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

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

GEORGE S. RINGWOOD, HAROLD
T. RINGWOOD, LUELLE DUNCAN
and ESTHER JANE OSWALD,

RESPONDENTS & Plaintiffs,

vs.

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

APPELLANT, Defendant.

BRIEF OF PLAINTIFFS AND RESPONDENTS

FILED
NOV 6 - 1953

Clerk, Supreme Court

LAWRENCE L. SUMMERHAYS,
Attorney for Respondents.

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IN THE SUPREME COURT of the STATE OF UTAH

GEORGE S. RINGWOOD, HAROLD
T. RINGWOOD, LUELLA DUNCAN
and ESTHER JANE OSWALD,

Plaintiffs,

vs.

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

Defendant.

Case No.
8073

BRIEF OF PLAINTIFFS AND RESPONDENTS

STATEMENT OF FACTS

For the most part the facts set forth by the appellant in his brief are correct but do not present the situation in full from the respondents standpoint. We will therefore make our own statement of the facts as we deem them material to our presentation of the case.

Plaintiffs brought an action of ejectment in the District Court of Salt Lake County to require defendant to remove her cabin from the property of the plaintiffs. Judgment was granted in favor of the plaintiffs and defendant has filed this appeal claiming title to the property on which the cabin was located by virtue of the doctrine of establishing a boundary by acquiescence.

The only question presented by this appeal is whether or not under the facts presented the trial courts finding that the doctrine of the establishment of a boundary by acquiescence was inapplicable, was proper.

The plaintiffs and the defendant are adjoining property owners of real property located in Emigration Canyon in Salt Lake County, State of Utah. Plaintiffs' East boundary and defendant's West boundary are common to both pieces of property (P ex. 1, R. 21). The plaintiffs' predecessors in title were their parents, William H. Ringwood and Julia E. Ringwood (R. 26, P ex. 1). William H. Ringwood purchased part of the property in about 1921 (P ex. 2), and one lot at a later date (R. 66, 72), and conveyed all the property to Julia E. Ringwood, his wife, on January 3, 1935, a few days before his death (P ex. 1). Julia E. Ringwood conveyed the property to Ethel J. Oswald, one of the plaintiffs herein in 1940, who in turn conveyed an undivided $\frac{1}{4}$ interest to each of the other plaintiffs in February of 1949 (P ex. 1).

The predecessor in title of the defendant was her daughter who acquired title in about 1935 (R. 44). Defendant's daughter received the property as a gift from her father, Lionel Bradford, an attorney, who acquired the property for work he had done (R. 47, 48). His name, however, does not appear in the chain of title. Defendant acquired the property in 1948 from her daughter (R. 56).

In 1923 William H. Ringwood, with the assistance of J. T. Oswald, one of the witnesses for plaintiffs, was building a cabin on his property and had also just planted some young Boxelder trees. In order to keep the sheep then grazing in Emigration Canyon from destroying the Boxelder trees, Mr. Oswald, in that year, at William H. Ringwood's direction, built a barbed wire fence, (R. 61) without any attempt whatever to put the fence on a boundary line. The fence was erected from a point on a steep bank of Emigration Canyon stream in a general Northerly direction (R. 62, Def. ex. 10). It did not reach to the South property line, being about 80 feet north of it (R. 41) nor did it reach to the North property line of Ringwoods property (R. 72- 73).

At the time of the construction of the fence, Mr. Ringwood was buying three lots. Sometime after the fence was constructed, additional property East of the three lots was purchased (R. 66, 72), but the fence was never changed from its original position (R. 15, 66, 72). William H. Ringwood knew that the fence was not on the

property line (R. 67) and he told his son-in-law, Dr. Halgren, that the fence ran North and South, while the line was on an angle.

In the late summer of 1933, Mr. Ringwood suffered a heart attack and moved into Salt Lake City and never went to the property again (R. 67, 30).

In 1934 during Mr. Ringwood's absence, Mr. Bradford built a cabin on part of the property presently in dispute, all of which cabin except for possibly a corner of the porch on the Northeast corner, rests entirely on property deeded to plaintiffs (R. 21, D ex. 10). Defendant's cabin remained in its original location without objection upon the part of the plaintiffs until a survey was made for the plaintiffs about two years before trial when they were trying to sell their property and when it was first discovered by plaintiffs that defendant's cabin occupied the plaintiffs' property (R. 27, 28).

Margaret Bradford Pitts was the owner of the property at the time the cabin was built and until about 1948 (R. 56). She testified that she did not go up to the cabin more than once or twice each summer, that her father selected the site of the cabin and that she did not know whether the site was selected because it was a nice flat area or because it was on her property (R. 48, 49). She further testified that she had never had a conversation with any member of the Ringwood family relative to the fence line (R. 46) and that the Ringwoods did not occupy

their property up to the fence line (R. 46). Witnesses for the plaintiffs also testified that the property was never occupied by plaintiffs or their predecessors up to or even near the fence line (R. 31, 70) and that they did not know what the defendant claimed or what they were doing with respect to the property East of the fence line (R. 75, 76, 28).

The Eastern part of the plaintiffs' property is covered with brush and trees and the stakes put in on the original survey were not visible without going to the immediate point of the stake (R. 75). In fact, the East half of the Ringwood property was not used, for any purpose (R. 70).

There is no evidence in the record of any conversation or dispute between the respective property owners or of any dispute or conversation concerning the boundary until after the survey made at the request of the plaintiffs approximately two years prior to the filing of this action.

From a decree in the trial court ordering the defendant to remove her cabin within 30 days, the defendant has filed this appeal.

STATEMENT OF POINTS

POINT I.

THE TRIAL COURT PROPERLY FOUND THAT THE FENCE WAS NOT USED OR INTENDED AS A BOUNDARY FENCE BY RESPONDENTS, AND PROPERLY FOUND THAT THE DOCTRINE OF BOUNDARY BY ACQUIESCENCE WAS INAPPLICABLE UNDER THE FACTS OF THE CASE.

ARGUMENT

POINT I.

THE TRIAL COURT PROPERLY FOUND THAT THE FENCE WAS NOT USED OR INTENDED AS A BOUNDARY FENCE BY RESPONDENTS, AND PROPERLY FOUND THAT THE DOCTRINE OF BOUNDARY BY ACQUIESCENCE WAS INAPPLICABLE UNDER THE FACTS OF THE CASE.

Counsel for defendant contends that the fence constructed on the Ringwood property in 1923 to keep the sheep out of the trees and shrubbery planted there was acquiesced in and adopted as a boundary line between the plaintiffs' and defendant's property.

In the case of *Tripp vs. Bagley*, 74 U. 57, 276 P. 912, the Court, on page 916 citing the following cases: *Holmes v. Judge*, 31 Utah 269, 87 P. 1009; *Moyer v. Langton*, 37 Utah 9, 106 P. 509; *Rydalch v. Anderson*, 37 Utah 99, 107 P. 25; *Young v. Hyland*, 37 Utah 229, 108 P. 1124; *Farr v. Thomas*, 41 Utah 1, 122 P. 906; *Binford v. Eccles*, 41 Utah 457, 126 P. 333; *Christensen v. Beutler*, 42 Utah 392, 131 P. 666; *Tanner v. Stratton*, 44 Utah 253, 139 P. 940; *Warren v. Mazzuchi*, 45 Utah 612, 148 P. 360; *Van Cott v. Casper*, 53 Utah 161, 176 P. 849, stated:

“In these cases the rule is announced and reiterated that, where the owners of adjoining lands occupy their respective premises up to a certain line which they mutually recognize as the boundary line for a long period of time, they and their grantees may not deny that the boundary

line thus recognized is the true one. The general rule thus repeatedly enunciated has become the settled law in this jurisdiction."

Again in the case of *Brown v. Milliner*, Utah 1951, 232 P. 2, 202 at Page 207, our Court says:

"We have further held in this state that in the absence of evidence that the owners of adjoining property or their predecessors in interest ever expressly agreed as to the location of the boundary between them, if they have *occupied* their respective premises up to an open boundary line visibly marked by monuments, fences, or buildings, for a long period of time and *mutually* recognized it as the dividing line between them, the law will imply an agreement fixing the boundary as located if it can do so consistently with the facts appearing, and will not permit the parties nor their grantees to depart from said line."

In the instant case there is not mutual recognition of the fence line as the boundary line nor did the plaintiffs and their predecessors occupy their premises up to the fence line at all, which fact was testified to by witnesses for both plaintiffs and defendant. Defendant's daughter, who owned the cabin and land adjacent to the plaintiffs' land at the time the cabin was built and up until 1948, when she conveyed it to the defendant, testified that the plaintiffs did not occupy their property to the fence line and that she had never had a conversation with anyone of the Ringwood family relative to the fence

line. She testified that she didn't know very much about them and only went to the cabin once or twice in the summer months.

Dr. Halgren, a witness for the plaintiffs and the husband of a deceased daughter of William H. Ringwood, testified that he had a cabin on the Ringwood property and lived in the same for several years prior to 1934, and visited it on occasion after William Ringwood's death and that the East half of the Ringwood property was never used for any purpose. Harold Ringwood, who lived in the Ringwood cabin during the years 1940 to about 1946, testified that he did not occupy the Ringwood property even close to the fence line. George Ringwood, one of the plaintiffs, also testified that they did not go near the Bradford property.

The case of *Glenn v. Whitney*, Utah 1949, 209, Pac. (2), 257 is in many respects in point in this case. In that case a third party, a predecessor in interest to plaintiff, built a fence between the property, subsequently acquired by plaintiff and defendant, but actually lying upon the plaintiff's property, to prevent the escape of the third party's livestock from the third party's property; subsequently, the defendants and their predecessors cultivated the property up to the fence, always assuming that they owned to the fence line. The plaintiff apparently did nothing about the fence line or use the land up to the fence line. In the trial court, the parties were held to have acquiesced in the fence as a boundary and the

defendant was given judgment. In reversing the judgment on appeal our court stated, commencing on Page 260:

“The cases and text writers in stating the general rule announce the principle that the question as to whether an established fence line has become the true boundary line separating two adjoining tracts of land is one of fact and the court must evaluate the facts in each case. Before doing so, we find it necessary to define the meaning of certain terms in view of the fact that there seems to be some confusion in the minds of the litigants as to what elements are necessary to establish a boundary line in a suit of this character. If it was not clear before the case of *Tripp v. Bagley*, 74 Utah 57, 276 P. 912, 69 A.L.R. 1417, it was expressly recognized there and in all Utah cases in point handed down subsequent to it, see *Home Owners’ Loan Corp. v. Dudley*, 105 Utah 208, 141 P. 2d 160; and *Smith v. Nelson*, Utah, 197 P.2d 132, that there must be some uncertainty or a dispute between adjoining owners as to the location of the true boundary line before a fence which they subsequently erect to resolve their differences and in which they acquiesce for a long period of time, may be taken as the agreed boundary line. Using the terms “uncertainty” and “dispute” loosely, we might say that the parties here were uncertain as to the location of the boundary line inasmuch as neither of them had attempted to locate it prior to the survey made by plaintiff. This, however, is not “uncertainty” as this term was meant to be used in this connection for as is said in *Thompson on Real Property*, section 3309:

“‘If an owner ignorant of his true boundaries by mistake acquiesces in a line as a boundary, he and his grantees are not thereby precluded from afterwards claiming to the true line, and it has been held that one who has no knowledge that the adjoining owner has encroached upon his land cannot be held to have lost his rights by acquiescence in such occupancy no matter how long continued, for one cannot waive or acquiesce in a wrong while ignorant that it has been committed, especially where each party has equal means of ascertaining the correct line.’

“Thus, lack of knowledge as to the location of the true boundary is not synonymous with uncertainty. This being true, it cannot be said that the parties here were uncertain as to the location of the true boundary line, for there is nothing in the record before us to indicate that either of them had any idea as to the true location of the boundary line apart from an assumption that some existing fences separating the lands of other owners in the area might make the section lines.

“Furthermore, the fence was not erected to settle any uncertainty or dispute between the litigants or their predecessors in interest for according to the undisputed testimony of Mr. Bishop, he erected the fence merely to prevent the escape of his livestock to the east, and he did not attempt to erect a boundary line between the properties now involved or to settle any doubt or uncertainty as to the location of the true boundary line. According to defendant and his father, from whom defendant derails his title, they had merely assumed that the fence that had existed at the time defendant’s father purchased the property,

was on the boundary line. The theory under which a boundary line is established by long acquiescence along an existing fence line is founded on the doctrine that the parties erect the fence to settle some doubt or uncertainty which they may have as to the location of the true boundary, and they compromise their differences by agreeing to accept the fence line as the limiting line of their respective lands. The mere fact that a fence happens to be put up and neither party does anything about it for a long period of time will not establish it as the true boundary. *Peterson v. Johnson*, 84 Utah 89, 34 P.2d 679; *Tripp v. Bagley*, *Supra*.”

In the instant case, there is evidence that William S. Ringwood had his property surveyed a short time before his death and that some of the survey stakes were still in place when the subsequent survey was made by the plaintiffs. However, for several months before and at the time the cabin was constructed upon the Ringwood property, and for a few months thereafter, Mr. Ringwood was confined to his home in Salt Lake City with a heart condition and apparently knew nothing about the construction of the cabin. From all the evidence in the case, none of the plaintiffs knew that the cabin had been built upon their property until the survey was made approximately two years before the time of the trial. Immediately upon discovery of that fact, they contacted the defendant and requested that the cabin be removed. There had never been any dispute about the boundary line although defendant tried to establish some conversation between Mr. Bradford, who never appeared as

the record owner of the property, and Harold Ringwood, who at the time of the alleged conversation, was not the owner of the Ringwood property, with respect to the boundary line. Harold Ringwood denies that he had ever had such a conversation but did state that he had talked to the defendant about the cabin after the last survey had been made. The defendant on cross-examination when asked if she had heard any conversation with respect to the boundary could not state that she had.

As in the *Glen v. Whitney* case, *supra*, the fence on the Ringwood property was put up purely for keeping sheep from traversing on the Ringwood property. For a few years prior to the construction of the cabin and for the period subsequent to that time, apparently no work was done on the fence to keep it in condition by either of the adjoining land owners. The defendant in her brief, page 13, indicates the activity of the plaintiffs with respect to the boundary line when he says that nothing but silence has been heard from the respondents and their predecessors for a period of 18 years since the cabin was constructed near the fence line. This was true for about 16 years but after the survey, the plaintiffs definitely requested the defendant to remove her cabin. The two properties are located as testified to, in a woody area in Emigration Canyon. The plaintiffs' testimony indicates that there is a considerable amount of brush and trees between the cabins which were on the Ringwood property and the cabin constructed by the defendant's predecessor. The pictures of the defendant's cabin

admitted into evidence, though taken in the winter time, indicate the nature of the brush. At the time the defendant's cabin was constructed on the property, a survey had been made of the plaintiffs' property and Mr. Bradford, who was constructing the cabin, could have readily determined the boundary line if he had exerted a little effort to do so. Mr. Ringwood undoubtedly knew the location of the boundary line and would have, no doubt, objected to the construction of the cabin on this location had he been on the premises at any time when the same was being constructed, but as previously indicated, he did not return to the Canyon property at all after his heart attack in the late summer of 1933, and knew nothing about the cabin or its location.

There isn't any evidence that there was ever any dispute between the parties with respect to the boundary line or any actual discussion of it until after the survey was made approximately two years prior to the filing of the lawsuit. There is no evidence whatever that there was any discussion between Mr. and Mrs. Willian H. Ringwood and the defendant and her predecessors in title at all. It is undisputed that the fence was old and broken down and covered only a portion of the distance between plaintiffs' South boundary line and plaintiffs' North boundary line when defendant's cabin was built and when defendant secured her property and that it did not reach to either boundary line. However, defendant seeks to have the Court establish a boundary line by acquiescence

for a substantial portion of the line claimed where there has never been any fence line and no use shown of the property.

The fence line as it existed was neither parallel to the actual line nor was it even close to it. Mr. Bradford who built the cabin apparently picked out the only flat place where a cabin could be constructed and built it without respect to boundary locations.

The fence was not, subsequent to any dispute between adjoining landowners, nor at any time, erected to resolve any dispute or difference between the adjoining landowners with respect to their boundary, and defendant has failed entirely to prove the necessary facts to establish her title to the property on which the cabin is located under the doctrine of establishment of a boundary line by acquiescence.

CONCLUSION

In conclusion the respondents respectfully submit that this court should enter its order confirming the findings, conclusions and decree of the District Court, requiring the defendant appellant to remove her cabin from the property of the plaintiffs.

Respectfully submitted,

LAWRENCE L. SUMMERHAYS,
Attorney for Respondents.