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George S. Ringwood, harold T. Ringwood et al v.
Lottie S. Bradford : Brief of Defendant and
Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

FILED
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GEORGE S. RINGWOOD, HAROLD
T. RINGWOOD, LUELLA DUN-
CAN and ESTHER JANE OS-
WALD,

Plaintiffs,

vs.

LOTTIE S. BRADFORD, also known
as Lottie Bradford White,
Defendant.

U.S. Supreme Court, Utah

Case No.
8073

Brief of Defendant and Appellant

ROBERT C. GIBSON,

Attorney for Appellant.

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Brief of Defendant and Appellant

STATEMENT OF FACTS

The defendant and appellant is the owner in fee of certain real property situated in Emigration Canyon, Salt Lake County, State of Utah. R-94, D-Abstract. Plaintiffs and Respondents are the owners in fee of certain real property immediately Westerly of and contiguous to the property owned by appellant. R-94, P-1. Appellant's predecessors in title acquired their property about the year 1934. Appellant acquired her property

about 1946, and she is the present owner. R-94, D Abstract. Respondents' predecessors in title acquired their property about the year 1924. R-62-63, 94, P-2. Respondents acquired their property from their predecessors about 1946. R-94, P ex. 2. The calls in the deeds to the property of the respective parties show that the westerly boundary of appellant's property coincides with the easterly boundary of the respondent's property. R-94, P ex. 1, D Abstract. The property which is the subject of this dispute is a triangular piece, bounded on the West by a fence, on the East by the common line referred to above and on the North by part of the line which would appear from the deed calls to partially bound the respondent's property on the North. At the South, the West and East boundaries of the disputed portion almost intersect at the Southwest corner of appellant's property and the Southeast corner of Respondents' property. Said disputed portion is described as follows and contains .0897 acres :

Beginning at a point North 1095.16 feet and East 1223.37 feet from the Southwest Corner of the Southeast Quarter of Section 32, Township 1 North, Range 2 East, Salt Lake Base and Meridian, thence South 183.97 feet to intersection of an old fence line; thence following said fence line North 14° -09' West 173.78 feet; thence North 70° -00' East 45.21 feet to beginning. R-94, D-ex. 10.

The fence has bounded this property on the West for about 27 years. R-60, 61. The shape of the property and the location of the fence and appellant's cabin is shown best in defendant's exhibit D-10.

Appellant's predecessor in title was her daughter who was also one of the witnesses at the trial, Margaret Bradford Pitts. R-44. Respondents' predecessors in title were their parents, now both deceased. Actually appellant's husband was given the property for work he had done and he in turn had given it to his daughter. R-47, 48. He is also now deceased.

When Margaret Bradford Pitts acquired title to appellant's property, the fence in question was already in existence and was apparently assumed to be the boundary line between the Ringwood and the Bradford property. R-45, 46, 52, 54, 57. Such being the case in 1934, the Bradfords built their cabin near the fence line, said location being the most favorable spot in which to build a cabin on what was assumed to be the Bradford property. R-46, 47, 52. As a matter of fact, the cabin was constructed almost entirely on the disputed piece of property. That same cabin has existed in its same location ever since its original construction. R-51, 52. The fence has also always existed in its present location, only 4.7 feet to 7.3 feet from the cabin. R-51, R-94-D ex. 10. At the time the Bradfords acquired the property and built their cabin, the fence line was adopted and thought of as the boundary between the Bradford and the Ringwood property. R-64, 52, 54. Ever since the Bradford cabin was built, the Bradford family have occupied their cabin and property up to the fence line. R-27, 28, 46. The Ringwood family on the other hand, have never attempted to occupy nor possess any of the property East of the fence line. R-46-76. They have never made any claim to property

East of the fence, and have tacitly acquiesced in and recognized the fence-line as the boundary line. R-52, 57. It was only when the Ringwoods decided to sell their property that they had a survey made and discovered that the fence and cabin was ostensibly on the Ringwood property. R-27, 52. This survey was conducted about the year 1951. R23-. From 1934 to the present time the parties hereto and their respective families and predecessors in title have occupied their respective premises up to the fence-line. R-23, 27, 44, 50. No one ever questioned that the fence was not the boundary line until the present dispute arose. R-46, 52. There is evidence of a conversation between the elder Mr. Bradford and Harold Ringwood, one of the Respondents, to the effect that the fence was considered the boundary. R-57. This claim was never contested nor disputed. R-47, 76.

Witnesses for the Respondent testified that the fence was originally built for the purpose of keeping sheep out of the Ringwood property. R-61. However, the Ringwoods admit that they never attempted to occupy East of the fenceline, that they were familiar with the fence and Bradford cabin and that they were aware of the Bradford occupancy. R-25, 27, 70, 75. It was not until the present dispute arose that the Ringwoods ever asserted any claim to property East of the fenceline. R-27, 32, 57.

Respondents acquired their property from their mother about 1946. R-94, P ex. 1. The parents and the

children frequently visited the Ringwood property and were undoubtedly aware of the situation and location of the Bradford cabin and the fence-line in question. R-25, 27, 75. The respondents, as children of the elder Ringwoods, frequently visited the property and even stayed there from time to time. R-27. During all the 18 years prior to this dispute, some members of each of the families have visited the properties, and there has never been any question as to the true boundary. R-47, 76.

There is some evidence that the Ringwood family suspected that the fenceline was not the true boundary. George Ringwood, one of the respondents testified that one Fisher had surveyed the Ringwood property nearly twenty years ago. However, there is no evidence that he or any of the Ringwood family took steps to make this known to the appellant. They merely kept silent and continued to acquiesce in the fence as the boundary line. R-76.

This action was commenced by plaintiffs and respondents against the defendant and appellant as an action in ejectment and for damages for the wrongful detention of the disputed property. R-1. Their claim for damages was waived at the beginning of the trial. R-17. The defendant and appellant counter-claimed, claiming the disputed property under the theory of the doctrine of acquiescence. R-3, 6. The trial court found the issues on plaintiffs' complaint in favor of plaintiff and against defendant and on defendant's counter-claim, the court

found the issues in favor of the plaintiffs and against the defendant. R-80.

The trial court found that the respondents are the owners of in fee of the property subject to this dispute, that the appellant is the owner of the real property immediately to the east of said property, that the appellant's cabin has stood and does stand wrongfully upon the premises of the respondent, that the cabin of appellant was resting upon respondents' property, that said fence was not used or intended as a boundary fence by the respondent nor their predecessors, and that the respondents were entitled to judgment requiring appellants to remove her cabin from the said property. The court decreed that appellant should remove her cabin from said property within 30 days from entry of the decree. R-83, 84, 85, 86.

From the foregoing findings and decree, the defendant and appellant now brings this appeal.

STATEMENT OF POINTS ON APPEAL

1. THAT THE TRIAL COURT SHOULD HAVE FOUND THAT SAID FENCE HAS BEEN ESTABLISHED AS THE BOUNDARY BETWEEN THE APPELLANT'S AND RESPONDENTS' PROPERTY BY THE DOCTRINE OF BOUNDARY BY ACQUIESCENCE. THAT THE TRIAL COURT ERRED IN FINDING THAT SAID FENCE WAS NOT USED OR INTENDED AS A BOUNDARY FENCE BY THE PLAINTIFF RESPONDENTS.

ARGUMENT

POINT NO. 1

That the trial court should have found that said fence has been established as the boundary between the appellant's and respondents' property by the doctrine of boundary by acquiescence. That the trial court erred in finding that said fence was not used or intended as a boundary fence by plaintiff respondents.

As appears from the record, the appellant and respondents have lived peaceably on their respective properties as neighbors for approximately 18 years. During all of this time, the cabin of appellants has remained in its present location just a few feet from the fence. The appellant contends that the fence has been adopted and acquiesced in as the boundary line between appellant and respondents property. It has existed in its present location for more than twenty five years. Until the present dispute arose, neither respondents nor their predecessors in title have claimed that the fence-line was not the true boundary line. The respondents have not actually or constructively occupied nor did they attempt to occupy east of the fence-line. They made no claim to the triangular piece of property subject of this dispute. Their conduct has always been consistent with recognition of the fence as the boundary line. They have acquiesced in the fence as the boundary line for 18 years. Such being the case, appellant contends that the case comes within the doctrine of "boundary by acquiescence".

This doctrine has been long established within the State of Utah and is well stated in the leading case of *Brown vs. Milliner*, 232 Pac. 2nd 202, (Ut. 1951).

In that case plaintiff sued to quiet title to certain property and defendants counterclaimed on the doctrine of boundary acquiescence. Defendants had occupied the disputed portion for about forty years. However, the evidence showed that there was some joint user of the land by both parties. Plaintiff's conduct was always consistent with ownership of the disputed portion. In upholding the judgment of the trial court in favor of the plaintiff, this court said:

“... It has long been recognized in this state that when the location of the true boundary between two adjoining tracts of land is unknown, uncertain or in dispute, the owners thereof may by parol agreement, establish the boundary line and thereby irrevocably bind themselves and their grantees (*Rydalch vs. Anderson*, 37 Ut. 99, 107 Pac. 25; *Tripp vs. Bagley*, 74 Ut. 57, 276 Pac. 912). In the latter case, this court pointed out that when the location of the true boundary is known to the adjoining owners any parol agreement between them establishing the boundary elsewhere would be an attempt to transfer an interest in realty without complying with the statute of frauds, but we stated, if the location is not known to the adjoining owners, a parol agreement between them fixing its location is not regarded as transferring an interest in land, but merely determining the location of existing estates ...”.

The court further states in the *Brown vs. Milliner* case citing the case of *Tripp vs. Bagley*:

“... the Tripp case does not require a party relying upon a boundary which has been acquiesced in for a long period of time to produce evidence that the location of the true boundary was ever known, uncertain or in dispute. That the true boundary was uncertain or indispute and that the parties agreed upon the recognized boundary as the dividing line will be implied from the parties’ acquiescence.”

The difference between the instant case and the Brown case is that in this case respondents conduct is not consistent with ownership. Until this dispute arose, respondents did no act nor said no word which would imply that they claimed the disputed portion. For 18 years they acquiesced in the fence-line as the boundary. And all this time respondents were aware of the fact appellant and her predecessors were actively occupying the disputed portion up to the fence-line.

The reason for this doctrine is expressed in the case of *Ekberg vs. Bates*, 239 Pac. 2nd 205 (Ut. 1951). In that case a common grantor owned certain property. He erected a fence between two lots and conveyed the two lots to plaintiff’s and defendant’s successors. Plaintiff sued to quiet title up to a fence-line, basing his case upon the doctrine of acquiescence. The record showed that defendant’s father and predecessor helped reconstruct the fence in 1927. He conveyed to defendant in 1935. Fourteen year later, defendant asserted ownership to the disputed land. The court found acquiescence for only eight years and gave judgment in favor of plaintiff. In affirming the judgment of the trial court in favor of

plaintiff, this court well stated the reasoning and theory upon which this doctrine rests, as follows:

“... This is so because the doctrine of boundary by acquiescence rests upon sound public policy of avoiding trouble and litigation over boundaries.”

And in the case of *Blanchard vs. Smith*, 255 Pac. 2nd 729 (Utah), this court said:

“Our conclusions have been predicated on a principal of repose designed to set at rest boundaries commonly the subject of strife.”

The *Brown vs. Milliner* case says citing the case of *Glenn vs. Whitney*, 209 Pac. 2nd 257 (Ut. 1949):

“... that the rule is bottomed on the fiction that at some time in the past, the adjoining owners were in dispute or uncertain as to the location of the true boundary and that they compromised their differences by agreeing upon the recognized boundary as the dividing line between the properties.”

The case of *Holmes vs. Judge*, 31 Ut. 269, 87 Pac. 1009, was an action to quiet title to real property by plaintiff, in which defendant counterclaimed claiming under the doctrine of boundary by acquiescence. A fence separated the properties of the parties for about 30 years prior to suit. During this period the evidence showed that the children of both of the original owners had lived upon the properties when quite small, thus leaving the inference that the families of the owners lived there for many years at least, and thus not only acquiesced in, but must have recognized the fence as the boundary. It was open

and visible for all those years and no one raised any question respecting the boundary or that the fence did not constitute the true division line until the respondent plaintiff brought the action. At the trial plaintiff was granted judgment and defendant appealed. This court reversed the trial court and said citing the case of *Baldwin vs. Brown*, 16 N.Y. 363, in reference to implied agreements establishing a boundary line:

“The supposition of such an agreement in cases of long acquiescence in an established line is, as I apprehend, entirely superfluous. The acquiescence in such cases affords ground, not merely for an inference of fact to go to the jury as evidence of an original parol agreement, but for a direct legal inference as to the true boundary line. It is held proof of so conclusive a nature that the party is precluded from offering any evidence to the contrary . . .”

Accordingly, the silence of the respondents for these 18 years should be entitled to great weight. After sleeping on their rights for such a long period of years, they should not now be heard to say that they never recognized the fence-line as the boundary.

The Holmes case continues as follows:

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

And quoting Judge Cooley in the case of *Diehl vs. Zanger*, 39 Mich. 601, the Holmes case continues:

“But another view should have been equally conclusive in this case. The long practical acquiescence of the parties concerned in the supposed boundary lines should be regarded as such an agreement upon them as to be conclusive, even if originally located erroneously.”

Then citing the case of *Husted vs. Willoughby*,
75 N.W. 279:

“... The same court held that, where a boundary line was located by mistake by one party and acquiesced in for more than 15 years, such boundary will not be disturbed.”

Further citing the *Holmes* case:

“... Counsel for respondent, however contend that the improvements and fence were erected by tenants and that the owners are not to be bound by the acts of such tenants. Grant this and there remains the fact that the owners and their successors and grantees by implication of law adopted the acts of those tenants by acquiescence therein for more than 30 years.”

“... While as all the authorities agree, no hard and fast rule can be laid down to control in every case, but that each case must be determined by its own peculiar facts and circumstances, still where, as in this case, the facts respecting the acquiescence for so many years, and the open and visible boundary so clearly established, and the knowledge thereof by interested parties is so clearly shown, the general principles recognized by all authorities apply with full force, and we cannot do otherwise than to give them effect. We do not wish to be understood as holding that parties may not claim to the true boundary, were an assumed

or agreed boundary is located through mistake or inadvertence, or were it is clear that the line as located was not intended as a boundary, and where a boundary so located has not been acquiesced in for a long term of years by the parties in interest. But in all cases where the boundary is open and visibly marked by monuments, fences or buildings, and is knowingly acquiesced in for a term of years, the law will imply an agreement fixing the boundary as located, and will not permit the parties or their grantees to depart from such line.

... While the interest of society require that the title to real estate shall not be transferred from the owner for slight cause, or otherwise than by law, these same interest demand that there shall be stability in boundaries, and that, where parties for a long term of years acquiesced in certain line between their own and neighbor's property, they will not thereafter be permitted to say that what they permitted to appear as being established by and with their consent and agreement was in fact false."

In the instant case we have a fence which was adopted and established as a boundary line 18 years ago and nothing but silence has been heard from the respondents and their predecessors in all that time. The evidence clearly shows that respondents were aware of the location of the fence and appellant's cabin. The fence was open and visible and clearly established for respondents to observe and as respondents readily admit. Certainly they permitted the fence-line to appear as being established as the boundary line. They should not now be allowed to be heard to say that the fence-line was not acquiesced in as the boundary line. And their silence and

inactivity must be considered as acquiescence within the meaning of the doctrine, even though the trial court must have overlooked this fact.

Furthermore, the instant case is a family situation much the same as in the Holmes case. Members of both the Ringwood and the Bradford families either lived upon or frequently visited their respective properties. It must be presumed that the families must have not only acquiesced in, but must have recognized the fence as the boundary line. The fence-line was open and visible for all those 18 years, as was the location of the appellant's cabin, and was not questioned as the true division line until respondents brought this action.

Furthermore, the acquiescence in this case is much longer than the minimum period required under the holding of Ekberg vs. Bates, cited above. On this point, that case says:

“The length of time necessary to establish a boundary line by acquiescence has never been established in this jurisdiction. Each case must usually be determined on its own facts. In other jurisdictions there have been statements which indicate that the length of time should be at least that prescribed by the statute of limitations. In the instant case as we have pointed out above, there was a period of actual acquiescence for more than seven years before appellant acquired title and under all the circumstances shown herein that was sufficient length of time to establish the line so that appellants are precluded from claiming that it is not the true line.”

In the case at hand, the acquiescence has existed for a very minimum of 18 years. Add or take away a few years, one way or another, would not significantly change the fact of acquiescence in this case.

CONCLUSION

In conclusion appellant respectfully submits that this court should enter its order reversing the District Court and should set aside its Findings, Conclusions and Decree and enter as its final judgment a decree quieting title to the disputed portion of real property in the appellant and against the respondents on the grounds that the subject fence-line has been established as the boundary line between appellant's and respondents' property by their mutual acquiescence therein.

The fence involved herein was established and adopted as the boundary line between the properties when appellant's predecessors built their cabin in 1934. The appellant and her predecessors have always actively and physically occupied and claimed up to the fence-line from the time the cabin was built to the time this dispute arose in 1952. Respondents knew that appellant and her predecessors were claiming and occupying up to the fence-line. Respondents admit that they did not attempt to question the occupancy of appellant nor did they do anything consistent with claiming ownership to the disputed property. Assuming that the fence was not originally erected with the view of it being the boundary line, it was so established and adopted by both parties

when appellant's cabin was built only three to seven feet East of the fence-line. The fence was openly visible and the boundary was plainly marked. The respondents admit familiarity with the fence and appellant's cabin and their respective locations. For 18 years they acquiesced in this boundary which they would now have the courts unsettle which is contrary to our public policy to unsettle long established boundaries. The respondents and their predecessors have slept on their rights for this long period of years and should now be estopped from claiming that the fence-line is not the boundary line.

Respectfully submitted,

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