

UNRESOLVED BOUNDARY ISSUES

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A. CONFLICTING TITLE ELEMENTS

1. Right of Possession

Landowners have an indisputable right to protect the boundaries of their property from encroachment. Thus, when a dispute over a boundary arises, the owner who actually owns the property may openly and adversely take possession of the land in dispute as long as he does so without breaching the peace. Scott v. Mathis, 72 Ga. 119, 124 (1883); Clower v. Maynard, 112 Ga. 340, 37 S.E. 370 (1900). In fact, an owner's resort to self-help measures in taking possession may help him should the dispute end up in litigation, giving him leverage over the defendant in the dispute rather than merely relying on the defendant's weak title (as the plaintiff in a land dispute case has the burden of proving title). See O.C.G.A. § 44-11-1, Oxford v. Pierson, 142 Ga. App. 289, 235 S.E.2d 572 (1977). However, if a court finds the plaintiff is not the rightful owner, the defendant may be entitled to damages from the plaintiff for interfering with his property.

2. Junior and Senior Rights

When there is a dispute in deeds to adjoining land as to the description of the land parcels, i.e., if the tracts as described would overlap, there is an issue as to title as well as boundary. A purported landowner must show a senior right to the property in order for his description to prevail against the adjoining landowner's claim. To do this, a party may show evidence that he holds the first deed out of a common grantor such as a subdivision developer. Or, a party may show superior right by establishing adverse possession for twenty years. A party may also prevail over other claimants by showing some invalidity in his neighbor's chain of title. There are also questions of surveying in such disputes, as well, since engineers' opinions are differing as to the location of monuments and boundary lines. See DeLamar v. Titus, 229 Ga. 223, 190 S.E.2d 54 (1972).

3. Written Documents

To effectively convey any tract of land by deed, the deed must include a definite description of the land to be conveyed, including boundaries designating the outer margins of the parcel. If a deed has no description of the land, or an insufficient or void description, it will not be operative to convey the land or as color of title. Brasher v. Tanner, 256 Ga. 812, 353

S.E.2d 478 (1987).

a. Legal Description

A boundary can be defined by a statement in words, either written, oral or by diagram. The purpose of a legal description is to enable any party to physically locate the boundaries of the tract by the description alone. An instrument containing an incomplete or insufficient description of the land is void and thus has no effect.

Durand v. Reeves, 217 Ga. 492, 123 S.E.2d 552 (1962). Legal descriptions reference boundary lines of the property by noting natural and artificial monuments (or landmarks), courses and distances of the boundary lines, as well as other descriptive factors such as roads, streets, and street numbers. Although natural monuments are preferable over artificial ones, any monument will prevail over courses and distances. Finley v. Sutton, 245 Ga. 813, 267 S.E.2d 252 (1980).

b. Natural Boundary Markers

Generally, a natural monument will prevail over an artificial landmark in determining a landline because natural monuments tend to be less likely to change and are unique in nature. O.C.G.A. § 44-4-

5. Trees are often used as natural boundary markers. Trees may be marked to show a boundary line, but such markings of trees are not always conclusive evidence when not accompanied by more. See Id. Other natural boundaries include streams, watercourses, lakes and ponds.

c. Streets

A road or street may be used in describing property. When used as a landmark, the description must designate particular points along the length of the road to which the property line extends. See, generally, Malone v. Klaer, 203 Ga. 291, 46 S.E.2d 495 (1948); Allen v. Hiwassee Land Co., 162 Ga. App. 356, 290 S.E.2d 492 (1982).

When a landline is described as running to the street, it will be presumed to do so even if the distance described varies from the actual measured distance to the street. See Southernair Corp. v. Worley, 230 Ga. 489, 197 S.E.2d 729 (1973).

d. Railroads

Railroads may also be used in describing the boundaries of property. Generally, with railroads, the right-of-way is a mere easement rather than full ownership by the railroad of the land upon

which the tracks run. When a deed designates a railroad right-of-way as the boundary of a tract of land, Georgia courts have held that the boundary will extend to the centerline of the right-of-way unless intentions to convey otherwise are clearly expressed in the deed. The true right-of-way boundary will control rather than the parties' understanding of the right-of-way at the time of conveyance. Morgan v. Godbee, 146 Ga. 352, 91 S.E. 117 (1917).

e. Improper Descriptions

For a description to be legally adequate in a deed, certain elements must be included. If such elements are omitted or improperly included, the description will not suffice. The description must name the state and county in which the land is located.

Boatright v. Tyre, 112 Ga. App. 179, 144 S.E.2d 471 (1965). Another example is when the description depends on reference to adjoining landowners and either (1) the grantee is listed as one of the adjoining owners, (2) an adjoining owner's name is given, but not the side on which his land is joined, (3) the named persons have never owned adjoining property, or (4) the description fails to note the landowners with any real specificity. The description must give a beginning or

terminal point from which to begin when the land is shown on a specific side of a street. Hedden v. Hilton, 236 Ga. 641, 225 S.E.2d 39 (1976). The metes and bounds given in a legal description must be specific and definite and not vague or incomplete. See, e.g., Herrington v. The Church of the Lord Jesus Christ, 222 Ga. 542, 150 S.E.S.E.2d 805 (1966).

When one part of a larger tract is being conveyed, the description must fully and adequately designate the specific part of the tract to be conveyed. If the land is described as part of several land lots without properly designating exactly which part, a metes and bounds description will prevail even though it includes more than was intended to be conveyed. Pope v. Middlebrooks, 215 Ga. 282, 110 S.E.2d 354 (1959); White v. Spahr, 207 Ga. 10, 59 S.E.2d 916 (1950). Finally, when a deed describes the property as “that piece of land known as the home place of Mr. David Smith,” the description may be incomplete without a more definite description unless that parcel of land is well known by name. Grace v. Grace, 92 Ga. App. 693, 89 S.E.2d 813 (1955). Any of these faults in a description of land contained in a deed may render the deed void.

4. Intention of Parties

Parties with a landline dispute who wish to resolve the dispute amicably are encouraged to fix a boundary line by agreement, acquiescence, arbitration, or adverse possession. O.C.G.A. § 23-1-21. This is true when the parties seek to firmly establish a boundary that is uncertain or unascertained and when the parties wish to change a landline previously established. See Johnson v. Mary-Leila Cotton Mills, 155 Ga. 344, 116 S.E. 609 (1923).

a. Writing

When the boundary lines are certain and undisputed, the parties must memorialize their agreement in writing for the new line. Smith v. Lanier, 199 Ga. 255, 34 S.E.2d 91 (1945). Any valid boundary line agreement will operate against all parties under the agreement.

However, the agreement must put a subsequent good faith purchaser on notice in order to be operational against future parties. O.C.G.A. § 23-1-20. Thus, the parties must either record a written agreement or evidence the boundary line by possession or physical marking of the property in order to bind the purchaser. McNeal v. Carter, 191 Ga. 441, 12 S.E.2d 332 (1940).

b. Unwritten Agreement; Performance

In a case where there is no conflict between the deed descriptions of adjoining landowners, there is no statute of frauds requirement that the agreement be in writing since the agreement involves only boundary and no issue of title. In other words, such an agreement need not be in writing since no conveyance is made, the agreement purports only to further define what has been conveyed previously. Holland v. Shackelford, 220 Ga. 104, 137 S.E.2d 298 (1964). Parol agreements must be sufficiently performed and acquiesced to take effect. Examples of satisfactory performance include procuring a survey and physically mark out the agreed upon line, cultivation of the land up to the line, and marking of trees. See, e.g., King v. Fox, 244 Ga. 641, 261 S.E.2d 576 (1979). However, placement of a single stake has been ruled as insufficient performance.

Further, under Georgia statutory law, seven years of acquiescence to a certain boundary line will succeed in fixing such boundary line. O.C.G.A. § 44-4-6, See Also Dunn v. Lightle, 223 Ga. App. 137, 476 S.E.2d 776 (1996).

B. SUBDIVISION

1. Protracted vs. Surveyed

Subdivisions are normally surveyed and platted. Protracting refers to extending the boundary line by implication, out into an unsurveyed area. It generally refers to an unsurveyed subdivision. A protracted subdivision can refer to one where no survey is done on lots until they are sold. As can be imagined, unsurveyed subdivisions are a relic of the past and would create a number of problems that could be addressed by acquiescence or adverse possession of other sorts. Ordinances universally require a plat in this date and age to subdivide, and therefore protracted subdivisions are rare in Georgia.

2. Controlling Elements

a. Streets

Property owners whose land adjoins a street or road generally have title to the underlying fee unless they have conveyed title otherwise. Of course, the adjoining property owners' rights are subject to the travel right-of-way belonging to the general public. See Fambro v. Davis, 256 Ga. 326, 348 S.E.2d 882 (1986). The boundary line is presumed to be the centerline of the street for each

adjoining owner. When a street delineates a property boundary, the street will be the prevailing landline even if the distance to the street is more than is stated in the description.

b. Street Number Descriptions

Often in subdivisions, street numbers are used to compose a pseudo-land description. In most cases, a street number designation alone will not suffice as an adequate description unless the name of the city, county and state also appears. See Murphy v. Morse, 96 Ga. App. 513, 100 S.E.2d 623 (1957). When property is described by street number, there is a question of how much land is actually included in the parcel. This is determined by looking to outside factors showing the parties' intent. Romanik v. Buitrago, 153 Ga. App. 886, 267 S.E.2d 301 (1980). Although there are inherent insufficiency problems with street number designations when used in legal descriptions, there are also times when the inclusion of a street number in the description has redeemed an otherwise insufficient description. See Turpin v. County of Bibb, 191 Ga. 671, 13 S.E.2d 795 (1941).