

1980

Richard Diamond and Peggy Diamond v. Robert E. Christofferson et al : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT FOR THE
STATE OF UTAH

RICHARD DIAMOND & PEGGY)
DIAMOND,)
)
Plaintiffs and)
Appellants,)

vs.)

ROBERT E. CHRISTOFFERSON,)
RUTH R. CHRISTOFFERSON, husband)
and wife, and GLEN R. CHRISTOFFERSON,)
LAURA CHRISTOFFERSON, husband and)
wife, and the UNKNOWN WIVES, DEVICES,)
HEIRS AND CREDITORS OF THE ABOVE-NAMED)
PARTIES and ALL OTHER UNKNOWN PERSONS)
WHO HAVE OR CLAIM TO HAVE ANY RIGHT,)
TITLE OR ESTATE, LIEN OR INTEREST)
IN THE PROPERTY DESCRIBED HEREIN,)
)
Defendants and)
Respondents.)

Case No. 16642

BRIEF OF APPELLANTS

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TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE NATURE OF THE CASE.....	1
DISPOSTION IN LOWER COURT.....	1
RELIEF SOUGHT ON APPEAL.....	2
STATEMENT OF FACTS.....	2
A R G U M E N T	
POINT I.....	8
POINT II.....	15
CONCLUSION.....	21

TABLE OF CASES CITED

<u>Anderson vs. Osguthorp</u> , 29 U.2d 32, 504 P.2d.....	12
1000 (1972)	
<u>Bradley vs. Frazier Park Playgroun</u> g, 242 P.2d 958..	17
<u>Brooks vs. Jensen</u> , 483 P.2d 650.....	20
<u>Buckley vs. Cox</u> , 247 P.2d 277, 122 Utah 151.....	10
<u>Busdui vs. State</u> , 409 P.2d 735 (Ariz.App. 1966).....	19
<u>Hansen vs. Daniel</u> , 289 P.2d 50 (Cal.App.).....	20
<u>King vs. Fronk</u> , 15 U.2d 135, 378 P.2d 1893 (1963)...	17, 20
<u>Krencicki vs. Petersen</u> , 22 Ariz. App. 1,.....	12
522 P.2d 762 (1974)	
<u>North Union Canal Company vs. Daniel E. Newell</u> ,.....	14
<u>et al</u> , 550 P.2d 178 (Utah, 1976)	

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BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

This is an appeal by the plaintiff from a judgment entered by Calvin Gould dated the 15th day of June, 1979, denying the plaintiff a permanent restraining order.

DISPOSITION IN LOWER COURT

The lower court refused to grant the plaintiff a permanent restraining order and entered an order holding that the plaintiffs' property was burdened with a thirty-three (33) foot right-of-way in favor the defendants.

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RICHARD DIAMOND & PEGGY
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RELIEF SOUGHT ON APPEAL

The appellants seek to have this Court reverse the decision of the lower court and enter a permanent restraining order in favor of the appellants-plaintiffs against the defendants.

STATEMENT OF FACTS

The appellants-plaintiffs, Richard Diamond and Peggy Diamond, are the owners of property located in Pleasant View, Weber County, State of Utah. The right-of-way which is the subject matter of this lawsuit extends from a road known as 900 West in Pleasant View City to the east across the property owned by the appellants to property owned by the respondents. The respondents do not claim that they own the property over which the lane or right-of-way passes. The appellants admit that there is a right-of-way which has been established by use over the years but argue that that right-of-way is limited in width between nineteen (19) and twenty-one and one-half (21-1/2) feet. The respondents, on the other hand, claim that the right-of-way should be thirty-three (33) feet in width.

The lane in question was first constructed in approximately 1926. (R.176) In the same year a fence was built along the lane. The fence was constructed by Farmer Jones for the purpose of keeping in his cattle. (R.177, lines 12 through 15) Some years later, in approximately 1932, a hog-wire fence was constructed along the lane to keep

in livestock. (R.209, lines 16 through 27) Throughout the years thereafter, the fences were moved on either side of the lane by various parties that owned the property or lived in the vicinity. In each case the fence was constructed or moved for the purpose of keeping livestock in or out and not for the the purpose of establishing a right-of-way or easement. (R.209, lines 16 through R.210, line 16) At the time the fences were installed the parties installing the fence were not concerned with the width of the fence and therefore moved the fences at will. When the fences were moved they did not at any time interfere with the use of the right-of-way. (R.220, lines 8 through 18)

The right-of-way in question is one lane wide and has always been used for travel to and from the respondent's property. Over the years the lane has been used by wagons, horses, foot traffic and vehicles. At one time the respondents owned a home located on the east of the lane and also used the lane for transporting hay, tomatoes and fruit. (R.178, lines 12 through 16) On occasion the lane was used by a school bus which consisted of a horse and wagon or sled and also by snow removal equipment which consisted of a plow drawn by horses. In approximately 1946 the respondents claim that they moved a home that was twenty-four (24) feet by thirty (30) feet in dimensions down the lane. (R.212, lines 6 through 14) That was the first and last time that any such use of the lane was made. (R.229, lines 6 through 13)

The respondents originally demanded that the appellants permit them to have a sixty (60) foot wide right-of-way. (R.234, line 19 through R.261, line 14) Thereafter, they claimed that they should have a thirty-three (33) foot right-of-way. The respondents admit that they have previously attended the Planning Commission meeting of Pleasant View City and were told that they would need a thirty-three (33) foot right-of-way in order to construct homes on their property. (R.232, lines 13 through 27) The respondents attempted to introduce evidence to establish that the lane originally was thirty-three (33) feet wide. All of the testimony concerning the original width of the lane consisted of hearsay and the court, on a number of occasions, refused to allow the hearsay in, and in fact, ordered that it be stricken from the record. (R.179, 181, 200) Even though the court would not allow the hearsay in, the court then allowed the individuals to give their own estimate of the distance without requiring any foundation to be laid for that testimony. (R.182, lines 14 through 17) The first witness that estimated the distance was Lucien V. Critchlow. He stated he estimated the distance between the fences as thirty-three (33) feet. (R.182, lines 23 through 25) Mr. Critchlow, on cross-examination, admitted that he did not know how wide the lane was and did not measure it. (R.185, lines 2 through 6) He also testified that the right-of-way had always been one lane wide

as that was all that was needed. (R.190, lines 27 through 30) The second witness of the respondents, Mr. Max Wade, under cross-examination, admitted that the fences could have been anywhere from twenty-eight (28) to thirty-three (33) feet apart, but he was only guessing. (R.199, lines 13 through 18, R.214, lines 10 through 21) Mr. Wade testified that during the last six to seven (6-7) years there had been enough room to pass on the lane. (R.216, lines 3 through 26) The respondents estimated that the distance between the fences originally was about thirty (30) to thirty-three (33) feet wide although the respondent Robert E. Christofferson acknowledged that from 1948 to the present time there had not been a thirty-three (33) wide right-of-way. (R.260) The gate installed by the respondents was twenty (20) feet wide and today it is sixteen (16) feet wide. (R.233, lines 10 through 30)

In approximately 1968 the appellants replaced a fence that was located on the south side of the lane and in 1976 the appellants attempted to replace the fence on the north side of the lane. In both cases the appellants who raise horses in this area replaced the existing wire fence with a pole fence. The appellant Richard Diamond testified that he had the new fences installed on the same line as the existing wire fence. (R.104, lines 10 through 13, R.115, lines 13 through 17) The north fence

was moved further to the north than the old fence by reason of an agreement entered into at the time a hearing was held for the temporary restraining order. (R.107, lines 25 through 30) The new fences are twenty-four and one-half (24-1/2) apart on the east and twenty-one (21) feet apart on the west. (R.108, lines 6 through 21) One of the appellants' witnesses, Bruce Jones, a real estate broker who lives in the vicinity, testified that he was hired to replace the north fence and that he placed the north fence substantially on the same line as the existing wire fence that was located to the north of the lane. (R.156, lines 24 through 30, R.157, lines 19 through 22) Mr. Jones also testified that he had personally known of the lane in question since approximately 1950 and that the lane, as it exists today, is substantially the same as it was in the year 1950. (R.153, lines 5 through 13, R.159, lines 22 through 26)

The chief witness called by the appellants was Keith Hansen who is a consulting engineer. In 1957 Mr. Hansen was employed by the Pleasant View Culinary Water Association to do survey work in the vicinity of the disputed right-of-way or lane. At that time the respondent Glen Christofferson was a member of that water board and was involved in the hiring of Keith Hansen. (R.235, line 28 through R.236, line 4) Mr. Hansen testified that in 1957, approximately 22 years ago, he surveyed the lane in question for the purpose of constructing

a pipeline for the culinary water company. A copy of his survey was entered as evidence as Exhibit "F". In 1957 the fences that were replaced by the appellants were in place and Mr. Hansen established the distances between those fences. (R.129, lines 26 through 29) In 1957 the fences which paralleled the lane were nineteen (19) feet apart at the east end of the lane (R.132, lines 17 through 19) and twenty-one and one-half (21-1/2) feet wide at the west end of the lane. (R.134, lines 20 through 23) Mr. Hansen also testified that he had not discerned any change in the width of the lane since 1957. (R.135, lines 16 through 18) Mr. Hansen testified that he was able to establish a scale for the aerial photographs taken of the lane in question by the aerial photograph department on May 27, 1958 which had been introduced by the appellants as Exhibits "A" and "B". (R.93, lines 9 through 19) Mr. Hansen testified that the aerial photographs demonstrated that the fence lines were approximately twenty (20) to twenty-two (22) feet apart as indicated by those photographs. (R.136, line 23 through R.137, line 6) Mr. Hansen testified that he has not noticed any change in the lane since 1957 and that the appellants' fences had not changed the width of the lane. (R.135, lines 16 through 18, R.145, lines 8 through 11)

The aerial photographs taken in 1958 introduced as Exhibits "A" and "B" show trees located on both sides of the

lane. The appellants testified that the trees in the photographs were the same ones in existence today. (R.104, lines 22 through 27). This testimony was submitted by Bruce Jones who testified that the trees in the photographs are still in existence and are in line with the fence which was replaced by the appellants. (R.157, lines 19 through 26, R.162, lines 16 through 30) The respondents' witness, Mr. Wade, testified that he had planted the trees and that no one had used the property to the north of the trees since 1950. (R.221, lines 14 through 23)

When the appellants attempted to install a pole fence on the north, the respondents physically removed the posts and threatened physical violence to the appellants if they were to again attempt to construct the fence. This caused the appellants to seek a permanent restraining order restraining the respondents from interfering with the appellants' use of the property. By stipulation of counsel it was agreed that evidence could be presented to the court concerning the width of the lane and any effect that that might have on the fence on both the north and south sides of the lane.

A R G U M E N T

POINT I

THE COURT COMMITTED PREJUDICIAL ERROR IN RULING THAT THE RESPONDENTS HAD ESTABLISHED THAT THEY WERE ENTITLED TO A THIRTY-THREE (33) FOOT WIDE RIGHT-OF-WAY ACROSS THE PROPERTY OF THE APPELLANTS.

This Court, in the case of Richards vs. Pine Ranch, Inc., 559 P.2d 948 (1977), reviewed the decision of a trial court concerning the establishment of an easement by prescription. Concerning the weight to be granted a decision by a trial court this court stated: "This is a case in equity and we are not bound to recognize the findings of the trial court where they appear to be contrary to the evidence. . . ." It is the position of the appellants in this case that the Supreme Court has the right to review the evidence in this case without giving the normal weight that is allowed the findings of a trial court judge.

Judge Gould, in his Memorandum Decision, stated that the respondents were only required to demonstrate by preponderance of the evidence that their easement was thirty-three (33) feet wide. The Judge stated in part as follows: "A true application of the rule of preponderance evidence in a civil case is a simple proposition 'is the fact alleged more probably true than not true...?'" Clearly this is not the standard that is required in the state of Utah in order to establish a prescriptive use. The Utah Supreme Court, on many occasions, has stated that the standard to be applied is one of clear and convincing evidence. This court, in the case of Peterson vs. Combe, 20 U.2d 376, 438 P.2d 545 (1968), considered the question of whether or not a road was a public road. The court stated that the burden must be borne by the party claiming public

use by clear and convincing evidence that constitutionally must be justified. This court has consistently held that in order to establish or to demonstrate the abandonment of an easement the evidence must be clear and convincing and not a mere preponderance of the evidence. Buckley vs. Cox, 247 P.2d 277, 122 Utah 151, Western Gateway Storage Company vs. Treseder, 567 P.2d 181 (1977)

It is the appellants contention that the respondents did not meet the burden of proof that was required to establish that their right-of-way was thirty-three (33) feet in width. As indicated in the Statement of Facts the respondents presented testimony to the effect that fences that were established after 1926 along the right-of-way were thirty-three (33) feet in width. However, this evidence was very tenuous. The respondents attempted to enter hearsay which was overruled by the Judge on many occasions and stricken from the record. (R. 179, 181, 200) The only testimony presented concerning the width of the road was based upon the estimates of the respondents and two (2) witnesses called by them. Those witnesses, when cross-examined, admitted that they had not measured the road and that they were not certain of the width of the distance between the two (2) fences. (R.185, lines 2 through 6) Likewise, the two (2) respondents who testified were unable to give any concrete evidence as to the width existing between the fences. On the other hand the appellants were able to establish the distance

between the fences by positive evidence in the nature of a survey by a qualified engineer. He stated that the distance between the fences for approximately twenty-two (22) years from 1957 to 1979 was nineteen (19) feet on the east and twenty-one and one-half (21-1/2) feet on the west. (R.132, lines 7 through 19, R.134, lines 20 through 23)

The appellants introduced evidence contained in aerial photographs marked as Exhibits "A" and "B" which demonstrate that as early as 1958 there were trees located on both the north and south sides of the lane. These trees, as indicated in the Statement of Facts, are the same ones that presently exist. Consequently, it would have been impossible for the respondents to have used any greater width than delineated by the trees located long the lane. The dimensions of the aerial photographs indicated that the maximum width between the trees is twenty-two (22) feet. It is the position of the appellants that estimates on the part of witnesses who have never measured the right-of-way cannot constitute evidence which is clear and convincing as required by this court.

The majority of the evidence presented by the respondents was to the effect that they estimated the distance between the existing fences to be thirty-three (33) feet. Of course, the distance between the fences did not establish the right-of-way that had been created by use on the part of the respondents or their predecessor in interest. The testimony

at the trial was clear that the fences had been constructed not for the purpose of delineating the width of the right-of-way but to restrain cattle, hogs and other stock. (R.209, line 16 through R.210 line 16) Consequently, the width between the fences is not competent evidence upon which the court can establish the width of a right-of-way established by an easement. Likewise, the fact that the trial court judge observed wire on trees outside of the present fence line has no significance. (R.18)

This issue was addressed by this court in the case of Anderson vs. Osguthorp, 29 U.2d 32, 504 P.2d 1000 (1972) That case involved an easement by prescription and rights established by adverse possession. The appellants attempted to rely upon a fence line to establish a boundary for their easement. However, the court stated that where the fence was erected to prevent cattle from getting on the highway, it could not constitute evidence which would establish the location and boundary of an easement by prescription. A similar decision was reached in the case of Krencicki vs. Petersen, 22 Ariz.App. 1, 522 P.2d 762 (1974) In that case the court held in a case involving easements by prescription that a roadway did not extend to fences located on either side of the roadway but was limited to the beaten path or the actual part of the roadway which had been used by the parties and not by the land enclosed by the fences. Consequently, the respondents were required to prove not that the original

fences were thirty-three (33) feet apart but that the travelled portion of the right-of-way or beaten path was in fact thirty-three (33) feet wide.

The only evidence presented by the respondents to demonstrate the actual width of the right-of-way used by them was testimony to the fact that the respondents' parents had at one time owned a home at the east end of the lane and that the lane had been used for foot travel, horse and wagon and motorized vehicle. The respondents were very vague as to the years in which the various types of traffic were used. However, they testified that on occasion, the various vehicles used on the lane had turned around on the lane itself. One witness testified that a truck used to pick up fruit or produce had turned around within the fence line although it was very difficult to do. (R.180, lines 11 through 18) This witness testified that he did not know how long the truck was. Mac Wade testified that he turned a snow plow around which was drawn by horses and one of the respondents testified that a wagon drawn by a horse was turned around in the lane. None of these witnesses were able to indicate the room that would be needed to turn around these various vehicles. Neither could they testify that the lane had been used consistently for a period of twenty (20) years for the purpose of turning vehicles or animals. The respondents did testify that on one occasion in 1946 a house was

moved from the east of the lane to the west that was twenty-four (24) feet by thirty (30) feet wide.

It is the position of the appellants that the respondents must be able to demonstrate, not an isolated use of the property during the twenty (20) years, but that the property was used consistently and regularly for a particular type of travel. The fact that a home may have been moved down the road once during the entire prescriptive period would not be sufficient to demonstrate that the right-of-way was in fact as wide as the home. Likewise, the fact that at times vehicles were turned around is not sufficient. There was no testimony that this use continued for twenty (20) years or was anything other than occasional.

This, of course, is an equitable action and, consequently, the court must review all of the evidence and the ultimate decision in light of the principles of equity which control. The appellants believe that those equitable principles were well set forth in the case of North Union Canal Company vs. Daniel E. Newell, et al, 550 P.2d 178 (Utah, 1976) The court in that case stated in part as follows:

. . .The dispute between these parties provokes these observations: Whenever there is ownership of property subject to an easement there is a dichotomy of interest, both of which must be respected and kept in balance. On the one hand, it is to be realized that the owner of the fee

title, because of his general ownership, should have the use and enjoyment of his property to the highest degree possible, not inconsistent with the easement. On the other, the owner of the easement should likewise have the right to use and enjoy his easement to the fullest extent possible not inconsistent with the rights of the fee owner. . .

A R G U M E N T

POINT II

THE COURT COMMITTED PREJUDICIAL ERROR IN RULING THAT THE RESPONDENTS HAD NOT ABANDONED PART OF THE RIGHT-OF- WAY BY NON-USE FOR A PERIOD EXCEEDING TWENTY (20) YEARS.

The evidence in this case is very clear that for approximately twenty-two (22) years the fences on either side of the right-of-way in question restricted the right-of- way so that it was no more than nineteen (19) feet at the east end and twenty-one and one-half (21-1/2) feet wide at the west end. This fact was established by reason of a survey made by Keith Hansen, a consulting engineer, in 1957. (R.132, lines 17 through 19, R.134, lines 20 through 23) One of the witnesses, Bruce Jones, testified that the fences and the lane have not changed since 1950 which would make the restriction at least twenty-nine (29) years in duration. (R.158, lines 21 through 26) One of the respondents' witnesses, Mac Wade, testified that the fences that were surveyed by the engineer Keith Hansen were installed by Mr. Alkema in 1942. (R.211, lines 20 through 24) One of the respondents, Robert E. Christofferson, testified that he had not used and did not need to use any

greater width than that contained within the fences established by Mr. Alkema. (R.264, lines 5 through 20) It is clear from this testimony that the respondents have been restricted in the lane width to nineteen (19) feet on the east and twenty-one and one-half (21-1/2) feet on the west for a period of thirty- seven (37) years. This is substantiated by the testimony of the respondent Robert E. Christofferson to the effect that for approximately thirty-one (31) years there had not been a lane in existence that was thirty-one (31) feet wide. (R.260, line 26 through R.261, line 1) One of the other respondents, Glen Christofferson, testified that the widest object that had been moved along the right-of-way since 1947 was a twenty (20) foot wide harrow. (R.234, lines 1 through 5)

It was undisputed that for a period of between twenty-two (22) and thirty-seven (37) years the right-of-way has existed in its present width which is nineteen (19) feet at the east and twenty-two and one-half (22-1/2) feet at the west. The court, in its Memorandum Decision, stated: "There has been a continuous use of the right-of-way over a portion somewhat narrower than was originally used". (R.18) The legal question then is whether or not such a restriction over this period of time constitutes an abandonment of part of the width of the lane assuming that the lane was in fact thirty-three (33) feet wide when it was originated. Judge Gould, in his Memorandum Decision, indicated that evidence of

non-use was not sufficient to evidence abandonment as there must be a demonstration of an intent in addition to the non-use. Judge Gould also cited two cases in his Memorandum Decision. Apparently one is a case in the Southwest and incorrectly cited. The other case was Bradley vs. Frazier Park Playgrounds, 242 P.2d 958. This is a California case and the court made a very brief reference to the elements necessary to prove abandonment. It merely states: "Second, merely non-use does not necessarily constitute abandonment".

It is the position of the appellants that intent must be determined from the circumstances surrounding the non-use and that non-use for a period of twenty (20) years is sufficient to establish an abandonment and the intent to abandon. This court, in the case of King vs. Fronk, 15 U.2d 135, 378 P.2d 1893 (1963), in considering a case involving ownership by acquiescence stated "Besides, a visible persistent boundary having been shown over a period of time is convincing evidence of an intent or acquiesce in boundary. . .". The appellants believe that the same standard can be used to determine the intent of the respondents as it relates to the width of this right-of-way. The intent of the parties must be derived from their conduct or lack of conduct under the circumstances. In this case the respondents, for a period of twenty-two (22) to thirty-seven (37) years failed to use any greater width than was allowed by the fences existing on

either side of the lane. They did not move any vehicles or equipment down the lane that exceeded twenty (20) feet in width and they did not at any time remove the fences or request that they be removed. Such action not only demonstrates the width of the right-of-way needed by the respondents but also the fact that they intended to be restricted to the width confined within the fences. The first time that the respondents became concerned about the width was when they were informed by the Pleasant View Planning Commission that they would need thirty-three (33) feet in order to be able to build a home or homes at the end of the lane.

Judge Gould, in his Memorandum Decision, states that there is no evidence to demonstrate adverse use of the lane within the thirty-three (33) foot right-of-way claimed by the respondents. (R.20) This conclusion on the part of the court is absolutely incorrect. The respondents and their witnesses testified that the fences had been moved to the present position by Mr. Alkema and that the fences were installed for the purpose of fencing in cattle and livestock. The fences had been known to the respondents for a period of approximately thirty-eight (38) years and are clearly visible. Open and notorious use which is adverse to the rights of the respondents is all that is required to show adverse possession. The lane involved has always belonged to the appellants and

their predecessors in interest and, consequently, the appellants have always paid the taxes on the property in question. Under the laws of the state of Utah that is all that is needed to establish adverse use.

The respondents testified that they had installed a gate at the end of the lane that was twenty (20) feet in width. This gate belongs to the respondents and was installed by them. It is difficult to understand how they can claim that they should have a thirty-three (33) foot right-of-way when they themselves have installed a gate that would prohibit any item from being taken through that gate which exceeds the width of the gate. This act is clear evidence of the fact that the parties intended that the lane width be restricted to at least twenty (20) feet. (R.233, lines 17 through 23)

Utah, for many years, has recognized the fact that an easement by prescription can be abandoned. In the case of Richards vs. Pine Ranch, Inc., supra, the court, in considering the question of whether or not a right-of-way by prescription had been established stated as follows: "If a twenty year adverse use was established, then that could only be defeated by a prohibition of use for a like period". A similar decision was reached in the case of Western Gateway Storage Company vs. Treseder, supra. Many other states have also ruled that an easement may be lost or abandoned through non-use. In Busdai vs. State, 409 P.2d 735 (Ariz.App. 1966),

the Arizona Supreme Court stated that an easement may be extinguished by an owner of the subservient estate by acts which are adverse to the existence of the easement and which continue for a period sufficient to establish title by adverse possession. A similar decision was reached in a California Appellant Court in the case of Hansen vs. Daniel, 289 P.2d 50 (Cal.App.). The California court stated that an easement may be extinguished by non-use and abandonment and by the use of the subservient estate in a manner adverse to the exercise of the easement for a period equalling that which is required to establish the easement. In a Kansas case, Smith vs. Harris, 311 P.2d 325, the court held that an easement may be terminated by actions on the part of the subservient estate owner of such a nature that it would entitle the owners of the dominant estate to maintain an action for obstruction of the easement. The Nevada Supreme Court, in the case of Brooks vs. Jensen, 483 P.2d 650, stated that an easement may be lost if it is shown that the dominant estate intended to abandon the easement and that non-use of the easement is evidence of such an intent.

While this is not a case of boundary acquiescence, it certainly is similar in many respects. The Utah Court has held on numerous occasions that when a boundary is allowed to exist by the parties for a long period of time without protest, there is established an implied agreement based upon the passage of time that the boundaries are accurate. King vs. Fronk, supra.

It is the position of the appellants that they do not need to show that the respondents intended to abandon the entire right-of-way. If the dominant estate owner can abandon a right-of-way certainly he can abandon a portion of the right-of-way. Consequently, if the respondents ever did own a right-of-way thirty-three (33) feet in width, they abandoned that width by allowing a restriction on it that was clear and visible and known to the respondents for a period of thirty-seven (37) years.

C O N C L U S I O N

It is the contention of the appellants that the trial court committed prejudicial error in not requiring the respondents to prove their claim by clear and convincing evidence as required by state law. The respondents did not carry the burden of proving that the lane in question had ever been thirty-three (33) feet in width or that the uses they relied upon continued uninterrupted for a period of twenty (20) years. The appellants also contend that even if the court finds that the respondents sustained their burden of proof that the evidence clearly demonstrates that the respondents abandoned part of said right-of-way and that the easement thereon terminated by reason of the fact that the right-of-way has only been nineteen (19) to twenty-one and one-half (21-1/2) feet for between twenty-two (22) and thirty-seven (37) years and in fact has been encumbered with fence lines and uses the entire period of time. Consequently,

the appellants pray for the court to grant a permanent restraining order restraining the respondents from interfering with the construction and maintenance of a fence line by the appellants. In the alternative, the appellants request that this matter be referred back to the trial court for a new trial in light of the fact that the court applied the rule of preponderance of evidence rather than clear and convincing evidence.

DATED this 11 day of January, 1980.

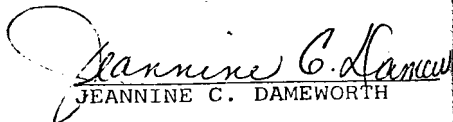
Respectfully submitted,



ROBERT A. ECHARD
Attorney for
Plaintiffs-Appellants

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Appellants to the attorney for the respondents, Richard Richards, Esq., 2506 Madison, Ogden, Utah 84401, on this 11 day of January, 1980.



JEANNINE C. DAMEWORTH