

SUPREME COURT OF MONTANA

Sacrison v. Evjene

2017 MT 170 (Mont. 2017) · No. DA 16-0699 · Decided July 11, 2017

SUMMARY

The Montana Supreme Court reviewed a partial summary judgment in a boundary dispute involving competing surveys and a disputed fence line. The Court held that genuine issues of material fact existed regarding whether the fence constituted a boundary monument and whether supporting statements were admissible, and it reversed and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Jim Rice; Dirk M. Sandefur; Laurie McKinnon; James Jeremiah Shea; Beth Baker
JURISDICTION	Montana
DECIDED	July 11, 2017
DOCKET	DA 16-0699
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from a partial summary judgment entered in favor of Jeffrey M. Evjene in a boundary dispute and quiet-title action; the appeal was accepted pursuant to Montana Rule of Civil Procedure 54(b) certification.
STANDARD OF REVIEW	De novo review of a district court's grant or denial of summary judgment, applying the same criteria under Montana Rule of Civil Procedure 56.
PRECEDENTIAL VALUE	published and precedential Montana Supreme Court opinion
PARTIES	Hans E. Sacrison, Leana F. Sacrison v. Jeffrey M. Evjene, Ricky Gene Marvel, Sylvia Denese Mee

TOPICS

- title disputes
- quiet title
- summary judgment
- evidence
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court erred by granting partial summary judgment when the record contained genuine conflicts in material facts concerning the location of the parties' property boundary.
2. Whether the disputed fence could be treated as an artificial survey monument on summary judgment without evidence that it was surveyed or built to conform to the original boundary.
3. Whether hearsay statements concerning the fence's alleged status as a boundary were sufficient under the community-reputation exception to support summary judgment.

HOLDINGS

1. Partial summary judgment was improper because genuine issues of material fact existed regarding whether the fence marked the true northern boundary of Evjene's property and whether the competing surveys correctly located the boundary.
2. A fence may be relied upon as the true and correct dividing line only when supported by testimony or other evidence indicating that it was built on, surveyed as, or conformed to the correct original boundary line.
3. The affidavit could not support summary judgment to the extent it relied on hearsay and lacked personal knowledge, and the record did not establish that the hearsay satisfied the community-reputation exception.

KEY QUOTATIONS

"The general hierarchy is as follows: lines actually run on the ground by the creating surveyor prevail over natural monuments (e.g., a tree), which prevail over artificial monuments (e.g., surveyor's stakes), which prevail over references to adjoining boundaries (e.g., "to Hunter's property line"), which prevail over directions (e.g., northwest), which prevail over distances (e.g., 30 feet), which prevail over area (e.g., 5 acres), which prevails over place names (e.g., "the Quinn farm")." (§ 13)

"There is a critical distinction between a fence which establishes a boundary line, and a fence that merely separates one side of the fence from the other." (§ 15)

"We conclude that genuine issues of material fact precluded summary judgment herein, and Evjene was not entitled to judgment as a matter of law." (§ 18)

FACTUAL BACKGROUND

The dispute concerns the boundary among three adjacent properties. The original 1954 survey creating Evjene's parcel contained errors and did not close, while a fence constructed around 1950 was later used by Evjene's retracement survey as the northern boundary despite not being called as a monument in the original survey. Evjene's survey placed part of his property within the Sacrisons' property, while the Sacrisons' survey placed a boundary through Evjene's home; the parties disputed whether the fence marked the true boundary.

PROCEDURAL HISTORY

The Sacrisons brought an action for declaratory judgment and quiet title concerning the boundary between their property and Evjene's property. The District Court granted Evjene partial summary judgment, directed entry of a quiet-title decree, and certified the order as final under Rule 54(b), while claims against Marvel and Mee remained pending. The Montana Supreme Court accepted the certified appeal and reversed, remanding for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Proceed with further proceedings consistent with the opinion, including resolution by the trier of fact of the genuine factual disputes concerning the true boundary and whether the fence is a boundary monument.

CASES CITED

- Whary v. Plum Creek Timberlands, L.P., 2014 MT 71, ¶ 8, 374 Mont. 266, 320 P.3d 973
- Larsen v. Richardson, 2011 MT 195, ¶¶ 32, 36, 44-45, 361 Mont. 344, 260 P.3d 103
- Karlson v. Rosich, 2006 MT 290, ¶ 14, 334 Mont. 370, 147 P.3d 196
- Pilgrim v. Kuipers, 209 Mont. 177, 181-82, 679 P.2d 787, 790 (1984)
- Goodover v. Lindey's, 232 Mont. 302, 308, 757 P.2d 1290, 1294 (1988)