

2005

G&C Case Family Trust, Gordon and Claudia Case v. Ronald Jensen and Geraldine Jensen : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

G& C CASE FAMILY TRUST, :
GORDON and CLAUDIA CASE :
Trustees :
 :
Petitioner and Appellant. : Court of Appeals No. 20050633-CA
 : Supreme Court No. 20050633-SC
vs. :
RONALD JENSEN & GERALDINE :
JENSEN, :
Respondent and Appellee. :

BRIEF OF APPELLEE

APPEAL FROM THE FINAL JUDGMENT OF THE FOURTH JUDICIAL DISTRICT
COURT FOR UTAH COUNTY, STATE OF UTAH
FOURTH DISTRICT No. 030404224
HONORABLE ANTHONY W. SCHOFIELD

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FILL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

JURISDICTION OF THE COURT 1

ISSUES PRESENTED AND STANDARDS OF REVIEW..... 1

CITATION OF DETERMINITIVE AUTHORITIES.....2

STATEMENT OF THE CASE 2

STATEMENT OF RELEVANT FACTS..... 6

SUMMARY OF ARGUMENT..... 6

ARGUMENT..... 6

I. THE COURT CORRECTLY CONCLUDED THAT THE JENSEN PROPERTY AND CASE PROPERTY WERE CONTIGUOUS7

II. THE COURT CORRECTLY CONCLUDED THAT THE JENSENS OCCUPIED THE PROPERTY UP TO A VISIBLE LINE MADE BY A MONUMENT.....7

III. THE COURT CORRECTLY CONCLUDED THAT THE JENSENS AND THE PREDECESSORS TO THE CASES MUTUALLY ACQUIESSED TO THE BOUNDARY LINE FOR A LONG PERIOD OF TIME..... 8

CONCLUSION9

CERTIFICATE OF MAILING 10

TABLE OF AUTHORITIES

Cases Cited

<u>Edgell v. Canning</u> , 976 P.2d 1193 (Utah 1999)	7
<u>Englert v. Zane</u> , 848 P.2d at 169-170(Utah App. 1993)_.	7
<u>Fuoco v. Williams</u> , 421 P.2d 944, 946 (Utah 1996)	7
<u>Goodman v. Wilkinson</u> , 629 P.2d 447, 448 (Utah 1981)	1,2,7,8
<u>Hales v Franks</u> , 600 P.2d 556, 559 (Utah 1979)	1,2
<u>Schurtz v BMW of North America, Inc.</u> 814 P.2d 1108 (Utah1991).....	1
<u>Springville Citizens for a Better Community v City of Springville</u> , (1999 Utah 25) 979 P.2d 332	1

Statutory Provisions

Utah Code Annotated § 78-2a-3(2)(j).....	1
Utah Code Annotated § 78-2-2(5).....	1

JURISDICTION OF THE UTAH COURT OF APPEALS

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated § 78-2a-3(2)(j). The Appeal was referred to the Utah Court of appeals pursuant to Utah Code Annotated § 78-2-2(5).

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether the trial court erred when it granted summary judgment by ruling the Jensens satisfied each of the four elements of boundary by acquiescence. Namely, that the Jensens (a) are adjoining land owners with the Case Property, (b) occupied [the property] up to a visible line marked by a monument, fence, or building, (c) that the previous owners of the Case property, and the Jensens mutually acquiesced to the irrigation canal as the boundary line, (d) and that such acquiescence was for a “long period of time” particularly a period in excess of 20 years. Goodman v. Wilkinson, 629 P.2d 447, 448 (Utah 1981); Hales v Franks, 600 P.2d 556, 559 (Utah 1979).

The standard of review is for correctness affording no deference to the trial court’s decision. Schurtz v BMW of North America, Inc. 814 P.2d 1108 (Utah1991); Springville Citizens for a Better Community v City of Springville, (1999 Utah 25) 979 P.2d 332. Stated differently, did the court correctly conclude that those material facts not in dispute supported the necessary legal elements to satisfy each of the four prongs of boundary by acquiescence?

CITATION OF DETERMINITIVE AUTHORITIES

To establish a claim for boundary by acquiescence the claimant must show (a) that the two parties are adjoining land owners, (b) claimant occupied [the property] up to a visible line marked by a monument, fence, or building, (c) that the owners mutually acquiesced to the boundary line, (d) and that such acquiescence was for a long period of time. Goodman v. Wilkinson, 629 P.2d 447, 448 (Utah 1981); Hales v Franks, 600 P.2d 556, 559 (Utah 1979).

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a final order of the Fourth District Court for Utah County, State of Utah, establishing a common boundary line between property owned by the Case Family Trust and property owned by the Jensens, under the doctrine of boundary by acquiescence.

B. Trial Court Proceedings

The Case Family Trust filed its Complaint in this Action on 26 September 2003 (R0001-0004), seeking to quiet title in and to a parcel of property located in Benjamin, Utah County, State of Utah ("Case Property"), and establish a legal determination of the boundary line between the Case Property and the Jensens' property thereby determining who has title to a 15 foot disputed strip along their common border. On 21 October 2003 Jensen's counterclaimed (R0019-0026), claiming that the Jensens property extended 109 feet out from the boundary line, (wherever it be placed), and that the boundary between

the properties in actuality is an irrigation ditch which traditionally separated the property and which lies 15 feet east of where the Case Family Trust claimed the property line to be. Jensens sought a ruling that the irrigation ditch is the boundary under the doctrine of boundary by acquiescence.

Discovery was ongoing and The Case Family Trust submitted affidavits from Surveyor Donald Clair Allen, Ron Ludlow (occupier of the Case Property for the previous 40 years before the Case's), John Linstrom, (the neighbor and fellow irrigator on the ditch). Both Ludlow and Linstrom submitted affidavits that the irrigation ditch had been the boundary recognized by the Jensens and The Case Family Trust's predecessors for over 20 years.

On 28 June 2004, Jensens moved for summary judgment (R 0039-0052), seeking that as a matter of law the irrigation ditch is the boundary. On 22 October 2004 The Case Family Trust filed a response in opposition to the Summary Judgment Motion. On 29 November 2004 counsel presented oral argument (R0202).

C. DISPOSITION OF THE CASE

The court ruled that as a matter of law, Jensens had met each of the four requirements of boundary by acquiescence thus establishing the east bank of the irrigation ditch as the property line. The court directed the parties to acquire a survey to reflect its ruling (R-0157).

The court thereafter ordered in telephonic conference that the boundary be on the east bank of the ditch along a line one foot east of the concrete ditch lining in order to

accommodate the construction of a fence without damaging the irrigation ditch (R0159).

On 17 February 2005, the court signed its order regarding the matter.

On 4 March 2005 The Case Family Trust filed a Motion to Alter or Amend Findings, Conclusions, and Judgment (R0191-0192). The Petitioner/Appellant filed its notice of appeal on 19 July 2005 (R0193-0194). On 26 July 2005 The Utah Supreme Court ordered the case to the Court of Appeals pursuant to Utah Code Ann. § 78-2-2(4).

STATEMENT OF RELEVANT FACTS

1. Gordon and Claudia Case are the Trustees of the G&C Case Family Trust which is the owner of property located at 3535 West 7550 South Benjamin, Utah County, State of Utah.

Affidavit of Claudia Case (R0113-0115) at ¶ 2.

2. The Case Family Trust alleged that The Case Property is more particularly described as follows:

Commencing 19.286 chains North and 1.609 Chains East of the South Quarter corner of Section 29, Township 8 South, Range 2 East of the Salt Lake Base and Meridian; Thence North 0° 8' East 15.044 chains; Thence North 18° 38' East 0.274 chains; Thence North 0° 24' East 9.990 chains; Thence North 89° 59' East 9.990 chains; thence South 0° 15' West 25.67 chains; Thence South 89° 49' West 10.072 chains to the place of beginning.

Affidavit of Gordon and Claudia Case in Support of Motion for TRO and/or Preliminary Injunction (R0006-0009).

3. Defendants and Appellees Ronald and Geraldine Jensen own and occupy property to the west of the Case Property, which they received via warranty deed from Ronald S. Jensen dated February 9, 1999, recorded as Entry 15109 of Book 4968, p. 256 of the Real Property Records of Utah County, State of Utah. Complaint (R0013-0015) at ¶ 8; Answer (R0019-0026) at ¶ 8.

4. The Jensen Property is more fully described as follows:

Commencing 1 Chain East of the center of Section 29, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 4.66 chains thence West 20.40 chains; thence South 4.66 chains; thence East 7.28 chains; thence South 5.84 chains, thence East 14.22 chains; thence North 5.44 chains to the place of beginning.

Complaint (R0006-0009) at ¶ 9; Answer (R0019-0026) at ¶ 9.

5. The Case Family Trust purchased the Case Property from Patricia Mitchell and Diane Nielsen on September 12, 2002, taking by warranty deed. *Id.* at ¶ 1; Depo. Of Patricia Mitchell (R. 137-151) at p. 4 and Exhibit 1 thereto.
6. The Case Family Trust's transferors, Patricia Mitchell and Diane Nielsen, had inherited the Case Property from their father, who had owned and farmed the property for 40-50 years prior to his death. Depo. of Patricia H. Mitchell (R0137-0151) at p. 5.
7. The Case Property is bounded on the north by an irrigation ditch operated by the Spanish Fork South Irrigation Company. At a certain point, the irrigation ditch turns south, runs the length of the Case Property from north to south, and onto neighboring lands to the south of the Case Property. Affidavit of Claudia Case (R0113-0115) at ¶¶ 3 and 4.
8. From 1966 until the fall of 2002, the Case Property was farmed by Ronald T. Ludlow, brother-in-law to Patricia H. Mitchell. Depo. of Patricia H. Mitchell (R0137-0151) at p. 5; Affidavit of Ronald T. Ludlow (R0118-0121) at ¶¶ 3-4.
9. Mr. Ludlow farmed and worked the Case Property to the edge of the irrigation ditch on the west. Mr. Ludlow understood the irrigation ditch to mark the western boundary of the property. Affidavit of Ronald T. Ludlow (R0057-0058) ¶¶ 1-9.
10. The section of the irrigation ditch running from north to south along the west side of the Case Property was lined with concrete by Raynold Jensen (father to Defendant/Appellee Ronald

Jensen) and Arthur Hansen (a neighbor to the south of the Case Property); Affidavit of John Lindstrom (R0116-0117) at ¶ 7.

11. The Jensens maintained the property West of the irrigation ditch for nearly 40 years mowing the grass, attending to the weeds, caring for the property and reinforcing the irrigation ditch prior to its being concreted, while the Cases and their predecessors never attempted to cross the ditch or do anything to maintain the disputed property west of the ditch (R0054-0055) at ¶¶ 2-11, Affidavit of Ronald Jensen at (R0054-0055) ¶¶ 7-9.

12. Counsel for The Case Family Trust reported that the Case Property and the Jensen Property are contiguous. Summary Judgment Hearing (R0202) at pg 15.

SUMMARY OF ARGUMENT

The court correctly concluded that those material facts not in dispute supported the necessary legal elements to satisfy each of the four prongs of boundary by acquiescence. In particular, that the parties (a) are adjoining land owners with the Case Property, (b) occupied [the property] up to a visible line marked by a monument, fence, or building, (c) that the previous owners of the Case property, and the Jensens mutually acquiesced to the irrigation canal as the boundary line, (d) and that such acquiescence was for a “long period of time,” which was a period in excess of 20 years.

ARGUMENT

POINT I

THE COURT CORRECTLY CONCLUDED THAT THE JENSEN PROPERTY AND CASE PROPERTY WERE CONTIGUOUS.

The first requirement for boundary by acquiescence is that the property be contiguous Goodman v. Wilkinson, 629 P.2d 447, 448 (Utah 1981). In this case the court had nothing special to rule on. Counsel for the Case Family Trust admitted in open court that “In all actuality they [the two parcels] are [adjoining]” (R0202) at pg 15. With such an admission in open court, the trial court could have only been correct in its determination that the properties were contiguous. The court was therefore correct in concluding that this first element of boundary by acquiescence was met.

POINT II

THE COURT CORRECTLY CONCLUDED THAT THE JENSENS OCCUPIED THE PROPERTY UP TO A VISIBLE LINE MADE BY A MONUMENT.

The second requirement for boundary by acquiescence is that the claimant must have occupied [the property] up to a visible line marked by a monument, fence, or building Goodman v. Wilkinson, 629 P.2d 447, 448 (Utah 1981).

In order to establish “occupation” a claimant need only prove normal and typical use of the property. Englert v. Zane, 848 P.2d at 169-170(Utah App. 1993). The “visible line” test must be a line open to ready and open observation and that it should be definite, certain, and not speculative. Fuoco v. Williams, 421 P.2d 944, 946 (Utah 1996).

The Utah Supreme Court found that readily observable lines for boundary by acquiescence could consist of a number of things including but not limited to a line of trees, a stream, a wall, or a monument along the claimed boundary line. Edgell v. Canning, 976 P.2d 1193 (Utah 1999).

The Jensen family occupied by virtue of maintenance both the ditch, and the property west of the ditch, cleaning weeds mowing and regularly maintaining, and using, for nearly 40 years (above at ¶¶ 11). The Case Family Trust and its predecessors occupied, farmed, and maintained the property east of the ditch for the same amount of time (above at ¶¶ 9). Based on the facts presented which were not in dispute, the court was correct to determine that Jensens occupied the land up to the east side of the irrigation ditch and that the irrigation ditch is a visible line open to ready and open observation which qualifies as a monument for the purposes of boundary by acquiescence.

POINTS III AND IV

THE COURT CORRECTLY CONCLUDED THAT THE JENSENS AND THE PREDECESSORS TO THE CASES MUTUALLY ACQUIESSED TO THE BOUNDARY LINE FOR A LONG PERIOD OF TIME

The third requirement for boundary by acquiescence is that the claimant must show that the parties mutually acquiesced to the boundary line “for a long period of time.” Goodman v. Wilkinson, 629 P.2d 447, 448 (Utah 1981). In this case, the predecessors to the Cases and the Jensens acquiesced to the boundary line. Such was clearly recorded in the record. From 1966 to 2002 Ronald Ludlow operated and farmed the Case Property, never used the property west of the irrigation ditch, didn’t maintain it, and always considered and treated the east bank as the property line. Affidavit of Ronald T. Ludlow

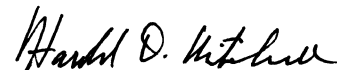
(R0057-0058) ¶¶ 1-9. During that time Jensens used the property west of the irrigation ditch and maintained it. (R0054-0055) at ¶¶ 2-11, Affidavit of Ronald Jensen at (R0054-0055) ¶¶ 7-9.

The court correctly concluded that the third and fourth elements of boundary by acquiescence were met when it recognized the facts the Jensens solely occupied and maintained the property up to the east side of the irrigation ditch for a period of over twenty years.

CONCLUSION

For the foregoing reasons, the court correctly found that the facts not in dispute clearly demonstrated that Jensens had met each of the four elements of boundary by acquiescence and was therefore correct to order the boundary between the Jensen and Case Properties at 1 foot east of the irrigation ditch which had been used as the boundary line for over 20 years prior.

RESPECTFULLY SUBMITTED this 2nd day of ^{March}~~February~~ 2005.




Harold Mitchel
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CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of the Appellee were mailed, postage prepaid, or hand delivered to the following on the 7 day of ~~February~~ ^{March} 2005:

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