STATE OF MINNESOTA | IN DISTRICT COURT
COUNTY OF HUBBARD | NINTH JUDICIAL DISTRICT

In the Matter of the Petition of | **Court File No. 29-CV-11-1453**

Melvin J. Cummins

For an Order Determining Boundary Lines

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM

The above-entitled matter came on for a court trial before the undersigned Judge of District Court on December 14–16, 2016. The Petitioner, Melvin J. Cummins, was personally present and represented by his attorneys, Thomas B. Olson and Katherine L. Wahlberg, 7401 Metro Boulevard, Suite 575, Edina, Minnesota, 55439. The Respondents, Randall Urdahl, Anthony Urdahl, and Jill Urdahl, were represented by their attorney, Paul R. Haik, 100 South Fifth Street, Suite 1900, Minneapolis, Minnesota, 55402. Anthony and Jill Urdahl were personally present.

On December 2, 2011, the Petitioner filed a Petition for an Order Determining Boundary Lines. The Petitioner seeks to establish that a fence is the boundary between his property and property owned by the Respondents by the theory of boundary by practical location. In July 2012, the Respondents moved to dismiss the petition and the Court denied the motion in October 2012. The Respondents filed a motion for summary judgment in November 2012, and the Petitioner filed a cross-motion for summary judgment in December 2012. Both summary judgment motions were denied in February 2013. In July 2013, the Petitioner renewed his summary judgment motion. In November 2013, the Court denied the renewed motion, concluded that the petition was barred by the doctrine of laches, and judgment was entered for the Respondents.

In December 2013, the Petitioner moved for reconsideration. In March 2014, the Court denied the Petitioner's motion for reconsideration and also denied the Respondents' motion for sanctions. The Petitioner appealed the dismissal of his petition, the denial of his motion for reconsideration, and the adverse judgment. The Respondents cross-appealed from the denial of their motion for sanctions. On February 2, 2015, the Court of Appeals concluded that this Court erred by applying the laches doctrine to bar the Petitioner's boundary by practical location claim, but did not err by denying the Respondents' motion for sanctions. The matter was remanded for trial.

After the court trial on December 14-16, 2016, the parties were given until January 20, 2017, to submit post-trial briefs. Any evidentiary issues were to be addressed in the post-trial briefs. On January 23, 2017, the Court took the matter under advisement.

Based upon the arguments of the parties, all the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. The Petitioner, Melvin J. Cummins, is the owner of 57 acres of property located in Nevis Township, Hubbard County, Minnesota (the "Cummins Property"), lying to the immediate east of the development platted as North Oaks.

2. The Respondents, the Urdahls, are owners of Lots 19, 20, 21, Block 1, North Oaks (the "Urdahl Property"), located in Nevis Township, Hubbard County, Minnesota.

Cummins Property

3. On or about July 11, 2001, the Petitioner acquired property in Hubbard County, Minnesota legally described as:

   > Outlot Number One (1) of the Plat of Beauty Bay lying South of State Highway Number 34 and that part of the Southeast Quarter of the Southwest Quarter (SE ¼ SW ¼) of Section Sixteen (16), Township One Hundred Forty (140), Range Thirty-three (33), lying South of State Highway Number 34, and also Government Lot Three (3) and Four (4), in Section Twenty-one (21), Township One Hundred Forty (140), Range Thirty-three (33). LESS AND EXCEPT the plat of Skie Lark.

   The Warranty Deed was recorded on July 24, 2001 as Document No. 272490 with the Hubbard County Recorder.

4. The chain of title for the Cummins Property is as follows:

   i. Elmer and Clara Gren conveyed the Cummins Property to Charles and Eva Rohrer by quit claim deed dated October 15, 1953, and recorded October 17, 1953, as Document No. 94789 with the Hubbard County Recorder.

   ii. Charles and Eva Rohrer conveyed the Cummins Property to Vernon and Joanne Vogt by warrant deed dated October 30, 1962, and recorded November 17, 1962, as Document No. 110195 with the Hubbard County Recorder.

   iii. Vernon and Joanne Vogt conveyed the Cummins Property to John and Carol Raun; James and Mary Raun; and Peter and Kathryn Marxen (altogether "the Rauns") by warranty deed dated May 4, 1983, and recorded May 11, 1983, as Document No. 165144 with the Hubbard County Recorder.

   iv. The Rauns conveyed the Cummins Property pursuant to a contract for deed to Gene Rugroden dated November 5, 1993, and recorded November 23, 1993, as Document No. 219622 with the Hubbard County Recorder.

v. The warranty deed for the Cummins Property to Mr. Rugroden was dated January 15, 2001, and recorded April 12, 2001, as Document No. 270369 with the Hubbard County Recorder.

vi. After Mr. Rugroden conveyed the Cummins Property to Melvin and Carol Cummins by deed, on August 10, 2011, Carol Cummins conveyed the property to Melvin Cummins, the Petitioner, by Summary Real Estate Disposition Judgment, Court File No. 29-FA-10-1173, recorded as Document No. A000353921 and T000006373 on August 19, 2011, with the Hubbard County Recorder.

5. Skie Lark was platted in 1994, which includes parts of Government Lots 3 and 4.

Urdahl Property

6. On or about August 19, 2005, the Respondents acquired property in Hubbard County, Minnesota legally described as:

    Lots 19, 20, and 21, Block 1, North Oaks.

   On September 22, 2005, the Registrar of Titles entered Certificate of Title Nos. 1750, 1751, and 1752 to the Respondents for the Urdahl Property.

7. The chain of title for the Urdahl Property is as follows:

i. Emma Knutson purchased an 80 acre farm in 1950. The Urdahl Property is part of the 80 acre tract of land referred to as the Knutson farm.

ii. Emma Knutson sold the farm to Palmer and June Peterson; and Eunice Peterson by contract for deed on August 5, 1980, and recorded as Document No. 154978 with the Hubbard County Recorder.

iii. On August 23, 1982, the official plat of North Oaks was certified as filed in the office of the Hubbard County Record. North Oaks includes Government Lot 5. The Urdahl Property is included in Government Lot 5.

iv. On September 1, 1996, the Petersons sold Lot 20, Block 1, North Oaks to Robert and Susan Panzer (“the Panzers”).

v. On July 29, 1997, the Petersons sold Lot 19, Block 1, North Oaks to the Panzers.

vi. On October 1, 1997, the Petersons sold Lot 21, Block 1, North Oaks to the Panzers.

vii. On August 19, 2005, the Panzers sold Lots 19, 20, and 21, Block 1, North Oaks to the Urdahls.

<u>Boundary between the Cummins Property and the Urdahl Property</u>

8. There exists on the disputed properties remnants of a barbed wire fence, wooden posts, and a path stretching from State Highway 34 south to Sixth Crow Wing Lake.

9. The fence remnants are located west of the East Line of Block 1, North Oaks (East Line, Government Lot 5). Neither party disputes that that government lot line is wrongly placed. The lot line corners are marked by monuments.

10. The disputed strip of land is located directly east of the fence line and directly west of the East Line of Block 1, North Oaks. The strip of land is approximately 39 feet wide, east to west, and 580 feet long, north to south (the "disputed strip").

11. The disputed strip of land was included in the plat of North Oaks but was not included in the plat of Skie Lark.

12. Before North Oaks was platted, the Knutsons raised cattle on their farm and used the fence to keep cattle on their property. No trespassing signs were placed on the fence to keep people from crossing the fence onto the Knutson farm. Craig Knutson, Emma and Carl Knutson's grandson, regularly hunted on his grandparent's farm and used the lake for ice fishing. Both Craig and Craig's father, Don Knutson, were aware that members of the community used the path next to the fence to access the lake. According to the credible testimony by both Don and Craig Knutson, the Knutsons did not farm east of the fence and considered the fence to be the east boundary of their property. The Knutsons owned the property until 1980. Don and Craig Knutson's testimony clearly, positively, and unequivocally demonstrates the finding that the Knutsons acquiesced to the fence line as the boundary until 1980.

13. Michael Cummins, the Petitioner's nephew, hunted and fished in the disputed area. He clearly understood the fence to be the boundary line.

14. Tommy Vokes and Dennis Garoutte both grew up near the Sixth Crow Wing Lake area and offered compelling testimony. Mr. Vokes credibly testified that he fished on the lake and would either drive in or walk in on the path located on the east side of the fence from approximately 1957 to 1962. He understood the fence to be the east property line. Mr. Garoutte also credibly testified that he hunted on the property from approximately 1962 to 1967 and recalled seeing "no trespassing" signs on the fence. Mr. Garoutte never hunted on the Knutson side of the fence. Even though Mr. Garoutte did not speak to the owners

on either side of the fence, through the manner and tone of his responses to questions at trial, he clearly understood the fence to be the east property line.

15. Vernon Vogt owned the Cummins Property from 1962 to 1983, which is on the east side of the fence bordering the Knutson farm. Mr. Vogt offered credible testimony through his deposition and affidavit that he firmly believed that the road was located on his property and that the west boundary of his property was the fence.

16. John Roehl offered credible testimony through his deposition. Mr. Roehl used to hunt in the disputed area between 1960 but he stopped hunting in the area in 1993 when Mr. Rugroden bought the property. Mr. Roehl asked permission from Mr. Vogt and Mr. Raun to hunt the area. Mr. Roehl was not specifically told by the owners that the fence was the boundary but clearly understood that the fence was the boundary. Mr. Roehl recalled seeing either "No Hunting" or "No Trespassing" signs on the fence bordering the Knutson farm.

17. Gene Rugroden bought the property east of the Knutson farm to develop. Mr. Rugroden platted Skie Lark in 1994. Mr. Rugroden credibly testified that he believed his property went to the fence and that he sold the Petitioner the land located directly east of the fence.

18. The Petitioner credibly testified at trial. The Petitioner walked, hunted, fished, farmed, and logged in the disputed area. The Petitioner started using the disputed area in the 1950's and continues to use the property to the present. The Petitioner confirmed that the fence even in the 1960's ran from State Highway 34 south all the way to Sixth Crow Wing Lake.

Based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The Petitioner satisfies the "common boundary" requirement under Minn. Stat. § 508.671. Vernon Vogt acquired the disputed strip of land by acquiescence in 1977 and the strip of land passed by deed to his successors, including the Petitioner. The Cummins Property and the Urdahl Property are adjoining properties.

2. Clear, positive, and unequivocal evidence indicates that the fence line was the certain, visible, and well-known relied upon boundary from at least 1962 to 1980, a period of 18 years, which is in excess of the 15 year statutory requirement. The 15 year acquiescence period was met in 1977.

3. The fence approximately 39 feet west of the surveyed boundary line is clearly and convincingly the established boundary by practical location by acquiescence and prevails over both the plat of North Oaks and the plat of Skie Lark.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court makes the following:

ORDER

1. The Respondents' Objections to Exhibits 59, 60, 61, and various witness testimony are **OVERRULED**.

2. The Petitioner's Petition for an Order Determining Boundary Lines is **GRANTED**.

3. The Petitioner's surveyor shall mark said boundary lines by placing judicial landmarks and that a plat of survey showing the location of each judicial landmark, certified as to location thereof, shall be then filed herein.

4. The Court will issue a final order indicating the boundary lines that have been determined, the location of the judicial landmarks that mark the boundary lines, and directing the Registrar of Titles to receive for registration as a memorial on said Certificate of Title a certified copy of the plat of survey showing the placement of judicial landmarks.

5. The attached Memorandum of the Court is incorporated by reference herein.

IT IS SO ORDERED.

BY THE COURT:

____
Robert D. Tiffany
Judge of District Court

MEMORANDUM

This case, at its essence, is a property dispute. The Petitioner and the Respondents are owners of adjoining property in Nevis Township, Hubbard County, Minnesota. The property at issue is a disputed strip of land located between an old fence line and a government lot line. The Petitioner filed a petition for the Court to judicially determine the boundary line between the properties. The Petitioner's petition is based on the theory of boundary by practical location by acquiescence. The Petitioner is not disputing the location of the government lot line; the Petitioner is contending that his property extends beyond the government lot line up to the fence. The Petitioner seeks to establish that a fence is the boundary between his property and the Respondents' property.

Objections to Exhibits 59, 60, 61, and Various Testimony

As an initial matter, an issue that was to be addressed in post-trial briefs was the admissibility of Exhibits 59, 60, and 61. Exhibit 59 is Vernon Vogt's affidavit dated May 18, 2013, which includes an October 6, 1962, letter from Strout Realty; Exhibit 60 is Vernon Vogt's deposition dated August 26, 2013; and Exhibit 61 is John Roehl's deposition dated July 30, 2014. At trial, the Respondents objected to Exhibits 59, 60, and 61 as inadmissible hearsay.

The Respondents called into question in their post-trial brief the admissibility of statements made by Mr. Rugroden and the Petitioner because the parol evidence rule bars them from testifying that a deed conveyed property west of the government lot line. The Respondents also objected in their post-trial brief to testimony from Mr. Garoutte and Mr. Vokes.

The use of depositions in trial is governed by Minn. R. Civ. P. 32.01, which states that:

> At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Minnesota Rules of Evidence applied as though the witness were then present and testifying, and subject to the provisions of Rule 32.02, may be used against any party who was present or represented at the taking of the

> deposition or who had reasonable notice thereof in accordance with any one of the following provisions:
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> . . . .
>
> (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead.

According to Minn. R. Evid. 801(c), hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay is inadmissible except as provided for by rule or other exception. One hearsay exception is former testimony. In a civil proceeding, a deposition taken in compliance with the law in the course of the same proceeding and the party against whom the testimony is offered had an opportunity to develop the testimony by direct, cross, or redirect examination is not excluded by the hearsay rule if the declarant is unavailable as a witness. Minn. R. Evid. 804(b)(1). Another hearsay exception is statements in an ancient documents in existence "twenty years or more" that are properly authenticated. Minn. R. Evid. 803(16). The authenticity of a document can be established by showing that the document has been in existence for at least 20 years at the time the document is offered, found in a place where such documents are normally kept, and in such condition that would not create suspicion of its authenticity. Minn. R. Evid. 901(8).

Mr. Vogt and Mr. Roehl were deceased at the start of trial. Prior to the start of the trial, both parties had an opportunity to examine by direct, cross, or redirect both Mr. Vogt and Mr. Roehl at the time of their respective depositions. Exhibits 60 and 61 are exceptions to the hearsay rule, and therefore, are admissible. The letter from Strout Realty has been in existence since 1962, which is well beyond the 20 year mark. The letter was in Mr. Vogt's possession and its condition does not create any suspicion that the letter is not authentic. The letter is a properly authenticated document and is deemed to be sufficiently trustworthy to warrant admission as evidence. The

statements contained in the letter are relevant but hearsay evidence. However, because the letter is a properly authenticated ancient document, the letter is admissible.

Another exception to the hearsay rule is reputation concerning boundaries or general history. "Reputation in a community, arising before the controversy, as to boundaries or customs affecting lands in the community…" is not excluded by the hearsay rule. Minn. R. Evid. 803(20). The testimony from Mr. Vokes and Mr. Garoutte relate to the boundary affecting the disputed land in question. Their experiences all relate to reputation as to the boundary arising before the controversy. Any testimony about statements from other individuals about the boundary may be hearsay but is exempt from the hearsay rule because of the reputation concerning boundaries exception. The Respondents did not object to Mr. Vokes's testimony at trial but did object to Mr. Garoutte's as it related to the fence line and road. However, the Court allowed Mr. Garoutte to answer the question about his knowledge of the boundary of the Knutson farm. The testimony from Mr. Vokes and Mr. Garoutte regarding the property and the fence is still admissible.

The parol evidence rule "prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003) (quotation omitted). Thus, "[w]hen parties reduce their agreement to writing, parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement. But parol evidence is admissible when the written agreement is incomplete or ambiguous to explain the meaning of its terms." *Flynn v. Sawyer*, 272 N.W.2d 904, 907-08 (Minn. 1978). The Respondents had a parol evidence objection to Mr. Cummins's testimony at trial but the Court overruled that objection. The entire case is about whether there is ownership of a disputed tract by the theory of boundary by

practical location. If proven, that transfer of ownership would not be reflected in the documents. Mr. Cummins's testimony as to where he believes the property line is located is not drawing on a legal interpretation of the deed. The Court noted the continued objection to the testimony by the Respondents.

The Respondents also had an objection to Mr. Rugroden's testimony that the west boundary of the property was the fence line. The Court allowed Mr. Rugroden to testify as to where he believed the west boundary of the property was because Mr. Rugroden was not talking about the deed. The same logic for Mr. Cummins testifying is the same for Mr. Rugroden: neither were drawing on a legal interpretation of the deed; their statements were not used as extrinsic evidence to interpret the meaning of the deed. Both Mr. Cummins's and Mr. Rugroden's testimony is admissible.

Spoliation of Evidence

At trial and in his post-trial brief, the Petitioner alleged that the Respondents removed fencing along the disputed strip and that he is entitled to negative inferences based on the doctrine of spoliation. The doctrine of spoliation applies where the party responsible for the destruction of destruction had exclusive control and possession of the evidence. *Wajda v. Kingsbury*, 652 N.W.2d 856, 861 (Minn. Ct. App. 2002) (quoting *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 437 (Minn. 1990)). The Petitioner did not present any evidence that the Respondents removed fencing along the disputed strip. Even if the Respondents had removed fencing, the Respondents did not have exclusive control and possession of the fence. The Court declines to apply the doctrine of spoliation to this case.

Statute of Limitations

The Respondents allege that the Petitioner's claims are time barred by Minn. Stat. § 508.28 (2016). The Court already addressed this argument in the Court's Order dated October 16, 2012, denying the Respondent's Motion to Dismiss, and held that Minn. Stat. § 508.28 did not bar the present action. Further, the Court held that the Petitioner's petition was not subject to the statute of limitations because of inadequate notice provided to the Petitioner's predecessors prior to the North Oaks Torrens registration. *Konantz v. Stein*, 283 Minn. 33, 167 N.W.2d 1 (1969). The Petitioner is seeking a determination that he already holds title to the disputed strip of property based on the conduct of his predecessors prior to the North Oaks Torrens registration. Specifically, the Petitioner indicates that the interest of his predecessors had ripened into title due to the practical location of boundaries before the entry of the decree of registration. Therefore, based on the Court's reasoning in the prior order and the Court's continued use of the same logic now, the Petitioner's petition is not barred under Minn. Stat. § 508.28.

Boundary by Practical Location

The Petitioner is claiming a boundary by practical location by acquiescence. The Petitioner contends that he has a common boundary with the Respondents' property. The Petitioner is not looking to change the government survey line; he is only looking for the Court to determine that the fence is the boundary between his property and the Respondents' property. The Petitioner has the burden of proving by clear and convincing evidence that the boundary was established by acquiescence. The Respondents allege that the Petitioner lacks a common boundary with Lots 19 and 20, Block 1, North Oaks because the lots only have common boundaries with Lot 10 of Skie Lark in which the Petitioner does not have any right, title, or interest in. The Respondents allege, therefore, that the Court cannot judicially determine their boundaries. The Respondents also

contend that there is no clear, positive, and unequivocal evidence of acquiescence sufficient to show a practical location.

Under Minnesota law, a district court may establish the practical location of a boundary line between two adjoining properties. *Theros v. Phillips*, 256 N.W.2d 852, 858 (Minn. 1977). "The common law doctrine of practical location of boundaries applies to registered land whenever registered," and Minn. Stat. § 508.671 "shall apply in a proceedings subsequent to establish a boundary by practical location for registered land." Minn. Stat. § 508.02 (2016). "An owner of registered land having one or more common boundaries with registered or unregistered land or an owner of unregistered land having one or more common boundaries with registered land may apply by a duly verified petition to the court to have all or some of the common boundary lines judicially determined." Minn. Stat. § 508.671 (2016).

A party claiming boundary by practical location can establish the boundary in one of three ways: acquiescence, express agreement, or estoppel. *Theros*, 256 N.W.2d at 858. Acquiescence must be "for a sufficient length of time to bar a right of entry under the statute of limitation." *Id.* To establish a boundary by practical location, the location must have been acquiesced for the statutory period of 15 years. *Wojahn v. Johnson*, 297 N.W.2d 298, 304 (Minn. 1980). Given the significance of the divestiture that follows a finding that a boundary has been established by practical location, the disseizor must establish the boundary by "clear, positive, and unequivocal" evidence. *Benz v. City of St. Paul*, 89 Minn. 31, 37, 93 N.W. 1038, 1039 (1903); *see also Theros*, 256 N.W.2d at 858. The evidence must be strictly construed, "without resort to any inference or presumption in favor of the disseizor, but with the indulgence of every presumption against him." *Phillips v. Blowers*, 281 Minn. 267, 269-70, 161 N.W.2d 524, 527 (1968) (quotation omitted).

The acquiescence required to establish a boundary by practical location must be more than passive consent to the existence of a fence or another marker, although conduct or lack thereof can be considered a reasonable inference of assent to the fence or another marker as the boundary line. *Engquist v. Wirtjes*, 243 Minn. 502, 507-08, 68 N.W.2d 412, 417 (1955). Acquiescence requires actual or implied consent to some action by the disseizor, such as construction of a boundary or other use of the disputed property, and acknowledgement of that boundary by the disseized party for an extended period of time. *LeeJoice v. Harris*, 404 N.W.2d 4, 7 (Minn. Ct. App. 1987). To demonstrate acquiescence, the line must be "certain, visible, and well-known." *Beardsley v. Crane*, 52 Minn. 537, 546, 54 N.W. 740, 742 (1893); *see also Ruikkie v. Nall*, 798 N.W.2d 806, 819 (Minn. Ct. App. 2011). "When a fence is claimed to represent a boundary line under an acquiescence theory, one of the most important factors is whether the parties attempted and intended to place the fence as near the dividing line as possible." *Wojahn*, 297 N.W.2d at 305; *see also Engquist*, 243 Minn. at 508, 68 N.W.2d at 417. However, it is not necessary that either party have knowledge of the true boundary line in order for a fence to become the boundary by acquiescence. *Fishman v. Nielson*, 237 Minn. 1, 9, 53 N.W.2d 553, 557 (1952).

In this case, the Petitioner's claim of acquiescence is compelling in two ways. First, the fence, although only remnants remain in some areas, was the specific demarcation of a property line. Photographs and a video show the fence line. Various witnesses testified to the existence of the fence extending along the disputed strip for a significant distance and its condition over the years. The Court also visited the site and was able to see remnants of the fence. At least until a certain point, the particular boundary line indicated by the fence was certain, visible, and well-known, unlike the deteriorated state the fence is in today. Second, there is clear and convincing

evidence of the acknowledgement of the boundary by the disseized party for the 15 year acquiescence period.

Although the parties did not present evidence of when the fence was constructed, the Petitioner did produce evidence that the fence was used by the Knutsons to retain cattle within their property on the west side of the fence, and that the Knutsons and the adjacent landowners used the fence line as a common boundary from 1962 until they sold the property to the Petersons in 1980. The Knutsons used the fence as a common boundary starting in the 1950's. The Knutsons maintained the fence, posted "No Hunting" signs on the fence prohibiting others from hunting on their land west of the fence line, and did not make any claims of ownership to the disputed tract located east of the fence line during the time they owned the property. From 1960 to 1993, Mr. Roehl intermittently hunted the area, considered the fence line the boundary line, and witnessed Carl Knutson work on the fence when the Knutsons owned the farm. Don Knutson, the son of Emma and Carl Knutson, testified that his family did not own the land east of the fence line and that his family understood the fence line to be the location of their east property line.

During Mr. Vogt's ownership of the land east of the fence, his realtor placed "No Trespassing" signs in the pathway located next to the fence line. Mr. Vogt's understanding was that the path was on his property and that the west boundary of his property was the fence line extending south to Sixth Crow Wing Lake. The Knutsons' and Mr. Vogt's statements that they considered the fence to be the boundary line is not passive consent; they expressly indicated that the fence line was the dividing line between their properties. Although we do not know whether the fence was placed or was attempted to be placed as near the dividing line as possible, that is only one factor considered under the theory of boundary by practical location by acquiescence. After Mr. Vogt sold his property east of the Knutson farm to the Rauns, Mr. Rugroden bought the

property from the Rauns to develop. He cleared brush along the fence line with no objection by Bob Panzer or anyone else during his ownership and platted Skie Lark. Mr. Rugroden believed that his property went to the fence line and that the property was included in the conveyance of Government Lots 3 and 4 less and except the plat of Skie Lark to the Petitioner.

"The boundaries established by the original government survey controls the judicial determination of boundaries." *Ruikkie*, 798 N.W.2d at 815. In *Ruikkie*, the landowners brought a petition for judicial determination of government lot boundaries. Here, unlike *Ruikkie*, the Petitioner is not seeking the determination of the boundary of Government Lot 3 or 5; he does not argue that the government lot line is incorrect. Instead, the Petitioner is seeking to establish that the boundary of his property extends beyond the government lot line to a fence located approximately 39 feet to the west of the government lot line. "A boundary clearly and convincingly established by practical location may still prevail over the contrary result of a survey." *Wojahn*, 297 N.W.2d at 304 (quoting *Phillips*, 281 Minn. at 274, 161 N.W.2d at 529). If the disseizor cannot prove the boundary by practical location, then the actual boundary established by the original survey and plat controls. *Benz*, 9 Minn. 31 at 36, 93 N.W. 1038 at 1039.

The parties' predecessors in interest acquiesced to the fence line as the property line since at least 1962 and met the 15 year acquiescence period in 1977. Mr. Vogt acquired the disputed strip of property in 1977, before North Oaks or Skie Lark were even platted, and the property was conveyed to Mr. Vogt's successors by deed. The Respondents assert that the legal description in the deed indicates that the disputed property is not part of the property sold to the Petitioner. However, the Petitioner owns land less and except the plat of Skie Lark, which includes the disputed strip of land. The Petitioner's deed does not convey to him more land than what is legally described in his deed.

A practical location boundary does not alter or shift the location of the original government subdivision or plat. The practical location of a boundary may be different than a survey boundary. The plats of Skie Lark and North Oaks depict the same government lot line, however, the plats do not control the determination of the boundary by practical location. The Petitioner's predecessor, Mr. Vogt, became the owner of land that from a later survey, the North Oaks plat, incorrectly shows the land to be the Respondents. Although the fence has not been maintained, parts of the fence line are still visible today, and according to various witnesses, including Don Knutson, Craig Knutson, Vernon Vogt, and John Roehl, the fence was visible and not in the same state of disrepair as it is today. The Court was presented with substantial evidence, including extensive, credible witness testimony, that the parties' predecessors in interest acquiesced to the fence as the certain, visible, and well-known boundary between the properties for the 15 year acquiescence period.

The Petitioner holds the land acquired by boundary by practical location because it passed along with the land conveyed by deed although the deed did not specifically describe that land in the legal description. The deed conveyed land outside the plat of Skie Lark which includes land to the fence line. Mr. Vogt is the first owner of the land acquired by boundary by practical location and Vogt's successors each obtained that land when sold to them. The disputed strip of land was first owned by Mr. Vogt, second by the Rauns, third by Mr. Rugroden, and finally by the Petitioner. The fence line is the practical boundary between the Respondents' property and the Petitioner's property. Therefore, the Petitioner's Petition for an Order Determining Boundary Lines is hereby **GRANTED**.