be reviewed is July 10, 1987.

Jurisdiction of this matter is conferred upon the court by Utah Code Annotated § 78-2-2 (3)(a) and by Rule 42, Rules of the Utah Supreme Court.

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CONTROLLING PROVISIONS OF CONSTITUTIONS,  
STATUTES, ORDINANCES, AND REGULATIONS

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There are no controlling provisions of constitutions, statutes, ordinances, or regulations applicable to this Petition for Writ of Certiorari.

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STATEMENT OF THE CASE

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This is an action brought by the Halladays to quiet



title to a parcel of property within the legal description of Halladays' title which had been occupied by the defendants Cluff and Bigelow, for in excess of 30 years. Mrs. Cluff counterclaimed, claiming ownership on the doctrine of boundary by acquiescence to a portion of the property to which the Halladays were seeking to quiet title. Mrs. Cluff pleaded in her counterclaim alternatively that if boundary by acquiescence did not apply, Mrs. Cluff should be entitled to property lying to the west of her fence line and within her title line, but to which the Halladays had possession for a number of years. (Appendix "A")

The trial court ruled that boundary by acquiescence had been established and quieted title to property shown on Appendix "A" crosshatched in orange and noted by the designations "MNOP" to Cluff and Bigelow and awarded the green shaded strip of property designated as "WXYZ" to Halladay. Both rulings were consistent with the holdings in Fuoco v. Williams, 15 Utah 2d 156, 389 P.2d 998 (1964) and Hales v. Frakes, Utah, 600 P.2d 156, 389 P.2d 143 (1979).

Halladays appealed and the Utah Supreme Court reversed the trial court, in Halladay v. Cluff, et al., 685 P.Rptr.2d 500 (1984). The case was "remanded to the district court for the entry of a new decree in conformity with" the opinion rendered in the matter.

In reversing, this Court held that a fifth element for boundary by acquiescence was not present to sustain the

lower court's decision, that being the element of a dispute or uncertainty over the questioned area.

Upon remand, counsel for defendant Cluff requested a hearing before the trial court, and presented Mrs. Cluff's contention that the same rule of law should apply to the green shaded area on Appendix "A" marked with point designations "WXYZ" as applied to the orange crosshatched area marked with the point designations "MNOP". The trial court declined granting Mrs. Cluff's request to quiet title to the area within her title line, i.e., the green shaded area on Appendix "A", marked "WXYZ", lying beyond the fence line.

From the trial court's ruling upon said remand hearing, Mrs. Cluff filed an appeal to the Utah Supreme Court. The Supreme Court transferred the case to the Utah Court of Appeals pursuant to Rule 4A(a) of the Rules of the Utah Supreme Court.

The Court of Appeals rendered its decision on July 10, 1987.

Because there have been two appeals of this matter, the transcript of the trial contains three numbering series at the bottom right-hand corner of the transcript. The typed number beginning with page 1 was the assigned number the court reporter gave to the transcript at the time that the transcript was typed. The stamped number on the same page in the file transcript commencing with the number 102 was the number given in the record filed with the Supreme Court on the first

appeal of this matter. The stamped number on the same page in the file transcript commencing with the number 40 is the number system applied by the county clerk on the second appeal. The most recently stamped numbers will be those referred to in this brief.

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STATEMENT OF FACTS

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At the time of the commencement of this case, the defendant, Cluff, had occupied property within an old established fence line for over 30 years. (R. 153:18-26; 155:12-21). The testimony of the plaintiffs' witness, Elmo Halladay, testified that the fence line had been placed prior to 1930 and that the fence line was a continuous unbroken fence line in U shape, going from the front of 100 South Street in Provo, Utah, north some 231 feet, then across the back the width of the Cluff and Bigelow properties, then returning south to the street. (R. 99:3-24). The plaintiffs had occupied the portion of the property lying within the defendant Cluff's title line, but lying west of the old fence, a strip approximately ten feet wide by the length of her property (shaded green on Appendix "A"). (R. 100:28-30; 101:1-9). Mrs. Cluff had occupied the area crosshatched in orange in Appendix "A" attached hereto for the same period of time (Elmo Halladay, R. 106:6-13; 118:11-17).

At the time of the commencement of the suit, the defendant Cluff filed a counterclaim alleging that the property crosshatched in orange had become her property and that of Bigelow by boundary by acquiescence and acknowledging the same facts as to the property shown in green occupied by the plaintiffs (R. 12-15). The defendant Cluff, however, pleaded in the alternative that if the trial court determined that there was not a boundary by acquiescence and that the title lines were to govern, then the trial court should award to Cluff the property west of her fence but within her title line, shown in green on Appendix "A", and that the property shown crosshatched in orange should be awarded to Halladay based upon title lines (R 12-15).

One distinguishing factual circumstance was that Halladays' title line did not connect to Cluff's title line. There was a no man's land between the title line of Halladays and the title line of Cluff, as demonstrated by plaintiffs' witness, the engineer Clyde Naylor (R. 75;27-30; 76:1). Thus, Halladays could not meet the requirement of being adjoining property necessary to have boundary by acquiescence on the green shaded property.

In the opening statements to the court in the trial of this matter, which was tried without a jury, Cluff's counsel emphasized that pursuant to the counterclaim, if the court should conclude that the area shown crosshatched in orange were to be awarded to Cluff by applying the doctrine of

boundary by acquiescence, then the area shown shaded in green should go to the Halladays on the same doctrine. But if the court should rule that title lines governed, then the green area should go to Cluff and the orange area should go to Halladays (R. 52:21-30; 53:1-14; 56:1-20).

At the time the Halladays moved into the area in approximately 1930, the fence line shown on Appendix "A" and marked by points Y to X to M, running north and south, thence easterly to point N, thence south to point O and back to 100 South Street, was in place. The title line of the Cluff property as testified to by Clyde Naylor, Halladays' engineer witness, encompassed the green shaded area, points "WXYZ". There was a gap which is shown on Appendix "A" as shaded blue, lying just to the west of the Cluff title line (R. 75:27-30; 76:1). The testimony of Elmo Halladay, Mack Halladay, and Madge Cluff all indicate that the area to the west of the old fence and lying within the Cluff title line had been occupied by the Halladays for many years. Likewise, the area encompassed in orange crosshatching, that point of "MNOP" lying to the north of the Cluff property, had been occupied by the Cluffs for the same period of years (R. 106:6-13; 118:11-17).

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#### SUMMARY OF ARGUMENT

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The Petition for Writ of Certiorari presents to the Supreme Court the same considerations which were before the

Supreme Court at the time that it elected to exercise its discretion under Rule 4A(a) by transferring the case to the Court of Appeals. By transferring the case for decision from that court, the decision might have been in favor of the appellant or of the respondent. The granting of certiorari is premature and would tend to frustrate the purposes for establishing a court of appeals.

The Petition for Writ of Certiorari raises the same points raised by the brief on appeal presented to the Court of Appeals. The granting of the Petition for the Writ of Certiorari would be inferential finding that the panel of the Court of Appeals which decided this case did not consider the Petitioner's brief.

The issues raised by the Petition for Writ of Certiorari and the brief supporting the Petition are the identical issues and arguments presented to the Court of Appeals. The Court of Appeals specifically found that there was no abandonment of Cluff's claim to the green shaded area, but only an alternative theory applicable to both the parcel lying within Halldays' title line and the parcel lying with Cluff's title line.

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ARGUMENT

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POINT I

PETITIONER DOES NOT DEMONSTRATE A JUSTIFIABLE BASIS  
FOR GRANTING CERTIORARI.

The Petition for Writ of Certiorari cites Rule 43 of the Rules of the Utah Supreme Court as being satisfied in this Petition for Certiorari. However, Petitioner does not address that in his Brief in Support of the Petition for Writ of Certiorari.

It is probable that every case assigned by the Supreme Court to the Court of Appeals could be the subject matter of a Petition for Writ of Certiorari under one of the considerations set forth in Rule 43. Each litigant who loses in the decisions rendered by the Court of Appeals could petition for a Writ of Certiorari with the hope that the Supreme Court would reconsider the decision of the Court of Appeals. Each decision could be claimed to be contrary to the decisions of the Utah Supreme Court, or an interpretation of the decisions of the Utah Supreme Court, as Petitioner claims in this case, that the Court of Appeals did not follow the decision of the Utah Supreme Court in the first appeal.

It is this writer's understanding that the prime thrust for and the legislative and constitutional changes

effectuated to create the Court of Appeals was to reduce the caseload in the Supreme Court and to afford more expeditious rulings on the tremendous volume of cases being appealed from the lower courts and administrative agencies. If the Court of Appeals becomes an additional step in the pipeline of ultimate justice with each litigant attempting to appeal up from the decision of that court, the purposes for which that court was established would be frustrated.

The Petition for Writ of Certiorari is premature, since the ruling of the Court of Appeals remanded the case back to the trial court for further hearings to determine if the same factual circumstances apply to the green shaded area as to the orange crosshatched area, and instructed the trial court to enter an appropriate decree in conformity with this Court's earlier decision. The decision of the Court of Appeals on the applicability of the earlier decision of this Court to the green shaded area and conceivably whatever the trial court does may yet be the subject matter of a further appeal. As such, the Petition for Writ of Certiorari is premature. It is in conformity with the proper procedure for filing a Petition for Writ of Certiorari, but it should be declined by this Court.



## POINT II

DEFENDANT CLUFF DID NOT ABANDON HER CLAIM AS TO PARCEL W-X-Y-Z. THE HOLDING OF THE COURT OF APPEALS IS WELL SUPPORTED IN THE RECORD.

The thrust of the Petition for Writ of Certiorari is a claim that the defendant Cluff abandoned any claim to the property shown shaded green in Appendix "A".

Pleading in the alternative in her counterclaim, Madge Cluff alleged that the property shaded green and marked by points "WXYZ" on Appendix "A" was within the description of her legal title but outside the old fence line. Madge Cluff alleged that if the court ruled that boundary by acquiescence was not applicable to Madge Cluff's acquisition of the area shown crosshatched in orange, the area shown as shaded in green and marked by points "WXYZ" was beyond the old fence line, but within Madge' Cluff's title line and asserted that the same doctrine should be applied to parcel "MNOP" as is applied to "WXYZ".

In counsel's opening statement to the court (R. 52), Madge Cluff's counsel stated to the court:

We think that the rule of law and the factual circumstances are identical on the green slashed area as on the orange slashed area except to the party who is in possession. (R. 52:21-24).

In the evidence presented to the court, it was shown that Halladays had been in possession of the green shaded area for a number of years and Mrs. Cluff had been in possession of that portion of the orange crosshatched area contiguous to her

title line for the same period of time. This writer went on to inform the court of that possession (R. 56), wherein he said:

What I am saying, when I said that the same principle lies, if the court is going to follow title lines rather than boundary by acquiescence, then we would be entitled to the green slashed area and we believe that if Mr. Halladay is entitled to the orange slashed area to his title line, that we are entitled to move over to the title line. There should be a consistency. (R. 56:1-7)

THE COURT: . . . [B]ut as far as the fence line is concerned here, you don't claim to the west of it, right Mr. Jeffs?

That's true, we think it became theirs by boundary by acquiescence, the same as we claim the other piece. But, if the court were to adopt the rule that there was no boundary by acquiescence, and you are going to examine the title, then I think we will be entitled to that title. (R. 56:8-20).

The Court of Appeals, in substantial detail, reviewed the very issue raised by Petitioner in the Brief in Support of the Petition for Writ of Certiorari, and said, at page 42:

We have reviewed the record, with considerable care, with an eye toward determining whether the claim was unqualifiedly waived. Cluff's counterclaim was crystal clear that she should be declared the owner of the orange parcel on the basis of the doctrine of boundary by acquiescence, but that if she was unsuccessful, she should be declared the owner of the green parcel because of the "identical circumstances" concerning each parcel. At trial, Cluff explained her position, through counsel, in response to the court's initial perception that she was conceding her rights to the green parcel:

[quoting the above-quoted statement of this writer].

The Court of Appeals went on to point out that after the case was over, the trial court rendered its decision, by saying:

It recited no waiver or concession by Cluff as to the green parcel, but rather reached the merits and found that Halladays had established entitlement to it on the basis of boundary by acquiescence under the cases of Fuoco v. Williams, 15 Utah 2d 156, 389 P.2d 143 (1964), and Hales v. Frakes, 600 P.2d 556 (1979).

The Court of Appeals further concluded: "We see in none of this any concession or waiver by Cluff."

The Court of Appeals made very clear that its decision was on the very issue now urged by Petitioners after a careful consideration by the Court of Appeals, when that court went on to say:

While we would in any event be unwilling to construe that brief exchange between the court and Halladays' counsel as a concession by Cluff, we are especially not inclined to do so since the court in its decision made no mention of any concession or waiver by Cluff, but rather spoke in terms of a decision on the merits. At the hearing before the trial court following remand by the Supreme Court, Halladays' counsel acknowledged that the green parcel had been tried and not resolved by stipulation. Moreover, the court's remarks at that hearing, and in its subsequent written ruling, make clear the exclusive basis for its decision not to reconsider its disposition of the green parcel was its conclusion that the failure of Cluff to cross-appeal precluded it from doing so. No mention was made by the court of any prejudgment concession or waiver by Cluff.

The issue now raised was fully considered and well decided by the Court of Appeals.

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CONCLUSION

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The Petitioner has demonstrated none of the impelling considerations necessary for this court to exercise its discretion and grant a Writ of Certiorari. The attempt to have the matter reviewed by this court is an attempt to provide another step in the pipeline, and would render the decisions of the Court of Appeals meaningless. The matter has been remanded to the trial court for further evaluation and entry of a decree in conformity with the decision of the Court of Appeals, and that procedure should be allowed to go forward.

This court should deny the Petition for Writ of Certiorari.

Respectfully submitted this 25th day of September, 1987.

  
M. DAYLE JEFFS

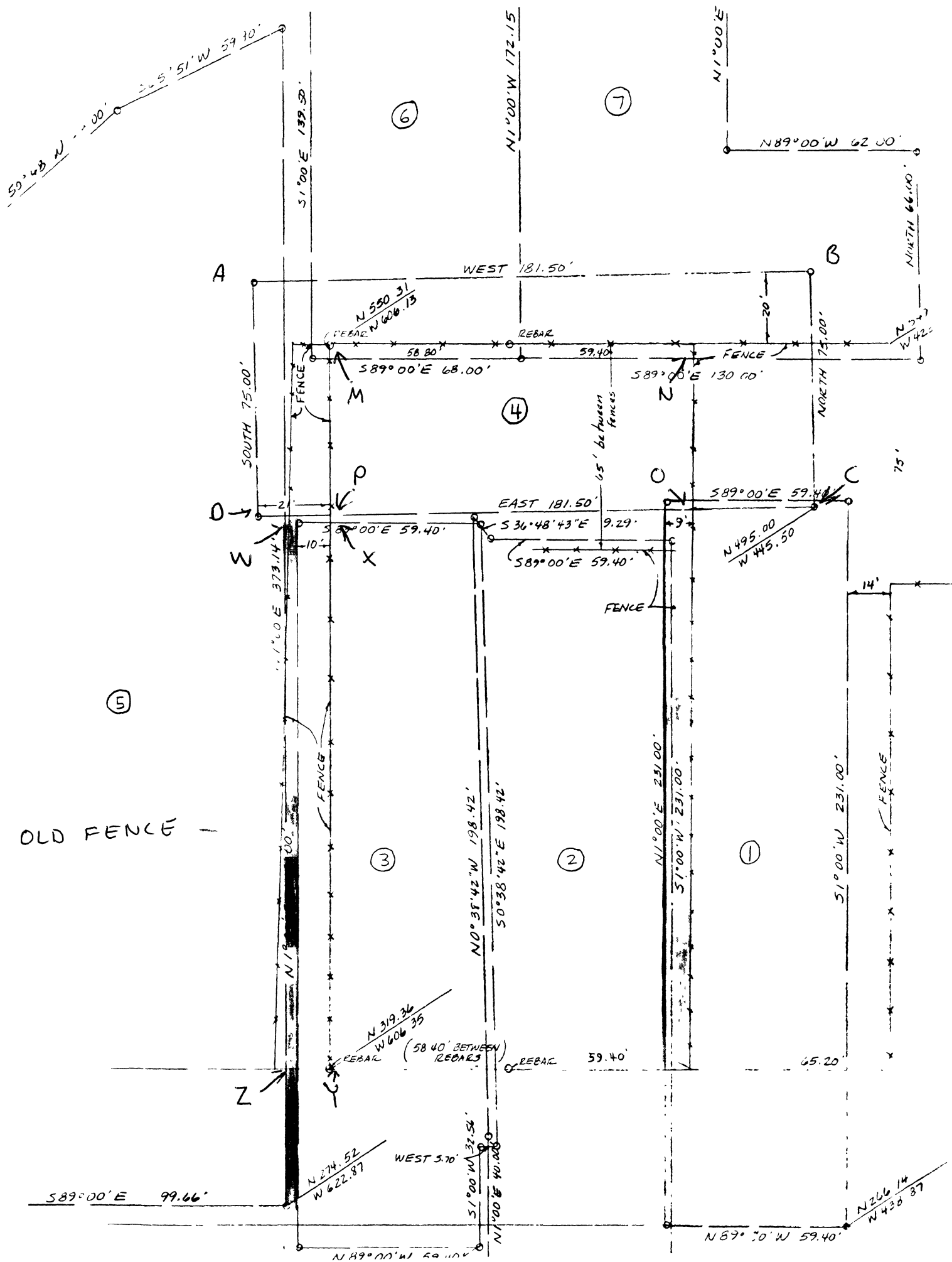
CERTIFICATE OF MAILING

I hereby certify that eleven copies of the foregoing were mailed to the Utah Supreme Court, State Capitol Building, Salt Lake City, Utah, 84114, and four copies were mailed to each of the below named parties in the United States Mails, postage prepaid, this 25th day of September, 1987, at the following addresses:

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Cite as  
61 Utah Adv. Rep. 41

IN THE  
UTAH COURT OF APPEALS

Mack HALLADAY and Merle Halladay,  
Plaintiff and Respondent,

v.

Madge CLUFF, Perry K. Bigelow, and Norma  
G. Bigelow,  
Defendant and Appellant.

Before Judges Orme, Garff, and Jackson.

No. 860079-CA

FILED: July 10, 1987

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FOURTH DISTRICT

Hon. George E. Ballif

ATTORNEYS:

Dayle M. Jeffs for Appellant.

Brent D. Young, S. Rex Lewis for  
Respondents.

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OPINION

---

**ORME, Judge:**

Halladays commenced this action to quiet title to a parcel of property sometimes referred to as the orange parcel. They relied on their holding actual legal title. Cluff counterclaimed seeking to quiet title to the orange parcel on the basis of boundary by acquiescence and, alternatively, seeking to quiet title to another parcel of property, sometimes referred to as the green parcel, if the court determined to adjudicate the rights of the parties with reference to legal titles rather than on the basis of boundary by acquiescence. The unusual situation came about because Halladays held legal title to the orange parcel, which Cluff occupied, while Cluff held legal title to the green parcel, which Halladays occupied. If occupancy controlled, Cluff would own the orange

tently applied theory would either party be entitled to both parcels.

Cluff was successful at trial, persuading the court to adjust the parties' competing rights on the basis of the boundary by acquiescence doctrine. Thus, she was held to have title to the larger orange parcel primarily in dispute, but Halladays got the smaller green parcel on the same basis.

Halladays appealed to the Supreme Court and were successful there. *Halladay v. Cluff*, 685 P.2d 500 (Utah 1984). The Supreme Court held that boundary by acquiescence did not apply, given the facts developed at trial, and that legal title should control. See *id.* at 507. Of course, since the judgment had been adverse to Halladays only as concerned the orange parcel, the orange parcel was the focus of the appeal.<sup>2</sup> The case was remanded for entry of "a new decree in conformity" with the Supreme Court's opinion.

On remand, Cluff argued that consistency with the Supreme Court's analysis required that her alternative claim be granted. Cluff argued that if legal title was to control, it should control the whole dispute, and she should be awarded the green parcel, to which she held title.

The trial court, however, concluded that Cluff's failure to take a cross-appeal from the determination concerning the green parcel foreclosed any re-examination of that issue. We cannot agree. Cross-appeals are properly limited to grievances a party has with the judgment as it was entered--not grievances it might acquire depending on the outcome of the appeal. See *Cunningham v. Lynch-Davidson Motors, Inc.*, 425 So.2d 131, 133 (Fla. App. 1982)(cross-appeal only required when respondent seeks to vary or modify judgment below); *Terry v. Zions Co-Op. Mercantile Inst.*, 617 P.2d 700, 701 (Utah 1980)("[I]f a respondent desires to attack the judgment and change it in his favor, he must timely file a cross-appeal ..."). See also 15 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* §3904 (1976).

Cluff knew all along she could not have it both ways. Either boundary by acquiescence would apply, in which case she would win the larger parcel but lose the smaller, or legal titles would control, in which event she would lose the larger parcel but at least get the smaller one.<sup>3</sup> She could not plausibly argue one theory as to one parcel and another as to the other and walk away with both contested parcels. On balance, Cluff would come out much better if the boundary by acquiescence argument carried the day. She accordingly argued for application of that theory. She prevailed at the trial level to the fullest extent possible consistent with a disciplined decision, even though she "lost" as to the green parcel.

proper response to that appeal was to resist the Halladays' arguments and seek to have the trial court affirmed. A cross-appeal would not have been appropriate. Cluff had no dissatisfaction with the trial court's judgment, which she simply wanted to have affirmed. Moreover, a cross-appeal would have left Cluff and Halladays making inconsistent and contrary arguments depending on which parcel was being focused on.<sup>4</sup>

Thus, the absence of a cross-appeal did not, of itself, foreclose the trial court from reassessing the status of the green parcel in view of the Supreme Court's decision and changing its decree as to that parcel as well, so the "new decree" would be fully "in conformity" with the doctrine expressed in the Court's opinion.<sup>5</sup>

However, for the trial court to be able to address the green parcel on remand, i.e., to reconsider the claim in the alternative that if Cluff did not own the orange parcel she owned the green one, it would be necessary that that claim had not been compromised, dismissed, or otherwise unconditionally disposed of. If, as Halladays suggest on this appeal, Cluff unqualifiedly waived her claim to the smaller parcel, without regard to the disposition made as to the larger one or the legal doctrine underlying that disposition, Cluff would not be entitled to any relief. If, on the other hand, the claim to the green parcel was expressly preserved or had been resolved only as a necessary part of the basic determination concerning boundary by acquiescence, Cluff would clearly be entitled to an opportunity to show the trial court that the Supreme Court's reversal as to the larger parcel necessitates a "reversal" as to the other.<sup>6</sup>

We have reviewed the record, with considerable care, with an eye toward determining whether the claim was unqualifiedly waived. Cluff's counterclaim was crystal clear that she should be declared the owner of the orange parcel on the basis of the doctrine of boundary by acquiescence, but that if she was unsuccessful, she should be declared the owner of the green parcel because of the "identical circumstances" concerning each parcel. At trial, Cluff explained her position, through counsel, in response to the court's initial perception that she was conceding her rights to the green parcel:

What I'm saying, when I said the same principle lies, if the Court is going to follow title lines, rather than boundary by acquiescence, then we would be entitled to the green slashed area. And we believe that if Mr. Halladay is entitled to the orange slashed area to this title line, that we are entitled to move over to the title line. That there



should be a consistency.

Counsel for Halladays then sought to characterize Cluff's position as conceding the green parcel. The court explained that Cluff simply wanted a consistent legal approach and concluded by observing: "So there will be no stipulations on that." The parties then presented their evidence. After argument, the court issued a written decision. It recited no waiver or concession by Cluff as to the green parcel, but rather reached the merits and found that Halladays had established entitlement to it on the basis of boundary by acquiescence under the cases of *Fuoco v. Williams*, 15 Utah 2d 156, 389 P.2d 143 (1964), and *Hales v. Frakes*, 600 P.2d 556 (1979). Conversely, the trial court found, relying principally on the same cases, that Cluff had established entitlement to the orange parcel on the basis of boundary by acquiescence. Subsequently, the court entered Findings and Conclusions which reflect that the court reached the merits on both the green and the orange parcels and decided both situations on the basis of a consistent application of the doctrine of boundary by acquiescence. A single, short decree recited the result of the court's decision and quieted title to the green parcel in Halladays and the orange parcel in Cluff.

We see in none of this any concession or waiver by Cluff. The only place to which Halladays specifically point us in support of their contention that there was such a waiver, is at best ambiguous. The exchange followed an unreported bench conference and is, in its entirety, as follows:

The Court: As a result of a Bench Conference, I think there is no issue on that particular area, Mr. Young.

Mr. Young: The area of "W", "X" "Y" and "Z" on Plaintiffs' Exhibit 8?

The Court: Yes.

While we would in any event be unwilling to construe that brief exchange between the court and Halladays' counsel as a concession by Cluff, we are especially not inclined to do so since the court in its decision made no mention of any concession or waiver by Cluff, but rather spoke in terms of a decision on the merits. At the hearing before the trial court following remand by the Supreme Court, Halladays' counsel acknowledged that the green parcel had been tried and not resolved by stipulation. Moreover, the court's remarks at that hearing, and in its subsequent written ruling, make clear the exclusive basis for its decision not to reconsider its disposition of the green parcel was its conclusion that the failure of Cluff to cross-appeal precluded it from doing so. No mention was made by the court

Accordingly, the trial court's order of October 18, 1984 is vacated and the case is again remanded to the trial court "for the entry of a new decree in conformity with" the Supreme Court's prior decision. In that regard, Cluff is entitled to an opportunity to show the trial court that the evidence adduced at trial as to the green parcel, when squared with the Supreme Court's decision, entitles Cluff to the green parcel. If it does, the "new decree" contemplated by the Supreme Court should so provide. Costs of this appeal to Cluff.

Gregory K. Orme, Judge

WE CONCUR:

R. W. Garff, Judge

Norman H. Jackson, Judge

1. The orange parcel was actually occupied and claimed by the Bigelows and Cluff, adjacent landowners, apparently as though the undisputed boundary between them continued on through the orange parcel. Bigelows are not parties to the instant appeal and in the interest of simplicity we refer only to Cluff even in situations where technically the reference should be to "Cluff and Bigelows."
2. The orange parcel, labeled MNOP on Cluff's exhibits, was referred to in *Halladay v. Cluff*, 685 P.2d 500 (Utah 1981), as the ABCD parcel. *Id.* at 502. The green parcel, labeled WXYZ on the exhibits, was not delineated on the Supreme Court's map, but lies to the west of the ADE line on their map. *See id.*
3. The trial court appreciated the need for a consistent approach to the entire dispute and later referred to its decree as "a fence-line decree."
4. The facts of this case are extremely unusual and it might even look like a case where some kind of "contingent" cross-appeal should have been filed. That illusion disappears if one focuses not on the component parts of the dispute but rather on the dispute as a whole and the pivotal role in its resolution of the selection and consistent application of one of two competing legal doctrines. Generally, however, the decision whether to cross appeal is simple. If a respondent wishes to modify or vary the trial court's judgment, he must cross appeal. *See Mann v. Oppenheimer & Co.*, 517 A.2d 1056, 1060 (Del. Supr. 1986)("[A]bsent a cross-appeal, the [respondent] may not attack the judgment of the court below with a view to enlarging its own rights or lessening the rights of its adversary."); *Terry v. Zions Co-Op. Mercantile Inst.*, 617 P.2d 700, 701 (Utah 1980). If he only wants the judgment affirmed, he should not cross appeal. Nothing in this opinion should be taken to create allowances for parties who should cross appeal but do not. *See, e.g., Bentley v. Potter*, 694 P.2d 617, 622 (Utah 1984); *Cerritos Trucking Co. v. Utah Venture No. 1*, 645 P.2d 608, 613 (Utah 1982); *Eliason v. Watts*, 615 P.2d 427, 431 (Utah 1980). *See also Ryan v. State*, 150 Ariz. 549, 724 P.2d 1218, 223 (Ariz.App. 1986)(respondent can't raise assignment of error because issue not made subject of cross-appeal); *Broadhead v. McEntire*, 19 Ark.App. 259, 720 S.W.2d 313, 318 (1986)(respondent can't argue for

precluded raising attorney's fee issue).

5. Trial courts are in a much better position to evaluate an entire case, including its nuances and undisclosed pitfalls, than an appellate court. It is for this reason that where, as in this case, all possible ramifications of a decision on appeal may not be readily apparent, a case will be remanded for such proceedings as are appropriate in view of the guidance offered in the opinion. It is no doubt for this reason the Supreme Court, in addition to specifically directing the trial court to quiet title to the orange parcel in the Halladays, remanded in general terms for "the entry of a new decree in conformity with" its opinion.

6. Loosely following the trial court's characterization quoted in Note 2, *supra*, Cluff wants nothing more than an opportunity to persuade the trial court that the Supreme Court's decision simply means the court's decree should have been a "title-lines decree" rather than a "fence-line decree."

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