

In the Matter of the Petition of

Court File No. 29-CV-11-1453

Melvin J. Cummins

For an Order Determining Boundary Lines

**ORDER AND
MEMORANDUM**

The above-entitled matter came on for a motion hearing before the undersigned Judge of District Court on May 23, 2017, at the Hubbard County Courthouse, Park Rapids, Minnesota. Petitioner, Melvin J. Cummins, was personally present and represented by his attorney, Thomas B. Olson, 7401 Metro Boulevard, Suite 575, Edina, Minnesota. Respondents, Randall Urdahl, Anthony Urdahl, and Jill Urdahl, were represented by their attorney, Paul R. Haik, 100 South Fifth Street, Suite 1900, Minneapolis, Minnesota. Anthony Urdahl was personally present.

After the court trial held on December 14–16, 2016, the Court issued its Findings of Fact, Conclusions of Law, and Order dated April 19, 2017. On May 9, 2017, Respondents submitted a motion to amend or supplement findings, or for a new trial. Specifically, Respondents move for a new trial due to the Court’s rulings on several hearsay objections and the Court’s use of a variety of factors to determine a boundary by practical location by acquiescence. Because Respondents did not specify by finding of fact number in their motion, supporting memorandum, or arguments at the motion hearing, it is unclear which specific findings Respondents wish the Court to amend or supplement.

Based upon all the files and records herein, and the arguments at the hearing, the Court makes the following:

ORDER

1. Respondents’ motion for a new trial is **DENIED**.
2. Respondents’ motion to amend or supplement findings is **GRANTED**.
3. The Court will hereby amend three Findings of Fact as follows:
 - a. Finding #9 is amended for clarification purposes. The following sentence is removed: “Neither party disputes that that government lot line is wrongly placed.” The following sentence is added: “The government lot line is not in dispute.”
 - b. Finding #11 is supplemented for clarification purposes. The following sentence is added: “The disputed strip is located in the plat of North Oaks.”
 - c. Finding #15 is supplemented with additional facts. The following sentence is added: “Mr. Vogt stated in his deposition that he relied on the legal description of

his deed, did not do anything to investigate the actual survey lines, and that the fence did not belong to him.” The word “However” is also added as the first word in the next sentence following the added sentence.

4. Except as amended or supplemented above, the Findings of Fact, Conclusions of Law, and Order dated April 19, 2017, shall remain in full force and effect.
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

I. Defendant's Motions for Amended Findings or a New Trial

Aside from clarifying Findings #9, and #11, and adding additional facts in Finding #15, this Court does not have a sufficient basis to amend its decision under Rule 52 of the Minnesota Rules of Civil Procedure. As is the standard for such a motion, the Court does not find that the Order is "clearly erroneous." Minn. R. Civ. P. 52.01. The Court also does not find a new trial is justified under Rule 59 of the Minnesota Rules of Civil Procedure.

a. Evidentiary Objections

The Court overruled several hearsay objections not only at trial but in its Findings of Fact, Conclusions of Law, and Order dated April 19, 2017. In this case, the Court was the finder of fact and gave all the evidence the weight it was due. As the finder of fact, the Court will not amend its decisions on the evidentiary objections.

b. Consideration of a Variety of Factors and Tacking of Ownership

The Court considered a variety of factors in determining that the fence represented the boundary line. An important factor is whether the parties attempted to place a fence as near the dividing line as possible, however, it is not the only factor considered and the Court is not precluded from looking at other factors. The Court lacks evidence that the fence was placed as close to the surveyed property line as possible and who built the fence. Although the Court lacks information on fence placement, this lack of information does not render the Court's determination of the boundary line moot. Both the evidence indicated and credible witnesses testified to the location and appearance of the fence, maintenance of the fence, who owned the land on both sides of the fence, and who was using the land and for what purpose, which were factors the Court considered in making its decision in this matter.

In other similar cases and in this case, some property acquired through boundary by practical location is not listed on the deed. A title transferring event for a disputed strip of land occurs once all the elements have been met during a 15 year period. The title transferring event for the disputed strip of land in this matter occurred in 1977 and the title attached to the deed for every subsequent owner. After the title transfer in 1977 to Vernon and Joanne Vogt, the title then transferred to John and Carol Raun; James and Mary Raun; and Peter and Kathryn Marxen (altogether “the Rauns”) when the Vogts sold the land to the Rauns. The title subsequently was transferred from the Rauns to Gene Rugroden when the Rauns sold the property to Mr. Rugroden. Mr. Rugroden then sold the land to Melvin and Carol Cummins. Carol Cummins conveyed her interest in the property to Melvin Cummins in a real estate disposition judgment. The current owner of the disputed strip of property is Petitioner, Melvin Cummins. Petitioner has legal title to the disputed strip of land because it passed to him by deed from the previous owners even though Petitioner’s deed does not list the disputed strip of land.

Paired with credible testimony from various individuals and other evidence presented at trial that the fence was the set boundary line between Petitioner’s and Respondents’ properties from at least 1962 until 1980, three years past the 15 year statutory requirement, as well as finding that through the chain of title and deeds for both parties’ properties that there is a boundary in common in order for Petitioner to bring this action, led the Court to conclude that the fence line is the boundary line between the properties. Based on its previous review of these facts, the Court found that Petitioner met his burden of proof by clear and convincing evidence to establish the fence as the boundary by practical location. The Court does not have any evidence to show that its decision was “clearly erroneous.”

II. Petitioner Met All Elements of Boundary by Practical Location by Acquiescence

The Court, as the finder of fact, determined that Petitioner met all the requirements for boundary by practical location by acquiescence. First, the boundary line, demarcated by a fence, was certain, visible, and well-known at least during the 15 year acquiescence period. Various credible witnesses testified to the location and appearance of the fence. The disseizor, Petitioner, claimed that a boundary existed for the statutory period, and the disseized, Respondents, have acquiesced to that boundary. Credible witness testimony was presented that during the 15 year statutory period, both predecessors in title acquiesced to the fence as being the boundary between the properties; the landowners recognized the boundary. Any argument that a landowner did not use or utilize every foot of his or her property is irrelevant. Possession is not an element of establishing a boundary by practical location and there is no requirement that every landowner utilize every foot of his or her property.

III. The Court Amended Three Findings

The Court amended three Findings of Fact for clarity and to add additional facts. The Court removed a sentence in Finding #9 that states, “Neither party disputes that that government lot line is wrongly placed,” and added the following sentence: “The government lot line is not in dispute.” This merely clarified that the government lot line is not in dispute and that Petitioner and Respondents agree that the government lot line is correctly surveyed.

The Court added a sentence in Finding #11 that states, “The disputed strip is located in the plat of North Oaks.” The Court added the sentence to make clear that the disputed strip was not platted in Skie Lark but was platted in North Oaks. The purpose of the Court in making this Finding was to make clear what plat the disputed strip is located in.

The Court added a sentence in Finding #15 that states, “Mr. Vogt stated in his deposition that he relied on the legal description of his deed, did not do anything to investigate the actual survey lines, and that the fence did not belong to him.” The word “However” was also added as the first word in the next sentence following the added sentence. The Court added the sentence to address Respondents’ concern over any contradictory testimony in Mr. Vogt’s deposition. Although Mr. Vogt stated in his deposition that he relied on his deed for the legal description of his property, he did not investigate the survey lines, and he was clear in both the deposition and affidavit that he thought his property extended up to the fence line.