

decided **guidance:** case examinations

Boundary Fixed by Common Grantor

The case of *Atwell v. Olson* presented the Supreme Court of the State of Washington with the question of whether an agreed line between grantor and grantee is binding on subsequent owners? Here's another look at a grantee's meaning of the word "half." Unlike the case *Wood v. Mandrilla* (The American Surveyor October 2016) there was evidence on the ground and like *Harris v. Robertson* (The American Surveyor November 2016) that evidence was actually placed by the parties of the deed. This is yet another case created through an ignorance of boundary evidence and I smell a skunk wrapped in kimchi running away from a deed staker full of garlic & anchovy egg salad. Let's break this case down!

On March 7, 1928 Crooks and Forsman entered in a contract for the south half of Crooks property. The property was conveyed by warranty deed some two years and eight months later on October 17, 1930. Subsequently Forsman deeded the same "south half" of Crooks property to the plaintiff Atwell on August 3, 1940. Forsman believed and thus told Atwell that the line was marked by a hedgerow.

Okay so thus far we know that the term "half" was used on paper and a hedgerow was used on the ground. That's two pieces of evidence, not just one assumed from the legal description on the deed. This might even count as three pieces when you consider that Forsman believed the hedgerow was the line. With good testimony I might be able to distinguish between some hasty identification of a line by a motivated seller/realtor versus many years of mowing, planting, and occupation. So that's how I get "maybe" three and we'll see that unfold



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Confooseus say:
Intentions are estimated in writing
but exercised on the ground.

with more testimony. FYI: I'm confident the surveyor had some record document to work from. I'm not certain that he was privy to all of the pertinent evidence offered through testimony.

Here's the rest of the story. Six months after Crooks and Forsman entered into the contract, Crooks himself measured and set stakes on a line that he established as the halfway line. Forsman agreed to this line as the dividing line and within a year from the contract date he strung a wire between the stakes and planted a hedgerow. This all happened well before the deed was executed. Forsman also heartily occupied

the property while relying on the stakes to build his house, garage, and landscape and the whole nine yards. Atwell also relied on the same hedge line as she enjoyed her property. Meanwhile, on the north side of the line Crooks conveyed his interest in the north half to his wife and on November 23, 1945, she conveyed the north half to Krusell. He in turn occupied and bulldozed the land down to the hedgerow. On December 12, 1945 Krusell sold part of the north half to our defendant Olson who took possession, built a house, and had a survey done. The "new" survey led Olson to believe his corner was 14.7 feet past the hedgerow and

motivated him to build a brick pier memorial and prompted him to threaten removal of the hedgerow.

Stop right there! Let's rewind to 1945 and re-approach the "new" survey.

The objective of a boundary survey is to maintain stability of the boundaries. So why are Atwell and Olson in court? Well shucks, once again there was not a problem until a deed was staked and presented as "the boundary." This seems to be a reoccurring theme in boundary disputes. So, before the chain leaves the truck we better understand the evidence we have, the evidence we may need, and the evidence that may pop up along the way. Some questions and thoughts to ponder:

1. Numero uno, out of the box, from the "git-go": are we retracing a sequential or simultaneous conveyance? I don't think "Junior/Senior rights" was a focus in this appeal, nevertheless it is a controlling factor in order of precedence of conflicting elements. Understanding that a grantee (Forsman) has a senior right gives some reason to reconsider any apparent encroachments based on record lines. This survey begs the question "why am I fifteen feet away from the occupation line?"
2. We better know what types of monuments we are looking for and by whom and when they were set. I'm not sure the deed mentioned monuments or anything more than the word "half." The lack of a survey record doesn't help. However, it doesn't mean that we shouldn't expect some iron in the ground. Perhaps a discussion with Atwell would lead us to the old stakes under the hedgerow and some history behind the creation of the parcels. In this case Atwell is only as far as "one owner and a decade" away from those stakes and the agreed line. BTW: Both Crooks and Forsman were alive and testified in court.
3. A cursory "run" around the property with a chain or rag tape should reveal potential conflicts between the ground evidence and the record measurements. In this case chaining fifteen feet past the hedgerow should be cause to pause at the hedgerow and stab around for physical evidence. This is an early

red flag indicating that you may need to work with the adjoining to resolve the location of the boundary.

4. Arming an unsuspecting owner with a "potential" boundary solution based on incomplete evidence is an invitation for them to make hostile claim. In our case one of the owners was very fresh and simply may not have understood the ground he purchased. It stands to reason your client is paying for your objective opinion and they're going to use it subjectively!

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Now the rest of the story...

So the appeal Court looked at two questions:

1. Were Norman and Augusta Crooks common grantors as husband and wife? *Presumably asked because Norman actually marked the line then Augusta sold the property as an individual later.*
2. Can a buyer dispute a true line on the ground if he failed to see it? *Olson actually bought the land without seeing the hedge but his daughter-in-law lived there and accepted it presumably as a tenant.*

I am duly licensed to practice law within the jurisdiction of my local barbershop and only after business hours but the Land Surveyor in me tells me that I shouldn't touch these questions with a thirty-nine-and-a-half foot pole tied to a Lenker rod duct taped to a four foot lath hanging on a Glonass satellite being tugged by the Mars Rover...so I won't. I will say the Court felt that Crooks and Forsman did establish the true line and Olson only bought to that line regardless of his surveyor's assumption.

Let's face a reality. A surveyor created this problem and that's where we need to focus our attention. Our opinions as retracement surveyors are forensic. Our function is to locate existing property boundary lines from evidence and perpetuate that evidence so that people do not feud or go into Court.

This case really highlights the ill effect of professional ignorance toward the collection and analysis of boundary evidence. The old adage "actions speak louder than words" has relevance when assessing conflicting boundary evidence.

Hindsight is 20/20

It's easy for me to re-coach this football game from the Monday morning highlights. So I'll turn the table and rerun the play. What if we held the hedgerow as the line with the benefit of the testimony from the

original subdividers? The questions don't really change for us rope stretchers. Does slicing the lot exactly in half by the numbers accurately describe how the original owners actually cut the lot in half? *No.* Does the hedgerow fit the known location of the original line? *Yes.* Is the discrepancy simply technical in nature? *Yes, with testimony to back that claim up!* I'm inclined to let sleeping dogs lay and like to think that I would not mislead Olson by embellishing my ability to precisely measure half. That's not a retracement survey but rather a simple test of my physical ability and my equipment. I'm comfortable explaining the differences between "half a' sandwich", "half a' lot", and the algebraic value of "one divided by two." I would do little service to suggest that any other interpretation of half might upset the original hedgerow...but then again this is hindsight! ■

Note: A PDF of the case is available at <http://www.amerisurv.com/docs/AtwellVOLson.pdf>

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