

decided **guidance:** case examinations

Frosher v. Fuchs

I did a websearch for *Frosher v. Fuchs* and came up with a page created by a land surveyor in New Port Richey, Florida. Gregory A. Shimp, PSM has been duly nominated for the 2017 Decided Guidance “No Bell” Peace Prize for doing something constructive with the Internet. Thanks, Greg for hosting this link <http://www.floridageomatics.com/cases/frosher.htm>

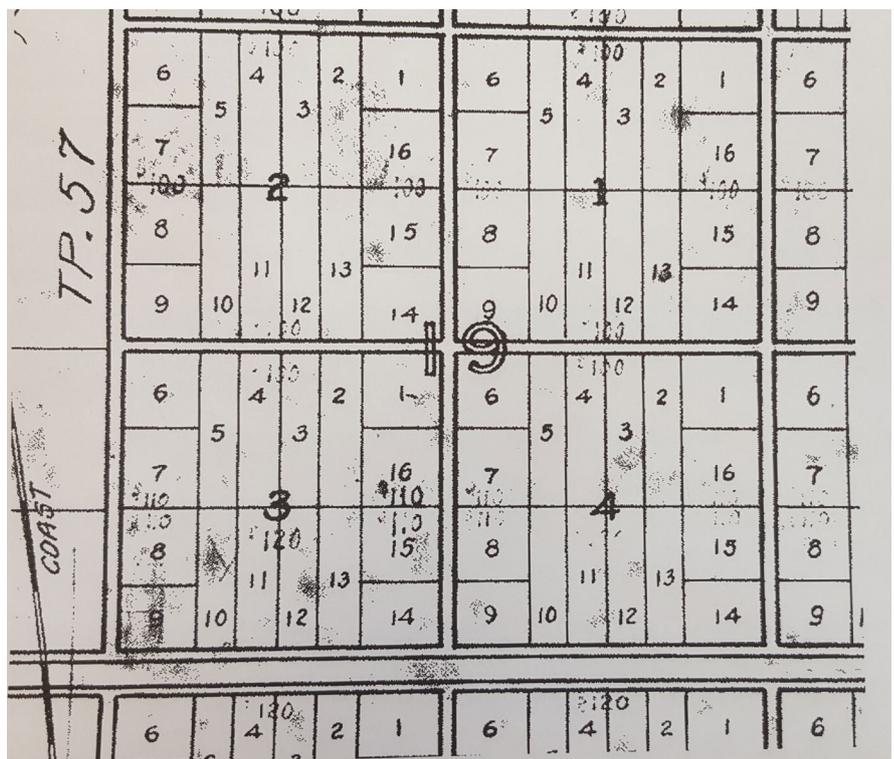
The Case text of *Frosher v. Fuchs* doesn't seem very detailed regarding the surveying techniques. I trust the Courts hashed all of that out early on and we are privy to the end result. The Court trimmed the fat to one big question and the crux of the surveyors' disagreement: *“The engineers agree that it is impossible to determine from the Miami Land and Development Company plat whether the 50 feet north of the centerline of the canal is deducted from the lot adjacent to the canal or whether this 50 feet is prorated among all lots in the southwest quarter of Section 19.”*

Okay, “impossible” is a pretty strong word so let's see what we've got to work with:

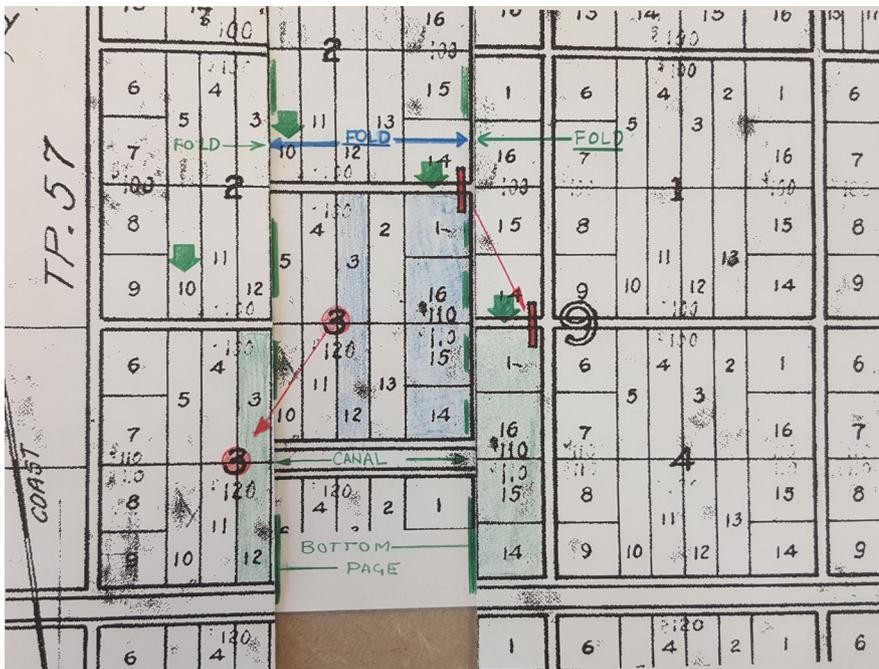
The surveyors agreed:

- they both needed to start at the southwest corner of Section 19 = ;
- the southwest corner of Section 19 is on the centerline of the canal = ;
- there's only one recorded plat covering the property = ;
- the recorded plat does not give sufficient measurements for any line other than the section line = ;
- the recorded drawing is a schematic division of the section covered into theoretically equal ten-acre tracts, without regard to the actual measurements = chehhhh.wait, what the heck did Chief Justice Horton just say???

Let's make a quick stop over at the Barbershop Barrister and hammer this “theoretical” thing out in this month's



Section 19 is quartered and further subdivided into sixteen 10 acre lots more or less. The south section line is the middle of the canal. Lots 9 through 14 along the canal all appear to be drawn shorter than the rest. See next map.



Using the block itself as a scale the folded copies (left and right) are indexed with green fiducial arrows and the "motion" is shown by red arrows and common markers. Even with the "street offset" it's apparent that Lots 1, 15, 16, & 3, are larger than canal Lots 14 & 12. This looks like "end lots" to me. However, the Court said the authority to treat these as "end lots" was derived from the public acceptance, reliance, and common report/ local standards of practice rather than the ambiguous sketch.

sidebar. Also noteworthy is each Section was quartered then broken down into sixteen rectangular 10 Acre lots each with a unique number. I guess the Miami Land and Development Company wasn't comfortable with the G.L.O's suggested format of describing land??? That's cool, his toys, his sandbox after the patent is issued. Regardless, the plat shows a multitude of regular breakdowns with uniformity among all lots in otherwise normal sections. Additionally, the canal sections appear to be compressed along the canal with "end lots" appearing shorter.

So there is no doubt of an ambiguity in the dimensions of this plat. We also have two different opinions from the expert surveyors. Not much for the Court to work with. The Court went ahead and examined the authority behind each expert's opinion. The Defendant's surveyor apparently held the canal as 50 feet wide and prorated the

difference among the entire tier of lots. I presume this means he assumed that each lot has exactly the same latitudinal dimension. In other words, no "end lot". The Plaintiff's surveyor dumped the difference in the end lot adjoining the canal. The Court felt that the latter followed substantial authority in doing so but how did they arrive at that conclusion? The Court said the following:

"The (defendant's) surveyor was unable to point to, any authority for this proration but stated that he had taken this course because he felt that it was the fair thing to do."

I'm not sure if he's a criminal, a communist, "o.c.d.", or just dumber than permitting a fireworks stand next to a drive up liquor store. Let's forget for a minute that a prorated position has nearly a 100% chance of landing somewhere different than an original monument. Let's also forget that even if it did land in the original location that you couldn't prove it because all of the original evidence is lost. Yeah, think about that one for a minute.

The Barbershop Barrister

Let's go off tangent for a moment and focus on a few concepts. According to Chief Justice Horton this plat is garbage, right? There's no measurements, just stick figures and a bill of goods here, right? Wrongo folks! The plat is bigger than the survey shown on it. Think of "land title" like a bloodline. A patent is the father of land title. It establishes a nobility of title and is the "planted seed". Metaphorically it's how the title gets its surname. The subdivision plat on the other hand is the mother of land title giving birth to lots, blocks, streets, alleys, town squares, canals, common places and so on. This happens under the legacy of the patent. It's a fair comparison to say a chain of title is a lot like a family tree for land. By the way, land deeds in all of their legal force might be described as "adoption papers" in this bloodline analogy.

The legal parts and words of the plat are what give it authority. Things are declared, statements are witnessed, offerings are granted and formally accepted. Then finally the whole ball of wax is recorded so everybody else in the whole wide world knows what just happened. This collection of acts done willfully by an owner has great strength in law and it's very notable that "The plat" still happens regardless of the "draughtsman's" indiscretion and the "engineer's" bobdangling monkeyshines. Lots are conveyed, roadways constructed, and improvements placed regardless and that is what the Courts serve to protect. Our retracement function is to demonstrate to the Court how that land division was carried out on the ground.

In contrast the "drawing part" (our part) on the plat is just a glamor shot on the dessert menu showing the suggested amount of blueberries atop a perfect slice of pie. Nowadays we slice the pie at the factory but in the past the pie may have been left whole and sliced individually on demand. We all know the cook is racing to fill many orders and our pie don't quite look like "da picher" when we get it. That's okay and regardless it's blueberry pie, it fulfills our enjoyment, and we are otherwise engaged in the peaceful occupation of our time.



Foose, continued from page 5

Let's also forget that proration under the authority of agreeable owners may be a valid method to stabilize boundaries when original evidence is truly lost.

Nope, this guy simply went rogue and applied his personal definition of "what is fair". That's it! He couldn't come up with any better explanation? I'm not even going to fire up the "rant mobile" and yell about how "that guy" is redistributing property he doesn't own nor was under contract to survey. Every other owner's lot on the block was upset by the proration. Geeeeeeeeezzzz! Okay, I'll stop now and just leave it at "the surveyor was unable to point to any authority".

Well, what, then, is authoritative?

The Court states: "*The long established use of the unrecorded survey, together with the fact that property rights have been acquired pursuant to recorded plats following this unrecorded survey, is sufficient to establish that the unrecorded survey was recognized by the surveyors of the area as the survey which established the procedure to be followed in locating boundary lines within the quarter section.*" Okeedoakie! So here's what we have to work with: 1.) People have transferred property accepting the unrecorded map as a supplement to the original plat. 2.) This has been the standard of care for a long time and has supported many land conveyances. 3.) The unrecorded map was recognized by local surveyors as the instructions within that quarter section. All of those actions in concert are authoritative! Possessing the cognitive ability to recognize them during a survey is our profession.

By the way, does anybody notice who and what is absent from this authority? The Government and regulatory guidance, right? This case is a great example of the power of

the people. Please don't confuse this power with the concerns of the over caffeinated social justice warriors down at the weekly campus whine-a-thon. There's a big difference. Our young and aspiring generation of Professional Land Surveyors are set to inherit the keys to a millenia of well settled rules and law that are the foundation of our free society, but you don't see that on CNN. Understanding how to access this guidance is fundamental to retracement work. The authority of free land owners is documented in case law and likewise rarely highlighted by the bureaucrats running the counter down at Tammany Hall. It is our professional obligation, not a regulatory requirement, to acquire and perpetuate this knowledge.

One last thing on "proration". The Court called the defendant's survey a "new survey" as in never seen before. Well that being the case, isn't setting prorated corners like planting evidence at a crime scene, no?

"The arbitrary proration of the 50-foot right-of-way among the lots of the southwest quarter was not in accordance with the plat of Miami Land and Development Company, nor in accordance with any other former plat of the area. It was a new survey and was not supported except for the State Road Department Plat."

Gnaw on that till next month! ■

Jason Foose is the County Surveyor of Mohave County Arizona. He originally hails from the Connecticut Western Reserve Township 3, range XIV West of Ellicott's Line Surveyed in 1785 but now resides in Township 21 North, Range 17 West of the Gila & Salt River Base Line and Meridian.



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