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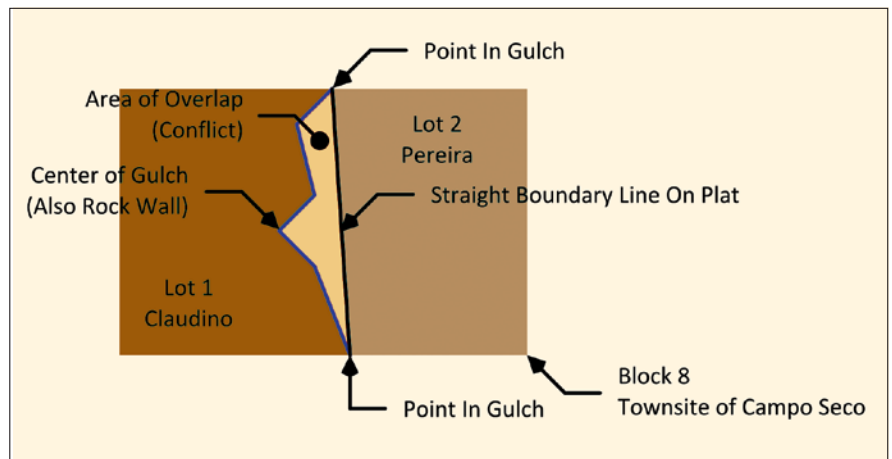
A Review of Claudino versus Pereira



Ian Claudino owns a portion of Lot 1 of Block 8 in the Campo Seco Townsite in Calaveras County, California. Patricia Pereira owns a portion of Lot 2 in the same block. The common boundary between Lot 1 and Lot 2 is shown as a straight line on the townsite plat, although physical occupation along the boundary, including a rock wall, closely follows a gulch. This dispute between adjoiners involves an action to quiet title, or legally claim the land between the gulch and the straight line shown on the plat. The field notes related to Lot 2 from the survey of the townsite that established the boundaries of the two lots contain calls for property corners "in the gulch" and a call going "down the gulch". The field notes for Lot 1 also call for property corners "in the gulch" but do not include the call "down the gulch" for the boundary common to the two lots.

Timeline

On March 2, 1867 the United States Congress allowed judges of county courts to make ownership claims for parcel owners that had settled and occupied portions of federal public lands as part of unincorporated townsites. In this case the court referred to this act of congress as the Townsite Acts. In 1868 California enacted legislation that implemented the Townsite Acts. This legislation allowed county judges to order surveys of the lands of unincorporated townsites that could then be claimed under the Townsite Acts. In 1870 the surveyor Henry Terry surveyed the Campo Seco townsite in Calaveras County in accordance with the Townsite Acts and the California legislation.



In July, 2005 Claudino filed suit seeking to quiet title to the land between the straight line on the plat and the gulch. In 2006 the trial court found the boundary between Lot 1 and Lot 2 followed the thread of the gulch, and not the straight line on the plat. Claudino appealed this decision.

Legal Questions

This basic legal questions discussed in the appellate court's decision is this:

- Is the boundary common to Lot 1 and Lot 2 the straight line shown on the townsite plat, or the actual thread of the gulch?
- These related questions are also discussed in the decision:
- Is the call "down the gulch" a directional call, or the call for a natural monument?
- Can the evidence of the physical occupation (in this case a rock wall) be ignored because the plat controls the boundary location?
- Does the straight line on the plat control even if it doesn't show an accurate location of the physical occupation being surveyed?
- Did the 1870 townsite survey conducted by Terry create boundaries like a GLO public lands survey, or did it simply ascertain boundaries, like a basic retracement survey conducted by a private surveyor?
- Are the field notes superior to the plat?
- Is there enough ambiguity in the boundary location to allow extrinsic or outside evidence?
- Did the intent of the surveyor matter in this case, and is it relevant to determining the boundary location?
- Did the field notes for Lot 1 and Lot 2 both need to be examined and considered when locating the boundary?
- Does the current legal description in the deed for Pereira, the owner of Lot 2, control the location of the boundary line in question?

How do you think the court decided in this case? Where do you think the judges located the boundary? Where would you have located the boundary based on the facts presented here? How would you answer the legal questions raised in this case? Some of the answers in the appellate court's decision may surprise you.

The Court's Decision

In favor of Claudino, the appellate court held the location of the boundary in the thread of the gulch parallel to the rock wall. The following questions and answers will shed light on the court's decision.

Q: Is the call "down the gulch" a directional call, or the call for a natural monument?

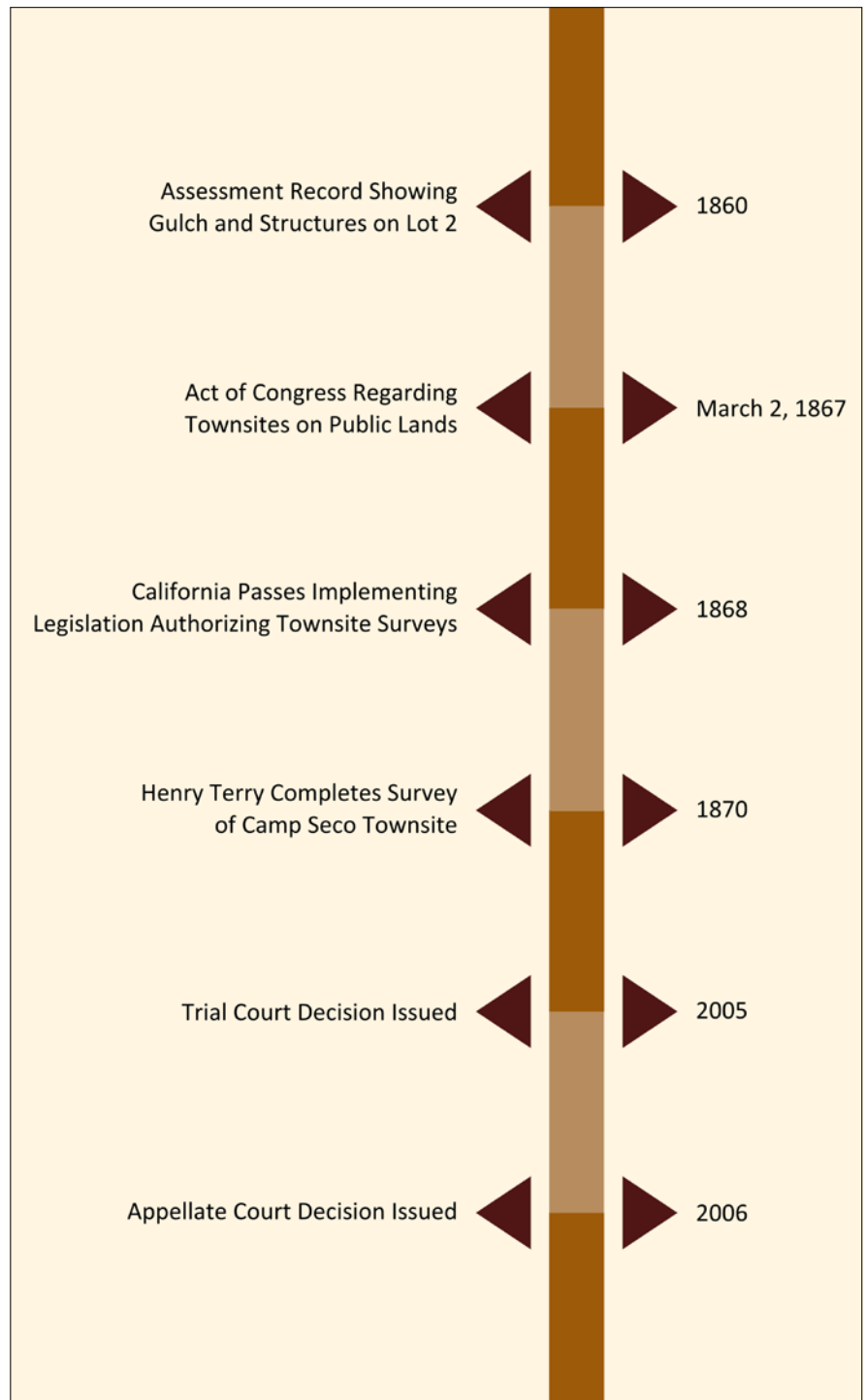
A: In this case the court decided the call "down the gulch" was a call for a natural monument, like the thread of a stream or the peaks of a mountain range, and not simply a directional call. This meant the straight line shown on the plat was like a meander line, showing only the approximate location of the natural monument.

Q: Can the evidence of the physical occupation (in this case a rock wall) be ignored because the plat controls the boundary location? Did the 1870 townsite survey conducted by Terry create boundaries like a GLO public lands survey, or did it simply ascertain boundaries, like a basic retracement survey conducted by a private surveyor?

A: In this case the physical occupation was very important because the purpose of the townsite survey conducted by Terry was to ascertain or establish the location of the property being occupied by the parcel owners. The survey followed the physical occupation, not the other way around, as is typically the case. In a sense, the physical occupation, including the rock wall, was the monument being surveyed. The monument controlled the actual location of the boundary, not the mathematical measurements shown on the plat. In this sense, the townsite survey ascertained boundaries like a private retracement survey, it did not create them, like a GLO public lands survey.

Q: Does the straight line on the plat control even if it doesn't show an accurate location of the physical occupation being surveyed? Are the field notes superior to the plat?

A: The plat does not control in this case. The field notes were found to be superior



as a controlling element in the boundary determination. One reason for this is the fact that the Townsite Acts provide that the field notes are as much a part of the official record of the survey boundary as the plat itself. The plat can't stand alone in this case, the field notes must be considered.

Q: Is there enough ambiguity in the boundary location to allow extrinsic or outside evidence?

A: There was disagreement between the two land surveyors that testified as expert witnesses in the case as to the nature of the call "down the gulch". The expert witness for Claudino claimed it was a call for a natural monument, while Periera's expert witness claimed it was a directional call only. The court decided this was sufficient ambiguity to allow for outside evidence that could clarify the boundary location.

Q: Did the intent of the surveyor matter in this case, and is it relevant to determining the boundary location?

A: The language Terry used in his field notes was key to determining the location of the boundary. He was charged with describing the land occupied by the land owners in the townsite, and it was important to understand how he was surveying the physical occupation. Therefore, his intent could be considered.

Q: Did the field notes for Lot 1 and Lot 2 both need to be examined and considered when locating the boundary?

A: The field notes for both lots need to be examined for a correct boundary determination. It would be incorrect to examine the field notes for only one lot, while ignoring the field notes for its neighbor. This is especially logical in this case, when the notes for each lot were taken by the same surveyor as part of the same townsite survey.

Q: Does the current legal description in the deed for Pereira control the location of the boundary line in question?

A: No it does not. The court stated clearly that: "...the reference to the plat is not an adequate legal description under the Townsite Acts unless it is read as a reference to 'such plats, field notes, and records'". Pereira's grant deed referred only to the plat, but the field notes and other records related to the townsite survey were legally incorporated in this reference though they are not directly mentioned in the deed.


More important, Pereira's predecessors in ownership could not convey more land than they owned, which would include the land between the gulch and the straight line on the plat. Even if her grant deed could be interpreted to include this property in its description, it could not convey this land.

Lessons and Principles

Several principles from this case can be applied to boundary surveying:

- A surveyor must, to the extent possible, know the history of the land being surveyed.

- A surveyor must research adjoining parcels to arrive at a correct boundary determination.
- Physical occupation can not be blindly ignored. It must at least be considered as important evidence during a boundary determination. In some unique cases physical occupation will be the most important and controlling evidence.
- A surveyor can't blindly adhere to the description in his client's grant deed, ignoring other related cadastral documents or evidence on the ground. The land described is not always the land actually owned.

There are some larger lessons that we can take away from this case as well. Maps that don't accurately depict reality can create dangerous and costly ambiguity. Boundaries along natural monuments often can't be measured, defined, or depicted exactly. They are inherently inexact and in practice can only be approximated by the boundary surveyor. 



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GRS-1



GRS-3

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