
UTAH SUPREME COURT CLARIFIES LEGAL DOCTRINES ESTABLISHING BOUNDARY LINES

Posted on April 8, 2011

April 1, 2011, the Utah Supreme Court issued its opinion in the case of *Bahr v. Imus*. 2011 UT 19. The case clarifies three boundary doctrines in Utah case law. Moral of the story: Good fences do not always make good neighbors – it costs less to hire a surveyor than to litigate boundary issues.

The case began in 1983 when Imus entered into a verbal agreement with the neighbors on either side, Dalton to the east and Wyman to the West, by which they all agreed to cooperate in fencing their respective properties. In so doing, the group set the fence locations using their own calculations and a tape measure. Fences were built and the Imuses installed extensive landscaping on their property, including an irrigation system and a koi pond.

As things happen, in 1985, Wyman sold to Carlisle who treated the established fence as the boundary line. In 1988, Carlisle sold to Bahr. The relationship between Imus and Bahr was cordial for some 19-20 years; however, at some point (the exact timing of which was disputed) a Russian olive tree and its removal became the focus of discord between Imus and Bahr.

Each obtained a survey. Both surveys revealed discrepancies in the legal description versus the fence location. The parties were unable to resolve their dispute and Bahr brought a quiet title action, claiming, among other causes of action, trespass by the Imuses. Imus countered that the boundary had been established by acquiescence or agreement. Alternatively, Imus claimed that Bahr was equitably estopped from contesting the boundary.

The trial court granted summary judgment in favor of Imus on the grounds of equitable estoppel because Imus and Wyman (Bahr’s predecessor in interest) had made mutual representations that the fence line was the boundary line, Imus had relied on those representations by landscaping up to the fence line and Imus would be injured if the boundary as . Bahr appealed and the Court of Appeals affirmed.

The Supreme Court affirmed equitable estoppel. The Supreme Court established a boundary by estoppel by the elements of the three boundary doctrines and elements of the

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Boundary by Estoppel.

Boundary by estoppel is designed to prevent fraud and injustice and to protect innocent landowners who reasonably rely on the representations of their neighbors regarding boundary lines. The elements for equitable estoppel are: 1) an affirmative admission, statement or act inconsistent with the position afterwards asserted; 2) action by the other party in reliance on the admission, statement or act; and 3) injury to the relying party resulting from allowing the first party to make the inconsistent admission, statement or act. ¶23.

The Court emphasized that an estoppel premised on an act or omission falling short of an affirmative representation will not meet the requirements of the first element. The Court declined to require a showing of bad faith or superior knowledge, stating that the focus is to be on the innocent party who reasonably relied on an

affirmative representation, “not on the subjective intentions of the party making the representation.” ¶127.

To meet the second element, reliance must be reasonable. Thus, the Court concluded, the parties “must have been ignorant of the true boundary.” ¶129. A demonstration of “objective uncertainty” is not required, although it could “certainly reinforce a plaintiff’s showing of reasonable reliance.” *Id.*

The third element is proof of injury, which will be found if the “injury is of sufficient gravity...that it would render it unfair or unreasonable to enforce the boundary.” ¶130. The Court specifically declined to adopt a limitation requiring a “permanent improvement” to have been made before an injury could be established. The Court instead directed the inquiry to be made into the “substantiality of the claimants injury.” ¶132.

In the Imus case, the theory of equitable estoppel failed on the first element – none of the parties knew the true location of the boundary.

Boundary by Acquiescence.

Boundary by acquiescence is based in the “realization, ancient in our law, that peace and good order of society [are] best served by leaving at rest possible disputes over long established boundaries.” ¶135, quoting *Staker v. Ainsworth*, 785 P.2d 417 (Utah 1990). The four elements required to establish a boundary by acquiescence are: 1) occupation up to a visible line marked by monuments, fences or buildings, 2) mutual acquiescence in the line as a boundary, 3) for a long period of time, 4) by adjoining landowners. *Id.* Objective uncertainty regarding the “true” boundary line is not required.

For the first element to be met, courts are to consider whether an occupation up to a visible line would place a reasonable party on notice that the line was being treated as a boundary line. The second element is met where the neighbors do not behave in a fashion inconsistent with the belief that the visible line is the boundary line. The third element requires an unbroken period of no less than twenty years in which each of the other elements is met. The fourth element requires that the parcels be contiguous. ¶136-38.

Summary judgment could not be granted on the theory of boundary by acquiescence in the Imus case because there was an issue of material fact as to when the dispute arose and, so, whether the twenty year requirement could be met.

Boundary by Agreement.

Boundary by agreement is “predicated on a principle of repose [and is] designed to set at rest boundaries commonly the subject of strife.” ¶140, quoting *Blanchard v. Smith*, 255 P.2d 729 (Utah 1953).

The elements of boundary by agreement are: 1) an agreement between adjoining landowners; 2) settling a boundary that is uncertain or in dispute; 3) an injury would occur if the boundary were not upheld; and demarcation of a boundary line such that a reasonable party would be placed on notice that the given line is being treated as a boundary. ¶141.

The first element requires that there be an express agreement. The agreement may be oral, “but it must be explicit...[It] requires an actual express statement of agreement.” ¶142. An oral agreement is proved by actual possession up to the lines agreed upon. Boundary by Agreement does not require the passage of a long period of time. The doctrine is based on the showing of an express agreement. Once an agreement has been established it is enforceable. Requiring a long period of time conflicts with the policy of repose and creates continued uncertainty. ¶145.

The second element requires uncertainty as to the location of the boundary. This is required to satisfy the Statute of Frauds. An express agreement fixing a location of an unknown boundary is not a transfer of interest in land and is an exception to the Statute of Frauds. ¶47. The third element requiring reliance ensures that important title interests are not unnecessarily undermined. A party seeking to enforce a boundary agreement must have placed “enough reliance on the agreement that it would now be unjust not to enforce it.” ¶50.

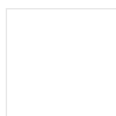
The fourth element requiring sufficient demarcation of the boundary line applies only in cases involving successors in interests. The Court concluded that while it was fair to bind the original parties to their agreement, it would be unfair to bind successors in interest without “objective indicia that would place such parties on notice regarding the boundary agreed upon.” ¶51. The Court noted that the fourth element will often be satisfied when the third element is, but that the two elements focus on distinct actors. *Id.*

The Court ruled that Imus was entitled to summary Judgment based on the doctrine of boundary by agreement. There was an oral agreement between Imus and the Bahr’s predecessor in interest regarding the location of a boundary line which was unknown or uncertain. Imus acted in reliance on the agreement by constructing a fence and landscaping their property. If the boundary line were not upheld, Imus would be unjustly injured. The fence constructed between the two properties served as a sufficient demarcation of the boundary line.

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One Response to *UTAH SUPREME COURT CLARIFIES LEGAL DOCTRINES ESTABLISHING BOUNDARY LINES*

Michelle says:

February 14, 2012 at 2:53 am

Although this is informative, I wonder, if a neighbor and myself purchased our homes within 1 year of each other and we brought to their attention that our fence line is incorrect and we proved this to them via county assessor documents and ultimately having a survey done, do they automatically have the right to my land which is included in my deed and that I pay

taxes on?

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