

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2001-517

APRIL TERM, 2002

	}	APPEALED FROM:
	}	
BWL, Inc.	}	Washington Superior Court
	}	
v.	}	DOCKET NO. 46-1-01 Wncv
	}	
Edward and Patrice Siergiey	}	Trial Judge: Matthew I. Katz
	}	
	}	

In the above-entitled cause, the Clerk will enter:

This appeal concerns a disputed boundary line between properties the parties own in Barre Town, Vermont. Because the trial court made clearly erroneous findings, and its decision leaves us to speculate as to the basis for the award to defendants, we reverse and remand.

On January 26, 2001, plaintiff filed a request in the Washington Superior Court for a preliminary injunction compelling defendants Edward and Patrice Siergiey to remove an encroaching storage shed and a fence they erected some years earlier between the parties' abutting property on Route 14 in Barre Town. Plaintiff also asked the court to (1) enter a decree fixing the boundary between the properties in the location depicted in a survey plaintiff commissioned, and as described in a deed in defendants' chain of title; (2) award plaintiff damages for defendants' trespass; (3) restrain defendants from further trespass; and (3) pay plaintiff a fair price for water drawn from an artesian well plaintiff alleged was on its property. Representing themselves pro se, defendants answered the complaint, agreeing that plaintiff's survey showed that defendants' well was on the boundary line and that their shed was on plaintiff's property. Defendants did not assert any affirmative defenses, deny that the survey accurately depicted the boundary, or allege that they owned the land on which the shed, fence, and well stood. The parties litigated the matter before the court.

On the first day of trial, the court, sua sponte, raised the issue of adverse possession during its questioning of Patrice Siergiey. Plaintiff's counsel objected to the court's introduction of that theory because defendants did not raise it in their pleadings. The court rejected plaintiff's objection, but allowed plaintiff additional time to address the issue.

Plaintiff presented testimony from a professional surveyor in its direct case. The surveyor testified that defendants' well partially encroached on plaintiff's land, and their storage shed and fence significantly encroached on the property. The surveyor explained that in preparing the survey, he relied on the metes and bounds description in a 1898 deed in defendants' chain of title from Mr. and Mrs. A.M. Harvey to Mary Harvey. He also testified that he placed defendants' northerly and southerly boundary lines parallel to the Barre City/Barre Town line. The court questioned the surveyor's decision to keep those lines parallel because nothing in the Harvey deed explicitly required it. The court also questioned why the surveyor did not place those boundary lines perpendicular to Route 14, and why the angles on the northwest and southwest corners of defendants' property were not at ninety degrees when the Harvey deed called for "right angles" in those locations. The surveyor testified that he felt compelled to use the monuments described in the Harvey deed to locate the property's boundaries; connecting the monuments by straight lines resulted in angles in those locations which

are not precisely ninety degrees. To show the court what the lines would look like if the northwest and southwest corners were at ninety degrees, the surveyor superimposed new lines on his survey. The new lines showed only a minor difference in the disputed boundary, such that the shed and the fence were still on plaintiff's land, although the well appears to be on defendants' property. The boundary line remains virtually parallel to the Barre City line in the new depiction.

The trial court issued its order in defendants' favor on October 24, 2001. The court found the following facts. Plaintiff's property has 132.55 feet of frontage on Route 14 extending west from the Barre City line, and defendants' property commences at that point. <sup>(1)</sup> The Harvey deed's metes and bounds description does not call for the line separating the parties' property to be at any particular angle to the road. Nothing in the Harvey deed requires parallelism with the Barre City/Barre Town line, although the survey was prepared that way. The court also found that it "would ordinarily expect that parties would intend boundary lines to run perpendicular to the road on which they front," and that "experience shows that rural parcels" such as defendants' in 1898 "seldom have precise 90 degree turns." The court then stated the following:

Were the disputed boundary, in fact, to run perpendicular to the road (now Route 14), it would run in accord with defendants' contention as to the proper line. It would also run in accord with trees that predated the disputed fence. There is therefore support in the conduct of adjacent owners subsequent to the 1898 deed which supports a reading of a line located where defendants claim. Where the meaning of a deed is doubtful, resort may be had to the practical construction adopted by the parties.

The findings do not explain what "conduct of adjacent owners subsequent to the 1898 deed" it was referring to nor who the adjacent owners were. Nor did the court explain the basis for its apparent determination that the meaning of the Harvey deed was "doubtful."

The court issued the following findings on the parties' dispute over the fence. It found that it was more likely that plaintiff's principals "acceded to the fence location when defendants first installed it." The court determined that plaintiff's true complaint about the fence at the time defendants erected it was whether the "good" side of the fence would face plaintiff's property. The court explained that although "acceptance of the fence, for some period of time, does not constitute a waiver of rights, it does support the factual inference that the fence location was in accord with long-held understanding of the boundary location. This location is one that would be demarcated by the deed boundary, if the deed contemplated a boundary line running perpendicular to the road."

The court's findings on defendants' well show that the well is an expensive and immovable improvement which was drilled in 1980 with plaintiff's knowledge. The well has been used continuously since 1980. The well is marked by a protruding steel pipe and iron cap. The court found the well "would be directly on the boundary claimed by plaintiff, but within the installers' lands if defendants' line is the correct one."

With respect to the storage shed, the court found that it is behind the well and its far side lines up, more or less, with the well head. It was present when Patrice Siergiey purchased the property in 1987, and was not new at that time as shown by its weathered appearance. In light of that fact, and the absence of evidence that the shed had been moved, the court stated that it was persuaded that the shed was probably in its present location for fifteen years before plaintiff filed the present action in January 2001.

Based on those findings, the court concluded that the line separating the parties' properties was in the location of defendants' fence and an existing row of trees predating the fence. It stated, "Such a boundary is not at odds with the Harvey deed. It also renders the long-standing shed and well head non-encroaching. It is therefore the most probable location of the boundary lines between these parties." The court continued, "The mowing, the shed and the well show this line to have been acquiesced to by plaintiff for more than 15 years despite open, notorious, hostile and continuous use and occupation by defendants and their predecessors in that time." The court entered judgment for defendant and fixed the boundary in the location of defendants' fence.

On appeal, plaintiff challenges several aspects of the court's order and the proceedings below. In light of our disposition in this matter, we address only its claim challenging the court's findings and conclusions on the Harvey deed and the

location of the disputed boundary.

Findings will withstand appellate review if there is any credible evidence supporting them. N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 438 (1999). A principle purpose of fact findings is to allow this Court to understand how the lower court reached its decision and why. Mayer v. Mayer, 144 Vt. 214, 216 (1984). Thus, the trial court must state the facts essential to its disposition of the matter. Id. at 217. "When this Court is left in a position where it must speculate as to the basis upon which the trial court reached its decision, we will refuse to so speculate." Roy's Orthopedic, Inc. v. Lavigne, 142 Vt. 347, 350 (1982). We will uphold the court's legal conclusions if the findings support them and they are consistent with the law. Highgate Assocs. v. Merryfield, 157 Vt. 313, 315-16 (1991).

The trial court's findings in this case suffer from two problems. First, some of the findings are clearly erroneous because no credible evidence appears in the record to support them. There is nothing in the record to support the court's finding that boundary lines ordinarily run perpendicular to the road on which they front. Similarly, the record does not support the court's finding that "experience shows" that rural parcels like defendants' in 1898 seldom have ninety degree turns. The court's determination that nothing in the Harvey deed supported the surveyor's decision to hold the boundary lines parallel to the Barre City line is likewise unsupported. The deed describes defendants' property lines by starting at a monument between defendants' property and the neighboring parcel to the north on Route 14. It calls for a line extending to another monument twenty rods to the east. As depicted on the survey, the line between those two monuments is parallel to the Barre City line. Again, using the monuments in the deed's description, the line between the parties' properties appears parallel to the Barre City line. Even the surveyor's depiction of the northwest and southwest corners at precisely ninety degree angles demonstrates that parallelism with the Barre City line is the result of the metes and bounds description in the Harvey deed. <sup>(2)</sup>

Second, the court's findings are so sparse and confusing, we are left to speculate as to the basis for the court's decision to redraw the boundary between the parties' properties. For example, the court found that "conduct of adjacent owners subsequent to the 1898 deed" supports defendants' contention as to the boundary's location. We are left to speculate, however, as to who those owners were and what their conduct was. We are also left to guess as to how the court reached its determination that a "long-held understanding" existed as to the boundary's location. We also cannot tell from the court's findings or conclusions whether its decision for defendants relies on the Harvey deed or the adverse possession theory. The court's order goes back and forth between the two theories with no clear statement on either.

In any event, if the court based its decision on the Harvey deed the order cannot stand because the court's findings relative to the deed's interpretation are clearly erroneous as explained above. Similarly, the adverse possession theory is not sufficiently supported by the court's findings. The court did not find when the disputed shed was placed on defendants' property; the court found only that it was present and weathered when Patrice Siergiey purchased the property in 1987. We do not know on what date she purchased the property or how long the shed was present before she did. Findings on those issues are critical to know whether the fifteen year statutory period for adverse possession had lapsed by the time plaintiff filed suit in 2001. See 12 V.S.A. 501. Moreover, an adverse possessor takes only the land which the possessor actually occupies, unless the claim is asserted under color of title or the disputed area is marked by clear and definite boundaries. Pafundi, 169 Vt. at 441-442. Neither the shed nor the well occupy the quantity of land the court awarded defendants, and the court did not explain whether the adverse possession theory was based on color of title or a bare claim of right. In light of the several errors in the trial court's order, we must reverse and remand.

Reversed and remanded.

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice

1. This finding is clearly erroneous because the uncontroverted evidence shows that plaintiff's frontage extends east not west from the Barre City line.
2. Plaintiff claims that the surveyor was correct to draw the northwest and southwest corners at something other than ninety degrees because the boundary line between the parties' lands would not reach back to Route 14 if the distance in the Harvey deed for that line is observed and the corners are at ninety degrees. As between distances and monuments, however, monuments control. Phillips v. Savage, 151 Vt. 118, 119 (1989). Because the deed describes the terminus of the boundary line as the road, it would not be improper to use right angles and extend the line to road as the deed calls for even though the line's length would be greater than the Harvey deed provided.