

1998

Wilkinson Family Farm LLC v. Lara L. Babcock and all other parties known or unknown that may claim an interest in the real property described herein : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

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IN THE UTAH COURT OF APPEALS

WILKINSON FAMILY FARM, LLC,
a Utah Limited Liability Company,

Plaintiff/Appellant.

vs

LARA L. BABCOCK, and all other
parties known or unknown that may
claim an interest in the real property
described herein,

Defendant/Appellee.

Case No. 981769-CA

Priority No. 15

APPELLANT'S BRIEF

Appeal from Second Judicial District Court
of Weber County, State of Utah
The Honorable Michael J. Glasmann, District Court Judge

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FILED

MAY 17 1999

COURT OF APPEALS

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction in this matter pursuant to §78-2a-3(2)(J), Utah Code Annotated.

ISSUES PRESENTED FOR REVIEW

1. Did the District Court err in considering the intent or purpose of a fence as determinative in its determination that there was no boundary by acquiescence.

Standard of Review: The District Court's determination of law is reviewed for correctness and no deference is granted to the District Court. James v. Galetka, 965 P.2d 567 (Uta App. 1998).

2. Did the District Court err in law by concluding that the Plaintiff/Appellant must prove that there was uncertainty or dispute as to the true location of a boundary in order to prevail on the theory of boundary by acquiescence.

Standard of Review: The District Court's determination of law is reviewed for correctness and no deference is granted to the District Court. James v. Galetka, 965 P.2d 567 (Uta App. 1998).

3. Did the Court err in law by failing to conclude that indolence created a conclusive presumption of acquiescence.

Standard of Review: The District Court's determination of law is reviewed for correctness and no deference is granted to the District Court. James v. Galetka, 965 P.2d 567 (Uta App. 1998).

STATEMENT OF THE CASE

The Plaintiff/Appellant filed a complaint in the Second District Court for Morgan County, State of Utah asking the court to determine that a boundary line by acquiescence had been established between the parties' property as indicated by an existing fence that had been in place for a long period of time. A bench trial was held in Morgan County before the Honorable Michael J. Glasmann. At the conclusion of the trial, Judge Glasmann ruled against the Plaintiff/Appellant on the basis that the boundary line was clear to the parties when the fence was originally installed. The court's findings of fact, conclusions of law and order were entered on the 30th day of October, 1998.

On March 26, 1998 Wilkinson/Appellant filed its Motion to Alter or Amend Judgment. Wilkinson/Appellant asked the court to reconsider its ruling in light of the fact that objective uncertainty is not an element, nor an affirmative defense, to the doctrine of boundary by acquiescence. This motion was denied on November 4, 1998.

Wilkinson/Appellant filed an appeal on the 19th day of November, 1998.

STATEMENT OF FACTS

1. The Plaintiff hereinafter referred to as "Wilkinson" and the Defendant hereinafter referred to as "Babcock" are adjoining property owners in Morgan County, State of Utah. Babcock owns land north of the disputed area and Wilkinson owns land south of the disputed area.

2. The disputed area consists of a triangular tract of land containing approximately five acres. The north portion of this triangular piece is marked by a fence. The fence has been in place for an excess of 64 years. (Transcript, page 266 through 269; Bench Ruling, page 2, Appendix A). The disputed area is shown on "Exhibit 28" which has been reduced and colored for the benefit of this court. (Appendix B).

3. Wilkinson used the disputed property to grow wheat, alfalfa, grass and to graze cattle and sheep. (Transcript, page 126, 268, June 24, 1998 hearing transcript, page 30; Bench ruling, page 2, Appendix A).

4. In 1970, Wilkinson placed part of the disputed property into a federal program with the agricultural stabilization and conversation service. A copy of an aerial photograph identified as "Exhibit 45" shows the Babcock and Wilkinson property and the disputed area. A portion of the property identified with a number 9 lies within the disputed area. The disputed area has been highlighted in blue and area 9 in red for the benefit of this court. The property that is fenced to the south of the disputed area contains a number of other portions of property that Wilkinson placed in the federal program. (Appendix C).

5. Babcock acknowledged that three of the elements required for a boundary by acquiescence was proven by Wilkinson or were not disputed. Those were,

- (a) Occupation to a visible line;
- (b) for a long period of time;

(c) by adjoining property owners.

(June 24 hearing transcript, page 12, line 24 through page 13, line 2; Bench ruling, page 3, Appendix A).

6. The trial court found that the disputed area was used for some crop usage and cattle and that Babcock did not interrupt that use. (September 23, 1998 hearing transcript, page 18, lines 14 through 16).

7. The trial court found that the fence line originally was not intended as a boundary line, but was a fence of convenience. (June 24, 1998 hearing transcript, page 29, lines 12 through 13).

SUMMARY OF THE ARGUMENT

- I. THE DISTRICT COURT ERRED IN HOLDING THAT THE ORIGINAL PURPOSE OF THE FENCE WAS DETERMINATIVE AS TO THE ISSUE OF BOUNDARY BY ACQUIESCENCE.
- II. INDOLENCE CREATES A CONCLUSIVE PRESUMPTION OF ACQUIESCENCE.
- III. THE DISTRICT COURT ERRED IN HOLDING THAT THE PRESUMPTION OF ACQUIESCENCE WAS REBUTTED BY THE LACK OF UNCERTAINTY AS TO THE TRUE LOCATION OF THE BOUNDARY.
- IV. EVIDENCE MARSHALED IN FAVOR OF BABCOCK

ARGUMENT

POINT I

THE DISTRICT COURT ERRED IN HOLDING THAT THE ORIGINAL PURPOSE OF THE FENCE WAS DETERMINATIVE AS TO THE ISSUE OF BOUNDARY BY ACQUIESCENCE.

The parties in the lower court agree that three of the elements required for a boundary line by acquiescence was proven by the Plaintiff or were not disputed. Bruce A. Maak, attorney for Babcock, in an argument before Judge Glasmann stated,

. . . Your Honor, we agree did find three elements. You found occupation to a visible line. A second element for a long time. A third by adjoining land owners.

(June 24 hearing transcript, page 12, line 24 through page 13, line 2).

Babcock, in her argument before the lower court, recognized that the court had found that a fence had been installed as a containment fence and that it had been used for that purpose. Babcock's attorney stated,

It is that the fence had a purpose different than that of a boundary. It is a purpose to divide or contain stock where the land is returned.

(June 24, 1998 hearing transcript, page 32).

Judge Glasmann in his bench ruling stated as follows,

Based on the strength of that case and on the overall evidence in this case of the occupation in the area, the Court believes that the presumption has been met on the Plaintiff's side of his case to suggest that there may have been a boundary line by acquiescence, but I can only get there if I view that the

phrase acquiescence as incorporating indolence and just not taking any action to kick someone off the disputed property.

(Bench ruling, page 4, Appendix A).

The court in its hearing on June 24, 1998 further clarified what the court meant by this language. The court stated that it found through testimony and a view of the land that the fence was put in originally to control stock and not to establish a boundary line.

(June 24 hearing transcript, page 26, line 23 through page 27, line 1). The court continued by saying,

But, the finding of the court, and there is no question in my mind that the boundary line was clear to the parties back then. There is testimony that it was clear back then. There's remnants of an old fence along the boundary. But this fence demarcated from that course for the convenience of putting a stock fence is where they felt the stock fence could last and be maintained so that the stock would be controlled.

. . .

And so what I'm saying is the argument that Mr. Maak is making is accurate that was the Court's finding and, therefore, what he is saying is that it's not a question of now acquiescing in a new line that was a disputed boundary line. That fence was never put in to be the boundary line and so that, so when I use the word indolence, and I should clarify this.

(June 24 hearing transcript, page 28, line 15 through page 29, line 4).

In a subsequent hearing on September 23, 1998, the court clarified its position when it stated,

. . . The court is willing to stand on its original ruling and I find that the interpretation of the case law as submitted by your office, Mr. Echard, is different than my understanding of the law and I believe that there is a requirement that, the fence that was put in, be intended as a boundary fence and it was, and it's my finding, and I've made specific findings concerning this, is that it was not ever intended to be a boundary fence but rather a stock containment fence and that there was not an attempt to even put it close to what the actual boundary of the property was.

(September 23, 1998 hearing transcript, page 4, lines 2 through 12).

At that hearing, the court stated, that it was using the word "indolence" to describe someone not objecting to the use of property. (September 23, 1998 hearing transcript, page 11, lines 13 through 16). The court stated,

What I want the facts to show is that the, again, we've already stated that the slant fence was the boundary line, not the boundary line but not intended as the boundary line but rather as a stock containment fence and that the area between the slanted fence and the actual boundary line between the properties, that the use that was made by Wilkinson was not disallowed by Babcocks or their predecessors and that they did not interrupt that use by Wilkinsons.

(September 23, 1998 hearing transcript, page 14, lines 11 through 19).

The court also stated,

. . . I mean there were some cattle that were able to access that area and there was some crop usage that went on and nobody interrupted.

(September 23 hearing transcript, page 18, lines 14 through 16).

It is clear from the court's bench ruling and subsequent statements that the court found that there was an existing fence, which is referred to by the court as a containment fence and that Wilkinson used the property enclosed by that fence for the raising of crops and the grazing of cattle. Babcock and her predecessors did not disallow or interrupt that use by Wilkinsons. The court referred to the inaction of Babcock as indolence and concluded that Babcock failing to take actions to kick the Wilkinsons off of the disputed property constituted indolence and an acquiescence in the Wilkinsons' use of the disputed property.

The court concluded that when the containment fence was first put in, by Babcock's predecessor, Williams, the true boundary line was known. The fence was placed because of the land topography and convenience. (Bench ruling, page 1, Appendix A; June 24, 1998 hearing transcript, page 28, lines 15 through 22). The court found that the fence was originally not intended as a boundary line, but was a fence of convenience. (June 24, 1998 hearing transcript, page 29, lines 12 through 13). Babcock, in her argument before the court contended that the second element of "mutual acquiescence in the line as a boundary" must be interpreted to mean that the parties intended the fence to be a boundary as opposed to a fence or line evidencing the parties occupation and use of the land. (June 24, 1998 hearing transcript, page 13, lines 3 through 8).

It is clear from a review of the transcripts of the arguments made by counsel before the lower court that the court found,

1. That a fence line was put in by the Babcock's predecessors, Williams;
2. That the fence enclosed land that is legally described as being the property of the Babcocks;
3. That the land was used by Wilkinson for growing crops and containing cattle for a long period of time;
4. That Babcock was indolent in not interfering with or disallowing Wilkinson use of the land; and
5. That the parties were adjoining property owners.

The summary of the court's finding clearly focuses the legal issue to be decided by the appellate court. Babcock contends that acquiescence in the Wilkinson's use of the property inside of the fence cannot constitute a boundary line by acquiescence unless the fence originally was intended to establish a boundary line. Wilkinson contends that the acquiescence in the use of the property enclosed by the fence line regardless of the purpose of the installation of the fence constitutes an acquiescence in a boundary which after a long period of time establishes the boundary line between the adjoining property owners. Wilkinson contends that it makes no difference whether originally the fence was a line of convenience. The passage of a long period of time during which the property

was used by Wilkinson fulfills the requirement set forth by the court to satisfy the second requirement of “mutual acquiescence in the line as a boundary”.

The Supreme Court in the case of Carter v. Hanrath, 925 P.2d. 960 (Utah 1996) stated the four requirements that must be met before a boundary by acquiescence can be established. The court stated that they were as follows:

- (1) Occupation up to a visible line marked definitely by monuments, fences, or buildings; and
- (2) Mutual acquiescence in the line as a boundary;
- (3) For a long period of time,
- (4) By adjoining property owners.

Id. at 962.

The court stated in Carter that a party must have access to the fence or monument in order for acquiescence to occur. The court went on to state,

. . . The rule of boundary by acquiescence serves a useful and practical purpose when applied in the typical fact situation, where adjoining owners are seemingly content to recognize a marked line or monument not on the true line as the practical boundary between them. . . .

Id. at 962.

This court in Staker v. Ainsworth, 785 P.2d. 417 (Utah 1990) rejected the requirement of objective uncertainty as to the boundary line, which had been established

by the court in Halliday v. Cluff, 685 P.2d. 500 (Utah 1984). Reaching that decision, the court cited and rejected language in the Halliday case, which stated,

. . . By the same token, a claimant cannot assert boundary by acquiescence if he or his predecessors entitled had reason to know the true location of the boundary during the period of acquiescence.

Id. at 421.

Judge Glasmann's ruling that mutual acquiescence was not established because the parties originally knew where the boundary line was and the fence was not constructed as a boundary line is another way of saying that there had to be objective uncertainty at the time the fence was installed in order to establish a boundary by acquiescence. Judge Glasmann's ruling is consistent with the court's decision in Halliday, but is not in conformance with the court's ruling in Staker and Carter.

POINT II

INDOLENCE CREATES A CONCLUSIVE PRESUMPTION OF ACQUIESCENCE.

In its ruling from the bench, the Court found that Wilkinson had met the presumption to establish a boundary line by acquiescence because of indolence on the part of Babcock.

(Court's Bench Ruling, page 4, Appendix A).

The Utah Supreme Court has held that mutual acquiescence was presumed when indolence on the part of the land owner is found. Olsen v. Park Daughters Investment,

Inc., 511 P.2d 145 (Utah 1973). The court in Olsen not only held that indolence created a presumption of acquiescence, but that it creates a conclusive presumption. Id. at 147.

The court in Olsen stated that a conclusive presumption is necessary in order to preserve the peace and stability of property interests. The Olsen court extensively discussed these public policy issues in boundary by acquiescence and then held:

...Peace and good order of society require that there be stability, not only in the record land titles, but more importantly in the ownership and occupation of lands. It is for this reason that it has seemed sound policy that boundary lines which have been long established and accepted by those who should be concerned, should be left undisturbed in order to leave at rest matters which may have resulted in controversy and litigation. Wherefore, there has developed the doctrine of boundary by acquiescence. Its essence is that where there arises a dispute as to the boundary between parties 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. It is our opinion that the policy of encouraging peace and good order and of discouraging trouble and controversy demands that that be accepted as the correct doctrine, and that it need not depend upon rationalization as to ideas of estoppel, presumed agreements, lost grants, or other fictional concepts. (emphasis added)

Id. at 147.

This doctrine was discussed in the case of Carter v. Hanrath 885 P.2d 801 (Utah App. 1994). Carter was then reversed on appeal by the Utah Supreme Court because of a lack of access to the disputed property. 925 P2d 960 (Utah 1996). However, the

language used by the Court of Appeals defining acquiescence is applicable. The Court of Appeals in Carter embellished upon and defined some of the requirements set forth in Staker. In discussing occupation, the court stated, that the land must be occupied to a visible line and normal and appropriate use made of the disputed parcel. In discussing the requirement of acquiescence the Court stated,

. . . that the actual knowledge of the fence or monument marking the disputed boundary line is not a prerequisite in boundary-by-acquiescence cases. . . .”

Id. at 805.

The Court went on to say,

. . . ‘[a]cquiescence’ is more nearly synonymous with ‘indolence,’ or ‘consent by silence,’--or a knowledge that a fence or other monuments appears to be a boundary,--but that no one did anything about it. Lane v. Walker, 29 Utah 2d 119, 505 P.2d 1199, 1200 (1973). This accords with the dictionary definition of acquiescence as [p]assive compliance or satisfaction . . . [conduct from which assent may be reasonably inferred. . . . Equivalent to assent inferred from silence with knowledge or from encouragement, and presupposes knowledge and assent. Black’s Law Dictionary 24 (6th ed. 1990).

. . .

. . . Moreover, our holding that acquiescence may be imputed from long-term indolence is consistent with the policy upon which boundary by acquiescence is based, namely ‘that the peace and good order of society require that there be stability . . . in the ownership of lands. . . . [B]oundary lines which have been long established and accepted by those who should be concerned should be left undisturbed in order to leave at rest matters which may have resulted in controversy and

litigation.’ James Backman, The Law of Practical Location of Boundaries and the Need for an Adverse Possession Remedy, 1986 B.Y.U.L. Rev. 957, 965 (1986) (quoting Olsen v. Park Daughters Inv. Co., Utah 2d 421, 425, 511 P.2d 145, 147 (1973)).

Id. at 806.

The District Court concluded that Wilkinson had met the elements for boundary by acquiescence. However, the Court then rebutted that presumption by finding that there was no uncertainty as to the true location of the boundary line. The District Court stated,

The defense in this case has argued that while even if the Court finds [acquiescence] that the Court should go further and take a look at whether the presumption could be rebutted by the purpose of the fence when it was installed and are the true boundary being whether it was unknown or uncertain. Now, in this case . . . the Wilkinson family called out deed lines that shouldn’t be real difficult to follow. They are great right angles, they follow section or quarter section lines and the Court doesn’t find in this case that there was confusion or needed to be confusion about where the actual boundary line was.

(Court’s bench ruling, pages 4 and 5, Appendix A).

From this language, it appears that the District Court has allowed the Babcocks to rebut the presumption of acquiescence by finding that there was no objective uncertainty in the true location of the fence. This is contrary to Utah law as set forth in Olsen which created a conclusive presumption of acquiescence.

POINT III

THE DISTRICT COURT ERRED IN HOLDING THAT THE PRESUMPTION OF ACQUIESCENCE WAS REBUTTED BY THE LACK OF UNCERTAINTY AS TO THE TRUE LOCATION OF THE BOUNDARY.

Even if indolence does not create a presumptive conclusion, the District Court's finding of uncertainty as to the true location of the boundary confuses the doctrines of boundary by acquiescence and boundary by agreement. There has been considerable confusion regarding these two doctrines which arose out of the Utah Supreme Court's decision in Tripp v. Bagley, 276 P.2d 912 (Utah 1928). As discussed in Staker, *supra* this confusion eventually resulted in the addition of objective uncertainty by the court in Halladay v. Cluff, *supra*. The court in Staker not only overruled the requirement of objective uncertainty, but also clarified the fact that a dispute regarding uncertainty as to the location of the true boundary line is not an element in boundary by acquiescence and that the line of cases which state otherwise are relying on the confused language of Tripp and were overruled. Staker at 422. To hold otherwise "restricts what was already a restrictive doctrine, and 'effectively eliminate[s] boundary by acquiescence as a viable doctrine for settling property disputes in Utah.'" Id. at 423.

Cases cited by the Defendant in support of creating a rebuttable presumption using objective uncertainty are recognized by the Utah Supreme Court as having confused the doctrines of boundary by acquiescence and boundary by agreement. Both cases cited by the Defendant to support this theory of a rebuttable presumption were used

by the Utah Supreme Court in Staker as examples of cases confusing these two doctrines.

The Staker court stated,

In previous opinions, this Court even referred to the doctrines as though they had merged into one [citation omitted]. The pivotal case upon which the Halladay majority relied in expressly declaring uncertainty or dispute a requirement in boundary by acquiescence was Tripp v. Bagley, 276 P.2d 912 (1928).

Staker at 422.

The court went on to cite two portions of the Tripp opinion which demonstrate the confusion of the court then stated:

Cases which followed Tripp seized upon this dicta, which we deem to be unfortunate in its impact, and intermittently began to refer to a showing of uncertainty or dispute in a boundary by acquiescence context.

Id. at 422.

Defendant relies upon Tripp for the proposition that the presumption is rebuttable and that uncertainty as to the actual boundary is an element for the doctrine of boundary by acquiescence. The other case cited by Defendant, Ringwood v. Bradford, 269 P.2d 1056 (Utah 1954), is one of those cases which relied upon the Tripp opinion for its holding.

Uncertainty or dispute in a boundary is a requirement in the doctrine of boundary by agreement. Wright v. Clissold, 521 P.2d 1224 (1994). It is not an element for boundary by acquiescence.

The District Court erred in permitting Babcock to rebut the presumption of acquiescence with evidence of a lack of objective uncertainty.

POINT IV

EVIDENCE MARSHALED IN FAVOR OF BABCOCK

Wilkinson has not asked this court to reverse the trial court's findings of fact. Wilkinson does ask the court to reverse the trial court's application of law to the facts. This Court has previously ruled that in order for an appellant to successfully challenge the trial court's findings, the Appellant must marshal the evidence in favor of the opposing party and show that the findings are against the clear weight of the evidence. Wade v. Stangl, 869 P.2d 9 (Utah 1994). Wilkinson believes that Babcock will acknowledge that the trial court found that the presumption of acquiescence was rebutted by the trial court's finding that when the fence was originally installed the original boundary was known and that the fence was not intended for a boundary line, but as a containment fence. Consequently, the issue in dispute on this appeal is the court's application of the law to those findings of fact. As indicated in the other points of argument in this brief, the proper application of existing law to the facts should result in a reversal of the trial court's decision.

CONCLUSION

The issue before this court is whether or not the Plaintiff proved the necessary elements to establish a boundary line by acquiescence. The parties in the lower court

agreed that three of the elements required for a boundary line by acquiescence was proven by the Plaintiff or were not disputed. Those were:

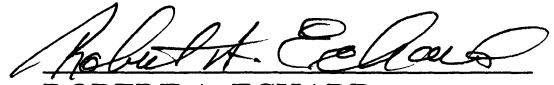
- (1) Occupation up to a visible line marked definitely by monuments, fences or buildings;
- (2) For a long period of time;
- (3) By adjoining property owners.

The only remaining issue was whether or not the parties had mutually acquiesced in the line as a boundary. The district court found that Wilkinson had established a presumption of boundary line by acquiescence because of indolence on the part of Babcock. The court, however, found that the presumption had been rebutted because at the time that the fence was originally established, the parties predecessors knew the true boundary line and the fence was not intended to be a boundary, but a stock containment fence.

Wilkinson contends that the trial court's finding of indolence on the part of Babcock raised a conclusive presumption of acquiescence and that that presumption could not be rebutted because of objective uncertainty at the time that the fence was first installed. The court in Staker and subsequent cases rejected the doctrine of objective uncertainty. Under current Utah law, a physical boundary of any character, which has been acquiesced in as a boundary for a long period of time conclusively establishes a

presumption of a boundary by acquiescence. The trial court's application of the law is contrary to the decision of the supreme court and the court of appeals, and therefore, this Court should reverse the trial court's decision and enter a ruling that Wilkinson has established a boundary line by acquiescence and is the owner of the disputed property.

DATED this 17 day of May, 1999.

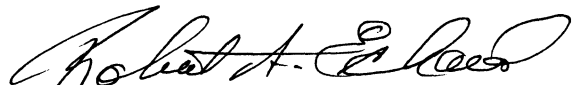

ROBERT A. ECHARD
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed two (2) true and correct copies of the foregoing *Appellant Brief*, via U.S. Mail, postage prepaid, to the following individual:

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DATED this 17 day of May, 1999.


ATTORNEY AT LAW

APPENDIX A

TRANSCRIPTION OF RULING--WILKINSON FAMILY L.L.C.

JUDGE GLASMANN: We will call the matter of Wilkinson Family Farm, L.L.C. v. Babcock and this is the Morgan case, let's see if I can refer to the number 960000010.

First of all, welcome to our court here in Ogden. I appreciate you folks making the trip here. I also apologize for some delay since we tried this case in getting the decision to you. I have been fairly busy and it's just taken some time to get back to you.

Let's start off by making the observation that this is a decision the Court is going to make on the record with the parties present following a several day trial that was conducted in Morgan. My compliments to you counsel on the way the case was presented and I have had a chance to review the facts and the evidence before me, the exhibits and also the trial briefs that have been submitted; and I now go into my findings and issue a decision in this case.

FINDINGS

First of all, by way of general observation, the ground that is in dispute was clear between the parties is what's turned out to be kind of a triangular shaped piece of property and it is the triangle that exists between the actual survey line and the location of a fence line that was established by the Williams family, the predecessors in the interest to the Defendant Babcock. The ground in dispute was homesteaded by the Williams family in the 1800's. The deed from the United States Government in this case contained a description that followed section lines or quarter section lines and created parcels of ground that had four square corners. This was also true, not only of the Defendant's predecessors in interest, but also the Wilkinsons' adjoining piece of ground.

Property taxes on the triangular piece that is in question have always been paid by the Defendant or its predecessors in interest. I find from the evidence that was presented, that two

fences had existed on the boundary line and when I say the boundary line in this case, the actual survey line consistent with the survey line and that those fences, evidence of those fences existing was presented in the form of some testimony and photographs of the old fence posts and some old wire in the area. Those fences have not existed, I find for a number of years and that the only existing fence between the parcels of property was the fence line that took off on somewhat of a diagonal direction and is along the line that is the line that is claimed by the Plaintiffs Wilkinsons in this case. I find that that fence line that takes off on the diagonal has been the only fence in that area for well over twenty years.

There was some testimony from Darrell Meacham in the case about a more recent creation of not only that diagonal fence but the fence along the actual survey line. The Court believes that that testimony was helpful and in some parts it was somewhat inconsistent with other testimony given, but I find on balance from the facts that it has been over twenty years since a fence has existed on the actual survey line, and I find that from the overall testimony and from the physical descriptions of what was found on the actual survey line.

With regard to Plaintiff's use of the ground, I find that the Plaintiff's livestock to the extent there at times were livestock in that area, have been able to roam and graze up to the diagonal fence line and I find that Plaintiff's have also planted somewhat on the disputed triangular piece, but not up to the fence line and certainly, not 100% of the property. I'd approximate that more in the nature of maybe 50% of the ground and that varied somewhat from time to time.

There was some time spent on the Plaintiff's side of the case concerning minutes from Planning Commission meetings as the Defendant Babcock's were attempting to get a subdivision approved and reference made to the Babcocks not including this ground for purposes of getting

their subdivision approved. The Court finds that is sort of a "red herring" because the reason that the Babcocks did that is to be able to say to the planning commission, we want the subdivision approved, we have a dispute over the triangular piece and just for the sake of approval of the subdivision we are proposing, leave it out, that may well be able to get the subdivision approved that they were proposing but it was still clear that the triangular piece was in dispute, so I don't find in any way that the Babcocks had given up their claim or their dispute that they should be the owners of that triangular piece.

There was also some testimony about potentially statements made to give an indication that that was given up, but I find that the exhibit number one that was introduced that was the agreement, it clearly covers that there is an area that was in dispute and I believe that it's Paragraph 2 on Page 2. It says that a boundary line dispute exists relative to the existing fence line located along the south boundary of the Fox Hollow subdivision. Parties do not intend to resolve that dispute by this agreement and reserve their claims relative to that dispute. This was signed by both parties and clearly covers that issue.

I will continue on with some facts in a moment, but right at this point I would like to observe that as has been briefed by the parties, in order for their to be a boundary line by acquiescence, there would have to be occupation up to a visible line marked by monuments, fences, or buildings. Mutual acquiescence in the line as a boundary for a long period of time by adjoining land owners.

Now certainly, the Court believes that the occupation up to the visible line, which would be the diagonal fence line, that that element is met. That number three, for a long period of time was met, as I've found already, I believe that that was for well over twenty years and the parties were adjoining land owners. The tougher question, and it's one that the attorney's have dealt

with and I think, you know, well in your briefs is this question of mutual acquiescence in the line as a boundary. I think that attorneys and judges for ages have struggled with what acquiescence means. It has been argued by Mr. Echard's side of the case that acquiescence can mean indolence and they have cited a case that points out factually that we had a land owner there that didn't even realize they were being occupied on the lands that belonged to them by way of survey, and the courts upheld that not even knowing about it could be indolence on your part and that could qualify for the element of mutual acquiescence in the line as a boundary. Now, in that case that was cited by Mr. Echard, there had been a building built in that area, grazing of animals and I don't recall but it seemed to me that there may have been some crop growth that had gone on in that area.

Based on the strength of that case and on the overall evidence in this case of the occupation in the area, the Court believes that the presumption has been met on the Plaintiff's side of this case to suggest that there may have been a boundary line by acquiescence, but I can only get there if I view that the phrase acquiescence as incorporating indolence and just not taking any action to kick someone off of the disputed property.

The defense in this case has argued that while even if the Court finds that the Court should go further and take a look at whether the presumption could be rebutted by the purpose of the fence when it was installed and are the true boundary being whether it was unknown or uncertain.

Now, in this case, as I've said in the beginning, the original deed that came in from the United States Government, and this would have been not only the deed that went to the Williams family, the Defendant's predecessors in the interest but also the Wilkinson family called out deed lines that shouldn't be real difficult to follow. They are great right angles, they follow section or

quarter section lines and the Court doesn't find in this case that there was confusion or needed to be confusion about where the actual boundary line was. This is a case, and I think the record already will reflect that the Court, myself as the judge along with the parties had a chance to walk over the ground and it was very valuable. I found that the topography was steeper terrain than what your models depicted to me or what I had gleaned from the photographs that were presented. The topographer of the land in this case from my perspective created somewhat of a natural barrier between these adjoining property owners in terms of their use of the land. The area that is near where the boundary line went through is quite steep, there is a cliffy area and some deep swales that made fencing in this area difficult.

The Court believes that it was rather graphically demonstrated even though, I would have to say that I've worked on some fences over there, I've never had the fence ground quite that hilly, and it was quite graphically demonstrated to the Court, in a deep swell is attempted to be crossed with a cattle fence, but in order to go down into the low portion, that you are fighting against the natural tension, you are attempting to put on the fence through the rest of the run of the fence and over time, it would have a tendency to pull the fence up out of the low swell and allow an area for cattle to get down underneath it and escape.

The Court finds having walked the ground, having looked at it, and having examined where the fence was run and taking into account all of your testimony in this case, that the angled fence was put in, and its purpose for being put in was to keep livestock in the Williams' parcel, or the Defendant's parcel, the Defendant's predecessor in interest, and that was its sole purpose and it was not put in in order to establish the boundary line.

The Court based on that finding is ruling in favor of the Defendants in this case and I find that the actual boundary line should be that of the survey line and should follow the line where

the newer fence was put in after the Defendants had torn out this older fence that followed the angled line. In so finding, I also find that this was a legitimate dispute between these parties that they certainly had the right to come to court and peacefully work out in a court of law, and the Court believes that each party should bear their own attorney's fees and costs in this action. Not costs, excuse me, but attorney's fees in that the costs should be awarded to the prevailing party.

Now, have I left you and your side with any questions on the defense side.

DEFENSE: No, your honor.

JUDGE GLASMANN: Mr. Echard?

BOB: No, your honor.

JUDGE GLASMANN: Alright, I'll ask you then on the defense side to prepare findings and an order for the Court to sign and submit those to Mr. Echard if you would for his approval. Again, I thank you folks and unless there are any questions the Court will be in recess at this time.

APPENDIX B

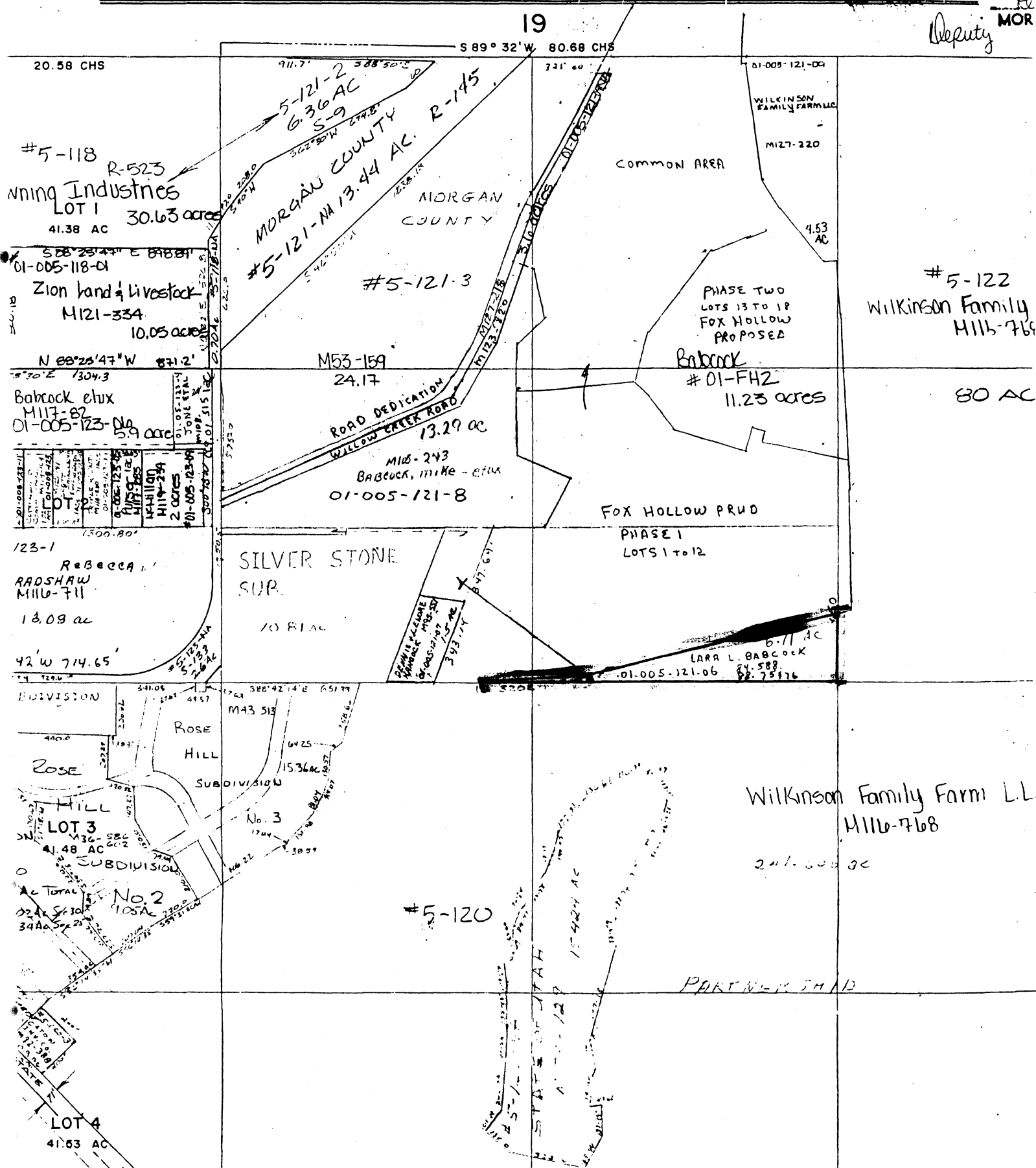
ONLY
LED
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Exhibit #28

SECTION 30
T5N - R2E
SALT LAKE BASE & MERIDIAN

I hereby certify this to be a true and end of
of the document recorded in the office of
Morgan County Recorded in Book
ENTRY NO: _____ In Witness
set my hand and affix my official seal
day of December, 1991

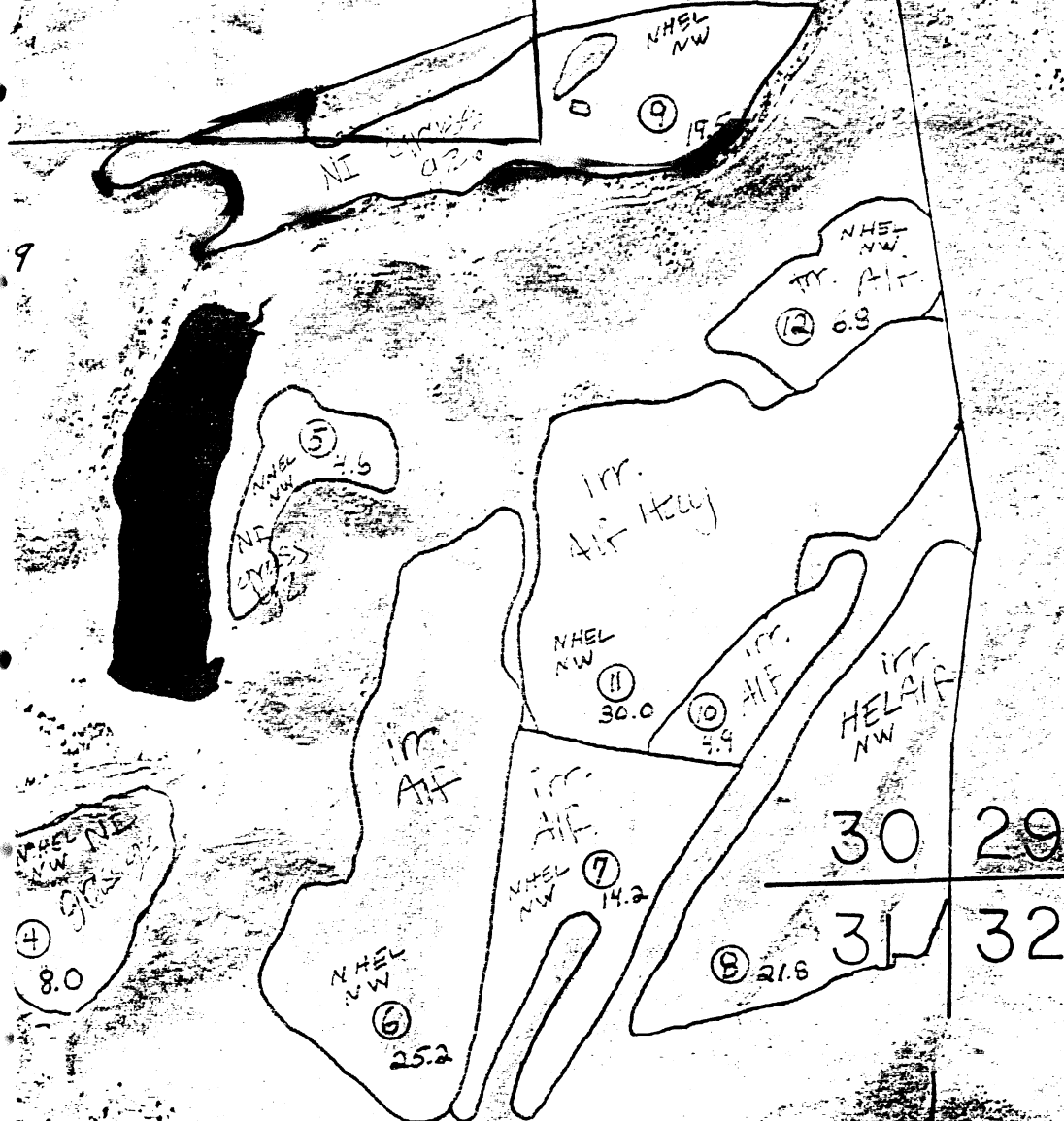
Deputy MOR



APPENDIX C

100-37470-3

NOT TO SCALE



APPENDIX D

SECOND DISTRICT
MORGAN COUNTY

98 NOV -4 PM12:07

Bruce A. Maak, Of Counsel (2033)
PARR, WADDOUPS, BROWN, GEE & LOVELESS
Attorneys for Defendants Lara L. and Mike Babcock
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IN THE SECOND JUDICIAL DISTRICT COURT OF MORGAN COUNTY
STATE OF UTAH

WILKINSON FAMILY FARM, LLC, a Utah)
limited liability company,)

Plaintiff,)

vs.)

LARA L. and MIKE BABCOCK, and all)
other parties known or unknown that may)
claim an interest in the real property)
described herein)

Defendants)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

Civil No. 960000010

(Hon. Michael J. Glasmann)

The trial of this action came on regularly before the Court, the Honorable Michael J. Glasmann presiding, on December 11 and 12, 1997, plaintiff appearing through its counsel, Robert A. Echard, and defendants appearing through their counsel, Bruce A. Maak, and the Court having heard the evidence offered by the parties and the arguments of counsel and

having considered the matters on file herein, and the Court having announced its decision, now therefore, the Court hereby makes and enters the following

FINDINGS OF FACT

1. Plaintiff Wilkinson Family Farm, LLC ("Wilkinson") is a limited liability company organized under the laws of the State of Utah.

2. Defendants Lara L. Babcock and Michael Babcock ("Babcocks") are each citizens of the State of Utah residing in Morgan County, Utah.

3. Wilkinson and Babcocks own adjoining tracts of land located in Morgan County, Utah. The legal description of the land owned by Babcocks is as follows:

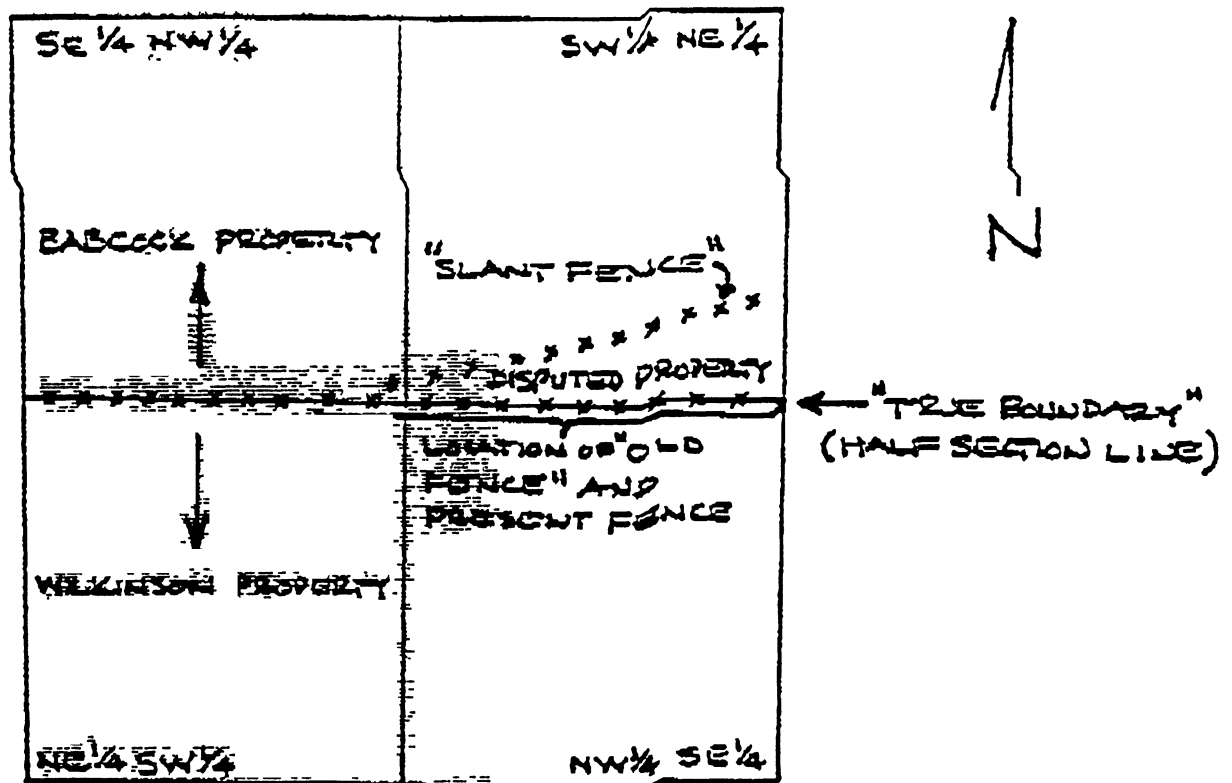
~~A tract of land situate in the Southeast quarter of the Northwest quarter (SE ¼ NW ¼) and the Southwest quarter of the Northeast quarter (SW ¼ NE ¼) of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian, U.S. Survey, Morgan County, Utah, being more particularly described as follows: The South 525.00 feet of said Southeast quarter of the Northwest quarter and the South 525.00 feet of said Southwest quarter of the Northeast quarter of Section 30.~~

The tract of land described immediately above is hereinafter referred to as the "Babcock Property." A part of the Babcock Property has been conveyed to others since Babcocks acquired it, but the portions so conveyed are not at issue in this action. The legal description of the adjoining land owned by Wilkinson is as follows:

~~Beginning at Southeast corner of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian: North 160 rods; thence West 320 rods; thence South 72 rods; thence Southeasterly to the South line of Section 30; thence East 236.75 rods to point of beginning. Being a portion of the South half of Section 30.~~

The tract of land described immediately above is hereinafter referred to as the "Wilkinson Property."

4. The northerly boundary of the Wilkinson Property is coincident with the southerly boundary of the Babcock Property. For illustrative purposes, following is a diagram showing the location of the Babcock Property and the Wilkinson Property in the vicinity of their common boundary, along with the locations of various fences.



SECTION 30, T5N R2E

5. In this action, Wilkinson claims ownership of the triangular portion of the property lying within the legal description of the Babcock Property which lies south of a fence slanting north from the True Boundary, which is identified as the "Slant Fence" in the

diagram above and will be hereinafter referred to as the "Slant Fence." As used in these Findings and Conclusions, "True Boundary" shall mean and refer to the boundary between the Babcock Property and the Wilkinson Property that is established by their respective legal descriptions. The location of the "True Boundary" is so identified in the diagram above.

6. The chain of title to the Babcock Property began with a conveyance from the United States of America to James Williams during 1897. Title to the Babcock Property passed from James Williams to Elwood Williams and Mabel Williams, his wife. Elwood Williams and/or Mabel Williams owned the Babcock Property until 1958, when the Babcock Property was conveyed to Douglas R. Williams and James E. Williams, who are the sons of Elwood and Mabel Williams. James Williams and Douglas Williams conveyed the Babcock Property to Babcocks in 1992.

7. Each of the deeds after patent covering the Babcock Property, which are mentioned in paragraph 6 above, describe the southerly boundary of the Babcock Property as the True Boundary, which is the half section line running east and west of Section 30, Township 5 North, Range 2 E, Salt Lake Base and Meridian.

8. The Wilkinson family first acquired an interest in the Wilkinson Property when John Wilkinson and Alice Wilkinson received a conveyance of the Wilkinson Property in 1935. John Wilkinson and Alice Wilkinson conveyed the Wilkinson Property to Harry Wilkinson and Dorothy Wilkinson, his wife, in 1955. Harry Wilkinson and Dorothy Wilkinson conveyed the Wilkinson Property to Harry Wilkinson and Dorothy Wilkinson, as tenants in common, in 1976. Harry Wilkinson and Dorothy Wilkinson conveyed the

Wilkinson Property to Wilkinson Family Partnership in 1984 and 1985. Wilkinson Family Partnership conveyed the Wilkinson Property to Wilkinson Family Farm, LLC in 1995.

9. Each of the deeds covering the Wilkinson Property that effect the conveyances described in the preceding paragraph describe the northerly boundary of the Wilkinson Property as the True Boundary, which is the half section line running east and west of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian.

10. In all of the deeds effecting conveyances of the Babcock Property and the Wilkinson Property, the boundary between those properties is described as a straight line (i.e., a line with no jogs or slants departing from a straight line), that straight line being a half section line.

11. Wilkinson initiated this action against Babcocks seeking a determination that Wilkinson owned the approximately triangular tract of land lying south of the Slant Fence.

A surveyor's description of the disputed property is as follows:

A parcel of land situate in the Northeast quarter and the Northwest quarter of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian, Morgan County, Utah, being more particularly described as follows: Commencing at the West quarter corner of Section 30; thence South 88°42'14" East 2463.67 feet to the true point of beginning; thence North 00°00'00" East 10.64 feet; thence North 87°41'19" East 450.84 feet; thence North 79°58'48" East 126.84 feet; thence North 76°23'47" East 1087.06 feet; thence South 04°38'44" West 343.99 feet; thence North 88°42'14" West 1604.50 feet to the point of beginning.

The Notice of Lis Pendens recorded on behalf of Wilkinson in this action describes the disputed property as follows:

A tract of land situate in the Southwest ¼ of the Northeast ¼ and the Southeast ¼ of the Northwest ¼ of Section 30, Township 5 North, Range 2 East,

Salt Lake Base and Meridian, lying South of Fox Hollow Subdivision and East of the Dennis and Lenore Hancock property deeded in Book M79 at Page 551 of Official Records, more particularly described as follows:

Commencing at the Northeast corner of said Section 30, thence North 89°09'43" West 1320 feet, thence South 2350 feet more or less to the South fence line of Fox Hollow Subdivision, the true point of beginning, thence following said South line, South 76°23'74" West 1087.06 feet, thence South 79°58'48" West 126.84 feet, thence South 87°42'19" West 450.84 feet, thence South 00°00'00" East 10.64 feet, thence North 88°42'14" East 1550 feet more or less to the Southeast corner of the Southwest ¼ of the Northeast ¼ of said Section 30, thence North 290 feet more or less to the South line of Fox Hollow Subdivision and the point of beginning.

That approximately triangular tract of land (whichever description is accurate) is hereinafter referred to as the "Disputed Property."

12. At least three different fences have existed in the vicinity of the Disputed Property. A very old fence existed on or very close to the True Boundary in excess of 20 years ago in the location marked in the diagram in paragraph 4 as the "Old Fence." Babcocks installed a fence very close to the Old Fence on the True Boundary during 1996. In addition, more than 20 years ago a fence was installed by Babcocks' predecessors, which fence is identified as the "Slant Fence" on the diagram above. The Slant Fence is the only fence that has existed in the area of the Disputed Property for in excess of 20 years.

13. The terrain in the vicinity of the Babcock Property and the Wilkinson Property is generally rolling hills, but in the area of the True Boundary south of the Slant Fence, there exists unusually steep, cliffy topography. This steep, cliffy topography has made installation of a fence along the True Boundary extremely difficult in this area. Any fence installed on the True Boundary in this area would have been extremely difficult to install and almost

impossible to maintain. The tension in any fence installed in this area would tend to pull up posts and wires in the lower areas of the fence, which in turn would allow livestock to escape.

14. The topography in the area of the Slant Fence, however, was like the surrounding topography and allowed easy, convenient fencing and was suitable for a livestock containment fence.

15. During the trial, the Court inspected the property at issue in this action. The Court was able easily to see that the Slant Fence departed from the straight line of the True Boundary by sighting east down the fence along the half section line lying to the west of the Disputed Property. That the Slant Fence was not located on the straight line of the True Boundary is obvious.

16. The boundary between the Wilkinson Property and the Babcock Property was neither unknown nor uncertain.

17. The Slant Fence was installed by the then-owner of the Babcock Property in excess of 20 years ago. The Slant Fence was not installed to establish a boundary or was not installed in a location considered to be the boundary between the Wilkinson Property and the Babcock Property; rather, the Slant Fence was installed for the exclusive purpose of containing livestock on the Babcock Property and preventing livestock from escaping from the Babcock Property onto the Wilkinson Property. The only reason why the fence in the vicinity of the Disputed Property was not always installed along the True Boundary was because of the topography in the area — installation of a livestock containment fence along

the True Boundary would be extremely difficult, maintenance of the fence would be extremely difficult, and a fence located on the True Boundary would not effectively contain livestock. The Slant Fence was installed where it was so that it would effectively and conveniently function as a livestock containment fence and avoid the extreme topography in the vicinity of the True Boundary.

18. Babcocks' predecessors did not interrupt the use of a portion of the Disputed Property by Wilkinson's predecessors.

19. The livestock of Wilkinson and its predecessors have, from time to time, grazed on the Disputed Property up to the Slant Fence. In addition, from time to time, Wilkinson and its predecessors have cultivated something less than one-half of the Disputed Property, but such cultivation was not up to the Slant Fence.

20. In seeking governmental approval for their subdivision, Babcocks did not include the Disputed Property in their proposed subdivision. Babcocks intentionally excluded the Disputed Property from their subdivision application in order to avoid objections to subdivision approval and to enhance the likelihood of subdivision approval and not because they did not claim ownership of the Disputed Property.

21. Babcocks and Wilkinson have on various occasions discussed exchanging various parcels of land owned by each for the mutual benefit of both, including exchanges involving Babcocks' transfer to Wilkinson of the Disputed Property. However, Babcocks and Wilkinson never arrived at any agreement under which Babcocks agreed to give up any

claim to the Disputed Property or to transfer ownership of the Disputed Property to Wilkinson.

22. Babcocks and their predecessors have paid all real property taxes on the Disputed Property. Wilkinson and its predecessors have never paid any real property taxes on the Disputed Property.

23. Wilkinson and its predecessors occupied up to the Slant Fence for in excess of 20 years.

24. Wilkinson and its predecessors, on the one hand, and Babcocks and their predecessors, on the other hand, are adjoining landowners.

25. Wilkinson and its predecessors and Babcocks and their predecessors did not mutually acquiesce in the Slant Fence as a boundary between the Wilkinson Property and the Babcock Property.

26. Wilkinson caused to be recorded a certain Notice of Lis Pendens relating to this action, which was recorded in the office of the Morgan County Recorder on December 4, 1996 as Entry No. 71679 in Book M0124 at Pages 385-387.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court hereby makes and enters the following Conclusions of Law:

1. Wilkinson and Babcocks are adjoining landowners within the meaning of the doctrine of boundary by acquiescence or agreement.
2. Wilkinson and its predecessors occupied up to the Slant Fence for longer than 20 years within the meaning of the doctrine of boundary by acquiescence or agreement.

3. Babcocks and their predecessors, on the one hand, and Wilkinson and its predecessors, on the other hand, knew or should have known that the boundary line between their respective properties was the True Boundary and knew of its location on the ground. The location on the ground of the True Boundary was never uncertain or unknown to either Wilkinson and its predecessors or Babcocks and their predecessors.

4. The purpose of the Slant Fence was always and exclusively to contain livestock and not to establish a boundary. The Slant Fence was located where it was because a livestock containment fence could not effectively be installed and maintained on the True Boundary. Babcocks' predecessors and Wilkinson's predecessors agreed that the Slant Fence would be used and maintained as a livestock containment fence. Both Wilkinson and its predecessors and Babcocks and their predecessors knew that the Slant Fence was not located on the boundary between the Babcock Property and the Wilkinson Property.

5. Wilkinson's occupation of the Disputed Property was not objected to by Babcocks' predecessors.

6. Neither Babcocks nor their predecessors ever agreed with Wilkinson or its predecessors to give up any claim to the Disputed Property or to convey the Disputed Property to Wilkinson or its predecessors.

7. The doctrine of boundary by acquiescence or agreement does not apply in this action.

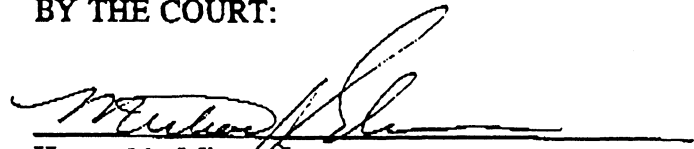
8. Babcocks own the Disputed Property free and clear of any claim of Wilkinson and its predecessors.

9. Wilkinson's Complaint should be dismissed with prejudice and upon its merits and Babcocks should be awarded their costs.

10. The Notice of Lis Pendens recorded by Wilkinson with respect to this action should be released and discharged.

MADE AND ENTERED this 30 day of October, 1998.

BY THE COURT:



Honorable Michael J. Glasmann
District Judge

NOTICE TO COUNSEL

TO: WILKINSON FAMILY FARM AND ITS COUNSEL:

You will please take notice that the undersigned attorney for defendants Babcocks will submit the foregoing to the Court for signature upon the expiration of five (5) days from the date this notice is mailed to you, allowing three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the Utah Code of Judicial Administration 1988. Kindly govern yourself accordingly.

DATED this _____ day of September, 1998.

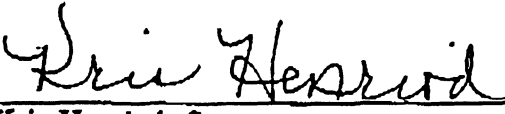
Bruce A. Maak
Attorney for Defendants Babcocks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Findings of Fact and Conclusions of Law
was served this 23rd Sept. day of ~~October~~, 1998 by mailing on said date copies thereof by
United States mail, first class postage prepaid, addressed to:

Robert A. Echard, Esq.
Attorney for Plaintiff
2491 Washington Boulevard, Suite 200
Ogden, Utah 84401

Melven E. Smith, Esq.
Smith, Knowles & Hamilton
~~Attorneys for Defendants Babcock~~
~~4725 Harrison Boulevard, Suite 200~~
~~Ogden, Utah 84403~~


Kris Henriod, Secretary

APPENDIX E

SECOND DISTRICT
MORGAN COUNTY

98 NOV -4 PM 12:07

Bruce A. Maak, Of Counsel (2033)
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 Attorneys for Defendants Lara L. and Mike Babcock
 185 South State Street, Suite 1300
 P.O. Box 11019
 Salt Lake City, Utah 84147
 Telephone: 801-532-7840
 Fax: 801-532-7750

IN THE SECOND JUDICIAL DISTRICT COURT OF MORGAN COUNTY
 STATE OF UTAH

WILKINSON FAMILY FARM, LLC, a Utah)
 limited liability company.)

Plaintiff.)

vs.)

LARA L. and MIKE BABCOCK, and all)
 other parties known or unknown that may)
 claim an interest in the real property)
 described herein.)

Defendants.)

ORDER

Civil No. 960000010

(Hon. Michael J. Glasmann)

Plaintiff's Motion to Alter or Amend Judgment dated March 25, 1998, plaintiff's
 Objection to Findings of Fact and Conclusions of Law dated March 25, 1998, and plaintiff's
 Objection to Memorandum of Costs dated April 6, 1998, came on regularly before the Court
 for decision and further argument by telephone conference on September 23, 1998, the Court
 having previously entertained oral argument on certain of these motions and the Court having

reviewed the parties' memoranda and other submissions with respect to these motions and having heard further argument from counsel for the parties, the Court being advised and good cause appearing therefor,

IT IS HEREBY ORDERED as follows:

1. Plaintiff's Motion to Alter or Amend Judgment be and the same is hereby denied.
2. With respect to plaintiff's Objection to Findings of Fact, Conclusions of Law and Judgment, the Court has reviewed the Findings of Fact and Conclusions of Law served herein by defendant's counsel on March 13, 1998 (referred to herein as the "Proposed Findings and Conclusions") and the Court hereby orders that those Proposed Findings and Conclusions shall be revised in the following respects:

~~(a) Paragraph 16 of the Findings of Fact in the Proposed Findings and Conclusions shall be deleted.~~

~~(b) Paragraph 17 of the Findings of Fact in the Proposed Findings and Conclusions shall be renumbered 16 and shall be revised to read as follows:~~

~~The boundary between the Wilkinson Property and the Babcock Property was neither unknown or uncertain.~~

~~(c) Paragraph 19 of the Findings of Facts in the Proposed Findings and Conclusions shall be deleted.~~

~~(d) Paragraph 20 of the Findings of Fact in the Proposed Findings and Conclusions shall be renumbered as 18 and shall be revised to read as follows:~~

Babcocks' predecessors did not interrupt the use of a portion of the Disputed Property by Wilkinson's predecessors.

(e) Paragraph 3 of the Conclusions of Law in the Proposed Findings and Conclusions shall be revised to read as follows:

Babcocks and their predecessors, on the one hand, and Wilkinson and its predecessors, on the other hand, knew or should have known that the boundary line between their respective properties was the True Boundary and knew of its location on the ground. The location on the ground of the True Boundary was never uncertain or unknown to either Wilkinson and its predecessors or Babcocks and their predecessors.

(f) Paragraph 5 of the Conclusions of Law in the Proposed Findings and Conclusions shall be revised to read as follows:

Wilkinson's occupation of the Disputed Property was not objected to by Babcocks' predecessors.

With the changes outlined above, the Proposed Findings and Conclusions accurately set forth this Court's Findings of Fact and Conclusions of Law, and defendants' counsel shall submit revised Findings of Fact and Conclusions of Law incorporating the changes outlined above and a Judgment for entry by the Court. This Court does not intend by its changes to the Proposed Findings and Conclusions to create any implication that the Court has in any respect changed the meaning or intent of the Findings of Fact and Conclusions of Law that were not changed by this Order.

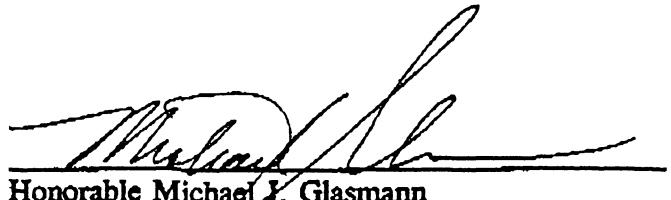
3. Except for the revisions set forth above in paragraph 2 of this Order, plaintiff's objections to the proposed Findings of Fact and Conclusions of Law be and they are hereby denied and overruled.

4. Plaintiff's Objection to Memorandum of Costs dated April 6, 1998 be and the same is overruled. All of the costs claimed in defendants' Memorandum of Costs herein dated March 26, 1998 are appropriate for recovery, and defendants should be awarded their costs in the amount of \$829.50. Defendants' counsel is directed to submit to the Court for entry a Judgment containing an award of costs in that amount

5. The time for any appeal of the Court's Judgment in this case shall run from the later of the date of the Court's entry of this Order or the Judgment to be submitted as directed in this Order.

MADE AND ENTERED this ^{fu} 12 day of October, 1998.

BY THE COURT:


Honorable Michael J. Glasmann
District Judge

NOTICE TO COUNSEL

TO: WILKINSON FAMILY FARM AND ITS COUNSEL:

You will please take notice that the undersigned attorney for defendants Babcocks will submit the foregoing to the Court for signature upon the expiration of five (5) days from the date this notice is mailed to you, allowing three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the Utah Code of Judicial Administration 1988. Kindly govern yourself accordingly.

DATED this day of September, 1998.


Bruce A. Maak
Attorney for Defendants Babcocks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Order was served this 23rd day of Sept.
October, 1998 by mailing on said date copies thereof by United States mail, first class
postage prepaid, addressed to:

Robert A. Echard, Esq.
Attorney for Plaintiff
2491 Washington Boulevard, Suite 200
Ogden, Utah 84401

Melven E. Smith, Esq.
Smith, Knowles & Hamilton
Attorneys for Defendants Babcock
4723 Harrison Boulevard, Suite 200
Ogden, Utah 84403


Kris Henriod, Secretary