Wheeler v. Hoffman, No. 40-2-07 Oecv (Teachout, J., Feb. 13, 2009)

STATE OF VERMONT
ORANGE COUNTY

RAYMOND D. WHEELER,	)	
BONNIE J. WHEELER	)	
	)	**Orange Superior Court**
	)	**Docket No. 40-2-07 Oecv**
v.	)	
	)	
TODD A. HOFFMAN,	)	
SUSAN M. HOFFMAN	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on for final hearing on February 2 and 9, 2009. Plaintiffs and Defendants both seek a declaration of the common boundary line dividing their adjacent properties, and an injunction that the other parties not trespass on the disputed area. Plaintiffs were present and represented by Attorney Richard L. Brock. Defendants were present and represented themselves.

The court took a view of the property on February 2, 2009, followed by testimony of several witnesses. Plaintiffs presented the expert opinion testimony of their expert surveyor, Jonathan R. Abst, and Defendants presented the expert opinion testimony of their expert surveyor, Richard W. Bell.

Based on the credible evidence, the court makes the following findings and conclusions.

Findings of Fact

Plaintiffs (hereinafter Wheelers) and Defendants (hereinafter Hoffmans) own adjacent properties on Bobbinshop Road in Chelsea. Their parcels were once part of a larger parcel owned by Catherine Crouse, who acquired substantial acreage on both sides of Bobbinshop Road in 1932. She lived in the house on the north side of the road. It is only the portion to the north of the town road that is at issue in this case. In 1975, she sold to a neighbor, Arnold Preston, a parcel of land to the west of her residence, retaining

ownership of her house and other lands. The Wheelers now own the parcel she sold to Preston, and the Hoffmans now own her house and the lands that remained after a second sale of another parcel to the east of her house. The issue in this case is the location of the common boundary that was created by the deed of Catherine Crouse to Preston on October 28, 1975.

The deed, which is in evidence as Exhibit 2, contains a description of the parcel conveyed, including a perimeter description, although the property had not been surveyed. Both parties' surveyors have interpreted this deed description for purposes of surveys they prepared for the parties, with different results. The description is as follows:

> Beginning at a point in the northerly line of Town Highway No. 4 on Chelsea West Hill at a corner of land nor or formerly of Buxton;
>
> Thence in a northeasterly direction along said Buxton land along a line marked by a fence line a distance of 1150 feet, more or less, to an iron pipe at land now or formerly of James Lazarus;
>
> Thence turning a right angle to the right and running along said Lazarus land a distance of 400 feet, more or less, to a point;
>
> Thence turning in a southerly direction along land retained by the grantor a distance of 1150 feet, more or less, to a wooden stake in the northerly line of Town Highway No. 4;
>
> Thence turning a right angle to the right and running along the northerly side of said Town Highway No. 4, a distance of 300 feet, more or less, to the point of beginning.
>
> Containing 10.1 acres, more or less.

Both surveyors agree that it is not possible to lay out on the ground a parcel of land with the dimensions stated in the deed description and have a perimeter that closes. Both agree that it is their professional responsibility to endeavor to determine the intent of the grantor from the language in the deed to determine the location of the boundary line.

Both agree on the location of the point of beginning, the location of the first course along Buxton land and its termination at a pipe at the northwest corner of the Wheeler parcel, and the direction of the second course along Lazarus land. They disagree about the location of the northeast and southeast corners and the course between them (third course), which is the common boundary line, as well as the length of frontage along the town road on the fourth course.

The Wheelers' surveyor, Jonathan Abst, has located the northeast corner at an iron pipe 551.8 feet from the northwest corner (rather than 400 +/- feet according to the deed call), and the southeast corner on the town road at an iron pipe a distance of 291.7

feet from the point of beginning (rather than 300 +/- feet according to the deed call). His survey produces acreage of 10.095 acres. He relies heavily on the statement in the deed that the property contains 10.1 acres as expressing the intent of the grantor, as well as three identical iron pipes he found at the northwest, northeast, and southeast corners he marked as indicating the property corners. He also relies on the existence of state subdivision regulations in 1975 that exempted parcels over 10 acres from complying with state subdivision regulations concerning water and sewer systems, and the statement on the Property Transfer Tax Return filed with the deed stating that for purposes of the state subdivision regulations, the parcel was "not a subdivision," providing further indication that the grantor intended to grant a parcel larger than 10 acres.

The Hoffmans' surveyor, William Bell, has located the northeast corner 400 feet from the northwest corner, and has located the southeast corner 300 feet from the point of beginning on the road. The resulting common boundary line along the third course indicates acreage of the Wheeler parcel of approximately 8.4 acres, less than the 10.1 acres stated in the deed and less than the 10 + acres required for the division of the Crouse land to be "not a subdivision" under the state subdivision regulations.

Mr. Preston testified that when he bought the parcel from Catherine Crouse, he was not shown the boundaries. He knew that the parcel consisted of 300 feet along the road and 400 along the back line, as stated in the deed description, and that it was said to contain 10.1 acres. He owned either a full or partial interest in the property for approximately 25 years. When he sold his final interest in the parcel, he was aware that there were matching pipes in the ground at spots which he understood signified the northwest, northeast, and southeast corners. He never walked the boundary lines himself.

There is no evidence showing who placed those three pipes there. In 1994, he conveyed a partial interest in the parcel to his daughter and son-in-law, and he and they and his wife owned it together until 2000, when it was sold to Aaron Moses and Ashley Hayward. They sold it to the Wheelers in March of 2004. In 2001, when the Hoffmans and a friend of theirs searched for the markers on the corners of the Hoffman property, they looked at what they thought were logical places for markers, but found none. Thus, as to the pipes Mr. Abst found at the northeast and southeast corners he depicted on his survey, it is unknown when they were placed in the ground or by whom or why. There are no pipes referenced in the deed description at the northeast and southeast corners.

In resolving discrepancies in deed descriptions, there is a set of rules of priority followed by survey professionals: monuments control over inconsistent courses and distances, courses and distances control over other circumstances found on the ground, and statements of acreage are given the least weight.

Both surveyors identified certain monuments: the point of beginning, the boundary with Buxton, the northwest corner marked by an iron pipe, the boundary with Lazarus, and the location of Town Highway No. 4. Both surveyors testified that the wooden stake in the description at the southeast corner would be a monument, except that it could not be found.

In determining how far to run the second course, Mr. Abst continued past 400 feet to an iron pipe he found in the ground at approximately 552 feet. He apparently treated the iron pipe as if it were a monument, but it is not a monument, as there is no reference to an iron pipe at that location in the deed description. Rather, the description is that the second course runs along the Lazarus land "a distance of 400 feet, more or less, *to a point,* Thence turning in a southerly direction. . ." (emphasis added). No monument is described for the northeast corner. The place at which Mr. Abst found an iron pipe was at 551.8 feet, which is significantly distant from a point at 400 feet, and thus could not signify a "point" at 400 feet. Because there is no monument at that corner, to determine the location of the corner, the next highest priority is used, which is the call for a course of 400 feet.

Mr. Abst also apparently treated the iron pipe he found near the town road as a monument. However, although there was an iron pipe there, there was no sign of a wooden stake in the vicinity, which was the actual monument in 1975. Furthermore, the iron pipe was at a distance of 291.7 feet along the road from the point of beginning, not 300 feet. There was no monument found at the southeast corner. Therefore, the call for a course of 300 feet is the next highest priority determining factor.

The court finds the boundary line between the parcels to be the one determined by Mr. Bell, as his is based on required priorities in determining deed descriptions. Mr. Abst contends that the intent of the grantor controls, and that his line is consistent with the intent of Catherine Crouse to convey 10.1 acres. However, the intent of the grantor that is relevant is the intent as to location of boundaries, not intent to avoid regulations. In this case, the evidence is clear that Catherine Crouse intended to avoid compliance with state subdivision requirements, but as to the location of boundaries, her intent was that the shape of the property would be determined by measurements of 300 feet along the road and 400 feet along the back line, and that the division boundary was to be determined based on those references. While the reason that the dimensions described did not create a parcel of at least 10 acres was most likely a mistake on the part of the logger/realtor Mr. Montgomery, who sketched the dimensions of the parcel for use by Catherine Crouse's attorney in drafting the deed, that does not change the size of the parcel determined by the boundaries described.

The Abst survey requires three of the four course measurements to be discarded, and replaced with distances that vary from the deed description to a greater degree than occurs in the Bell survey:

	Abst	Bell
Course 1: 1150 +/- feet is replaced with	1124.2'	(no dispute)
Course 2: 400 +/- feet is replaced with	551.8 '	400'- same as deed
Course 3: 1150 +/- feet is replaced with	1061.0'	1096.81'- closer to deed
Course 4: 300 +/- feet is replaced with	291.7'	300.92'- closer to deed

Mr. Abst contends that the Bell survey is inaccurate because the deed calls for right angles at two locations, and Mr. Bell did not use 90º angles. However, the first of these is at the northwest corner ("turning a right angle to the right and running along said Lazarus land. . ."), and neither surveyor used a right angle, because both the Buxton and Lazarus lands are monuments and the iron pipe at that location is a monument, and all these monuments control over an angle that is clearly not 90º. These circumstances support Mr. Bell's interpretation that the grantor's intent was not a 90º angle but an angle that turned to the right. The second appearance of "right angle to the right" is at the southeast corner where the disputed boundary line hits the road. Here, also, the course of the road is a monument, which prevails over any angle. These circumstances also support Mr. Bell's interpretation that the grantor's intent was not a 90º angle but an angle that turned to the right. The direction of the angle is determined by the course of the road.

The court finds that while the description as written cannot be accurate, the common boundary line as drawn by Mr. Bell more accurately reflects the intent of Catherine Crouse as the grantor as to the location of the dividing line between the two parcels she created in 1975.

Conclusions of Law

The master rule in construing a deed is that "the intent of the parties governs." *DeGraff v. Burnett*, 2007 VT 95 ¶ 20. The deed description creating Plaintiffs' property is geometrically impossible, as it does not describe a parcel of land with a perimeter that closes. If ambiguity in a deed description exists, "interpretation of the parties' intent becomes a question of fact to be determined based on all of the evidence-not only the language of the written instrument, but also evidence concerning its subject matter, its purpose at the time it was executed, and the situation of the parties." (citation omitted). *Id, Monet v. Merritt*, 136 Vt. 261 (1978). The court must determine the intent of Catherine Clark at the time of the October 28, 1975 conveyance in order to establish the boundary line between the parties' parcels. *Gardner v. Jeffreys*, 178 Vt. 594, 597 (2005), *Kipp v. Chips Estate*, 169 Vt. 102, 107 (1999).

The deed language and contemporaneous property transfer tax return show that Catherine Crouse intended to create a parcel that was large enough (10+ acres) to be exempt from state subdivision regulations. Such a general intent does not, however, establish boundaries of a parcel that can be surveyed or laid out on the ground. The relevant intent is her intent with respect to location of specifically described boundaries. The long-standing principle that specific descriptions prevail over general descriptions applies in determining the grantor's intent with respect to parcel boundaries. *Pine Haven North Shore Ass'n v. Nesti,*138 Vt. 381 (1980). Her general intent to create a parcel with a certain acreage cannot operate to enlarge a parcel whose boundaries and size can be determined from the property description. Statements of acreage are given the least weight in determining the intent of the grantor. *Brown v. Casella,* 135 Vt. 62 (1977).

Monuments control over courses and distances, and natural monuments control over artificial monuments. *Marshall v. Bruce,* 149 Vt 351 (1988). The reason is that "it is more likely that there would be a mistake or misunderstanding about the course or distance than about the boundary or monument." (quoting *Neill v. Ward,* 103 Vt. 117, 148 (1930)). Courses and distances may govern the location of property boundaries where the existence of or location of monuments referred to in the deed are not proved. *Thomas v. Olds,* 150 Vt. 634 (1988). Markers must be referred to in the deed in order to be monuments. *Hadlock v. Pouture,* 139 Vt 124 (1980), *Haklits v.Oldenburg,* 124 Vt. 199 (1964).

Applying the legal principles set forth in the case law cited above, the court has found that the facts demonstrate that the Bell survey more accurately reflects the intent of Catherine Crouse as the grantor as to the location of the dividing line between the two parcels she created in 1975.

ORDER

Based on the foregoing,

1. The court declares that the common boundary line between the parties shall be as shown on the "Plat of Lands of Todd Hoffman, [address redacted], Chelsea, Vermont," prepared by Richard W. Bell L.S. #638 VT, dated February 6, 2009.

2. The parties are enjoined from using or trespassing on the lands of the other beyond the line established herein.

3. As no other claims were supported by evidence, all other claims are dismissed with prejudice.

Dated at Chelsea this _____ day of February, 2009.

_____
Hon. Mary Miles Teachout
Presiding Superior Court Judge

_____
Hon. Prudence Pease (as to facts)
Assistant Judge

_____
Hon. Maurice Brown (as to facts)

Assistant Judge