Land Boundary

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Module 4

Written Intentions in Deeds

> "A deed merely furnishes a means of locating a boundary. Where the boundary actually exists is a subject of independent inquiry." (Clark, Grimes, Robillard and Bouman 1987:518)

PARKMAN et. al. v. LUDLUM.

4 Div. 763.

Supreme Court of Alabama

Dec. 17, 1953

Comment 1

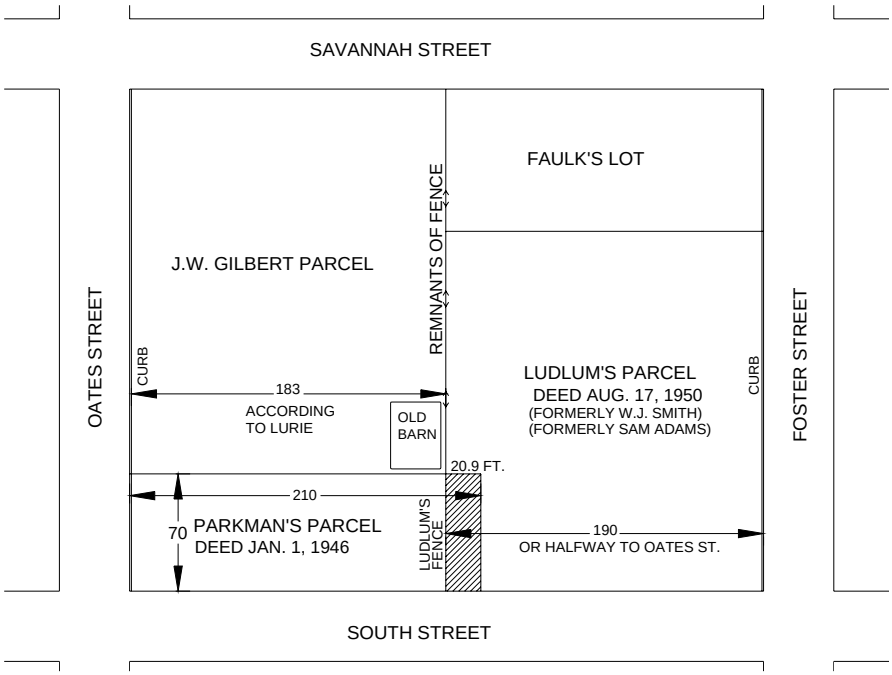
The Parkmans were not happy with the situation in Dothan, Alabama. The lot they bought from Reba Taylor was 70 feet wide and 210 feet long. It clearly said so in their deed. So how could Mr. Ludlum, their neighbor, build a fence some 20 feet into their property? Mr. Ludlum said that the line on which he built the fence was, 'well-defined and long established.' The Parkmans disagreed and filed a suit to ask the judge at the Circuit Court of Houston County Alabama to establish the disputed boundary once and for all. Unfortunately, Judge Halstead agreed with Mr. Ludlum. Still not persuaded the Parkmans carried their case to the Alabama Supreme court. The story is continued in the 69 Southern Reporter, 2d Series.

“Appellant and complainants (Parkmans) below, have appealed from a decree establishing a boundary line. Appellant (Parkmans) and appellee (Ludlum) have conveyances to lands to the City of Dothan that are contiguous and they derived title from a common source, Sam. H. Adams. Adams conveyed directly to appellee, Ludlum, but appellant, Parkmans trace their title back to Adams through three mesne conveyances. The question of adverse possession is not here involved.”

Comment 2

A Mesne conveyance just means that there were intermediate or intervening owners in the chain of title. Sam Adams had sold the property to James Taylor. James Taylor sold it to Reba Taylor. And Reba Taylor sold it to the Parkmans in 1946. Whereas in 1950 Mr. Ludlum bought his lot, called the W.J. Smith lot’, right next door to the Parkmans directly from Sam Adams.

The appellant is the party who takes an appeal from one court or jurisdiction to another. The appellee is the party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgement. An appellee is sometimes called a respondent. It should be noted that a party's status as appellant or appellee does not necessarily bear any relation to his status as plaintiff or defendant in the lower court.



"The properties comprise the south side of a block fronting South Street between Oates Street on the west and Foster Street on the east. The total footage from the intersection of South and Oates Streets to the intersection of South and Foster Streets along the north side of South Street, measuring from the back of the curbs at each intersection is 379.1 ft. Appellant (Parkmans)' deed calls for 210 feet along South Street; appellee (Ludlum)'s deed calls for 190 feet along South Street, a total of 400 feet, necessarily making an overlap of 20.9 feet.

It is the east boundary of the Parkmans (appellant) lot and the west boundary of the Ludlum (appellee) lot, or the North and South line between the lots, which is disputed. Complainants (Parkmans) set out their title in their bill, alleged that appellee (Ludlum) had built a fence on

their property and prayed that the court establish the boundary line between the properties at a point on South Street, define and locate the line and establish judicial markers on the line so defined.

Appellee (Ludlum) answered, setting up his title and claiming the true line to be west of where complainants (Parkmans) asserted it to be; that the west line of his property, the W. J. Smith lot, is a well defined and long established line and that he has been in possession of all the lands up to said well defined and established boundary line since the property was conveyed to him.

The deed to appellant (Parkmans), dated January 1, 1946, described the property as follows: 'One house and lot in the City of Dothan, Alabama, located on the east side of South Oates Street at the north side of South St., and further described as follows: Beginning at the southwest corner of the lot formerly owned by C. E. Harman, now the property of J. W. Gilbert, thence running along the east side of Oates St., Seventy (70) ft. to South St.; *thence east along the north side of Smith St. Two Hundred Ten (210) ft.; thence north along the west boundary line of lot formerly owned by W.J. Smith, now owned by Sam H. Adams, Seventy (70) ft.*; thence west Two Hundred Ten (210) ft, parallel with South St., to the starting point. Said lot containing one third acre and being the same property described in deed from Sam H. Adams, and wife Ruth Adams to James C. Taylor dated Aug. 5th, 1942, and recorded in Book 71 at page 342 of the Houston County Probate Office, and known as the former residence and lot of Annie H. and J. P. Adams. (Italics supplied.)

Appellee (Ludlum)'s deed dated August 17, 1950, described his property as follows:

‘One vacant lot situated on the west side of South Foster Street in the City of Dothan, Houston County, Alabama, and more particularly described as follows: Commencing at the crossing of Foster and South Street and *running west half way to Oates Street; thence North 70 yards to lot formerly known as the McKeachern lot, but now known as Faulk lot*; thence cast to Foster Street; thence South back to starting point, containing one acre, more or less. Said lot more particularly described as follows: Commencing at the northwest corner of Foster and South Streets, and running thence northward along the west boundary line of Foster Street 215 feet to Faulks lot; thence westward along the line of Faulk's lot and parallel with South Street 190 feet; *thence Southward parallel with Foster Street 215 Feet to the north boundary line of said South Street; thence Eastward along the north boundary line of South Street 190 feet to the starting point.’* (Italics supplied.)

The cause was submitted on bill and answer and testimony taken orally before the court. The decree was in effect a finding in favor of appellee (Ludlum).

Appellant (Parkmans) urges that the court erred in using a fictitious landmark or monument in fixing the boundary rather than metes and distances as fixed on the deeds. This assignment is directed to the following paragraph of the decree:

‘It is ordered. adjudged and decreed by the Court that the true boundary line between the Parkmans Lot and the Ludlum Lot, the lots owned by the plaintiffs and defendant in this case and involved in this suit, be and the same is hereby established as a straight line beginning at the northern extremity of the old brick foundation of a barn once located thereon at the southeast

corner of the J. W. Gilbert lot and extending South along said brick foundation, the old rusted wire fence and rotten or decayed fence posts, above and below the surface of the ground to South Street in the City of Dothan, Alabama.'

The J. W. Gilbert mentioned in appellant (Parkmans)' deed, called as a witness for appellee (Ludlum), testified that he purchased the lot lying north of the Parkmans in 1917 and lived on it for several years; that he built a cypress picket fence from his southeast corner north to Savannah Street (which is the north boundary of the block in which the property lies and presumably is parallel to South Street); that he had a paved stall in the southeast corner of his lot and the pavement was still there; that a corner of a barn joined his southeast corner; that the barn was built on a brick foundation. the east side of which extended south about 30 feet and from the barn there was a fence extending south to the north side of South Street; that this line was straight all the way through the block from South Street to Savannah Street. He further testified that the barn had been moved and he did not know whether the fences were up or not, except that he did identify from a picture the cypress picket fence which had been the boundary on his property. He also stated that the W. J. Smith lot, which was east of his lot and the Parkmans lot was enclosed by fences, one of which was the fence extending from the barn to South Street.

Mr. J. N. Massey, a witness for appellee (Ludlum) testified that he had known the land since 1917; he knew about the barn and the fence which extended both north and south from the corners of the barn and he cultivated the land up to the fence for several years.

The appellee (Ludlum) testified that he erected his fence from the southeast corner of the Gilbert lot, along the brick foundation south to South Street following old fence posts, which had rotted, to the ground. He had been familiar with the property since 1945 and an old fence had extended from the Gilbert corner south to South Street when he first knew the property. He had moved opposite the property in 1945 and still lived on the south side of South Street.

Mr. J. W. Parkmans, testifying for complainants (Parkmans), stated that they went into possession of the 210 ft. called for by their deed; that no one pointed out the boundary lines to them when they bought; that he did not know anything about the W. J. Smith lot except that he saw it mentioned in the deed; that he saw the old fence on the Gilbert lot but no fence extended to South Street, when he purchased the lot.

The surveyor, Mr. Milton Lurie, called by complainants (Parkmans), found no evidence of fences or old landmarks on the line claimed by appellant (Parkmans), but did find evidence of a boundary line 183 feet east of the back of the curb on Oates Street, which was a projection of the line running south from Savannah Street, along the paling fence on the Gilbert property. He further testified that he could find no information as to the width of either Oates or Foster Streets in the years 1918-21 (about the time title to all the property came into the Adams family). Also there was no evidence of when curbs were installed on Foster and Oates Street.

T. E. Buntin, Dothan, for appellant (Parkmans)s (Parkmans).

W. Perry Calhoun, Dothan, and Halstead & Whiddon, Headland, for appellee (Ludlum).

MERRILL, Justice."

Comment 3

So there is the case. Mr. Ludlum testified that he built a fence following the remains of a fence that had been there since at least 1917. Mr Gilbert spoke of a barn on a brick foundation at the southeast corner of his property. It was at the foundation of that barn that Mr. Ludlum began his fence. Mr. J.N. Massey's testimony corroborated Mr. Gilbert, he said he knew of the original fence and barn. A surveyor Mr. Lurie also spoke of evidence of a fence on the Gilbert property in his testimony. There seems to be a good deal of evidence about the fence and the barn foundation.

But this fence is in direct contradiction with the Parkmans's deed. Mr. J. W. Parkmans, said he knew about the old fence across Mr. J. W. Gilberts lot, but there was no fence across his property that he could see. So the Parkmans simply went into possession of the 210 feet called for by their deed. Imagine their surprise when Mr. Ludlum came more than 20 feet onto what they considered their property and started building a fence.

Here is the courts decision

"Suit to establish disputed boundary line. The Circuit Court, Houston County, D. C. Halstead, J., entered decree favoring defendant (Ludlum), and complainants (Parkmans) appealed.

The Supreme Court, Merrill, J., held that where witnesses and photographs testified to existence of brick foundation and rotted fence posts, these markings were not fictitious landmarks, and decree establishing boundary lines was not improper because it was based on these landmarks.

It is clear that the court was not using a fictitious landmark when the decree mentioned the brick foundation of the barn at the Gilbert corner and the old line of fence posts to South Street as monuments in determining the true boundary. In addition to the evidence of the witnesses, two pictures showing the fences are before us and one of them shows the brick foundation of the barn.

Appellants (Parkmans)' other assignment of error is that the court erred in finding for appellee (Ludlum) in the face of an antedated and prior recorded deed in conflict with the appellee (Ludlum)'s deed, and it is insisted that where there is a common source of title, the older deed prevails in disputed boundary cases. Dunn v. Stratton, 160 Miss. 1, 133 So. 140; Dupont v, Percy, La.App., 28 Sold 359.

We do not think this principle is applicable to the instant case. It is true that title to all the property was in Sam H. Adams prior to 1942, but the parcels were separate lots vested in Adams at separate times and as far back as 1906. W. J. Smith had conveyed appellee (Ludlum)'s lot describing it as follows: ‘One town lot in Dothan Alabama commencing at the crossing of Foster and South St, and running west half way to Oates St, thence North 70 yards to McEachern lot; Thence east to Foster St. thence South back to the starting point.’ This deed and subsequent

deeds were recorded.

Appellee (Ludlum)'s answer also carried exhibits of recorded deeds in appellants (Parkmans)' chain of title from 1905 to the present. Two deeds dated 1905 and 1908 described the west boundary as ‘thence North along W. J. Smith's lot 70 feet’; the next one dated 1918 said, ‘thence North along the West boundary of lot formerly owned by W. J. Smith, but now the property of C. S. Roby 70 feet’ and all the other deeds described it as appears in appellants (Parkmans)' deed.

The issue is one of fact and the court made the following finding of fact:
‘It is clear and evident from the deed of Sam H. Adams to James C. Taylor that he, Sam H. Adams, did not intend to convey, and did not convey to James C. Taylor, any part or portion of the 'Ludlum Lot' which he owned, for his deed to James C. Taylor in the description of the property conveyed therein, contains the following:

‘Beginning at the southwest corner of lot formerly owned by C. E. Harman, now the property of J. W. Gilbert and running along the East side of South Oates Street seventy (70) feet to South Street; Thence East along the North Side of South Street two hundred and ten (210) feet; *thence North along the West Boundary of lot formerly owned by W. J. Smith now the properly of Sam H. Adams seventy (70)* feet’

This same description is contained in the decd from James C. Taylor to Reba Taylor and Reba Taylor to Plaintiffs.

While the deeds furnished the means of locating the boundaries, their actual locations were an independent inquiry. Middlebrooks v. Sanders, 180 Al.. 407, 61 So. 898.

Affirmed.

LIVINGSTON C. J., and LAWSON and STAKELY, JJ. concur.

Decree affirmed.

1. Boundaries

Brick foundation and line of rotted fence posts, the existence of which was testified to by witnesses and by photographs, were not fictitious landmarks, and decree which established boundary line was not improper because based on these landmarks.

2. Boundaries

In suit to establish boundary, where descriptions in deed overlapped, evidence was sufficient to support finding that the boundary followed the line of rotted fence posts extending to corner of brick foundation.

3. Boundaries

Where title to complainant (Parkmans)'s and defendant (Ludlum)'s lots vested in parties' predecessor in title at different times, and where prior deeds to complainants (Parkmans)' lot described it as bounded by that lot which subsequently became defendant (Ludlum)'s antedated

and prior recorded deed which was in conflict with defendant (Ludlum)'s deed, did not control establishment of boundary.

4. Boundaries

While deeds furnish the means of locating boundaries, the actual location is an independent inquiry."

Comment 4

To a large degree it seems this case was decided on the "ancient fence" doctrine.

"Ancient fences, built and maintained on what were supposed to be the boundaries of a parcel of land for a long period of time prior to the dispute, may be held to locate the property rights and boundaries as against recent surveys with which they may conflict. This is a restatement of the 'ancient fence' doctrine that is supported by case law.

In order to utilize a fence as the true and correct dividing line, the fence itself must be supported by testimony or parol evidence indicating the fence was built on the correct original line." (Clark, Grimes, Robillard and Bouman 1987: 371)

Well, the location of the remains of the old fence in this case certainly was supported by testimony, from people who acted as if they thought it was on the correct original line. But what about the fact that the deed to the Parkmans was dated January 1, 1946 and the deed to

Mr. Ludlum was dated August 17, 1950? And they both have their deeds from a common source, Sam H. Adams. Adams conveyed directly Mr. Ludlum. The Parkmans trace their title back to Adams through three mesne conveyances.

It seems that the Parkmans have the senior deed. Senior rights are usually superior in standing to the written intentions of the parties to a deed. "Where two adjoining landowners claim title from a common source, the last deed must absorb any shortage in acreage" (Clark, Grimes, Robillard and Bouman 1987: 294). Yes, these principles are important, but there appears to be a critical difference here, the court said, " We do not think this principle is applicable to the instant case."

Part of the reason may be that the Ludlum parcel and the Parkmans parcel were vested in Sam Adams at different times. Part of the reason may be that the Parkmans deed description said that their eastern boundary was the western boundary of the W.J. Smith parcel, which is now Mr. Ludlum's parcel. And Mr. Ludlum offered evidence that this call had shown up in previous conveyances of what is now the Parkmans property. And finally it is important to remember that a court may not always follow guidelines such as the principle that senior rights are superior to the written intentions of the parties to a deed, if the court feels the evidence of the particular case shows that the principle does not apply.

Clark, F.E., Grimes, J.S., Robillard, W.G. and Bouman, L.J. (1987) *A Treatise on the Law of Surveying and Boundaries*, 5th edn, Charlottesville, Virginia: The Michie Company.