



## Curt Brown in the 21st Century

**C**urt Brown's influence upon the legal community and American jurisprudence remains unprecedented and impressive. Over the years, as various courts across the country wrestled with complex boundary conflicts and the need for an authority to consult with in adopting its decisions, many judges and courts would rely on Curt's opinions and his work. In a Minnesota Court of Appeals

Their neighbors, the Potvins, hired surveyor Robert Murray to locate the south line of their lot (lot 9). Unable to locate any monuments left by the original surveyor, Murray used as a starting point a boundary line established between nearby lots 20 and 21 by court action in 1966. In that action, the Beltrami County District Court established a line of occupation and ordered the surveyor, Al Bye, to place monuments to establish the line. His work became known as the "Bye

practical location through acquiescence, agreement, or estoppel between lots 9 and 10 and held that the actual boundary was the line Murray established. The Potvins conceded that the Halls had acquired, by adverse possession, the portion of lot 9 on which the Hall home is situated and the district court set a boundary four feet from the northern side of the Hall home.

The Halls appealed, contending that (1) they were only required to prove a boundary by practical location by a preponderance of the evidence, rather than by clear and convincing evidence; (2) they established a boundary by practical location; (3) surveyor Murray's attempt to locate the original boundary was inadequate; and (4) the line of adverse possession set by the district court fails to consider the Halls' reasonable use of their property. The court responded to the claim:

**"It is evident that Curt's influence will continue to assist in the resolution of boundary conflicts across the United States and elsewhere. Thus, his works will continue to serve their intended purpose."**

*The Halls also assert error in the district court's accepting surveyor Murray's testimony to ascertain the likely placement of the originally platted boundary. They argue that Murray's testimony is not competent evidence of the true platted line and constitutes an impermissible re-survey. We agree that "[i]n any resurvey of an original survey the only authority that the surveyor has is to relocate the lines exactly as laid down by the original surveyor." Curtis M. Brown, Boundary Control and Legal Principles 112 (2d ed. 1969).*

decision entitled *Allen G. Potvin, et al., Respondents, vs. Timothy A. Hall, et al., Appellants, Reliastar Mortgage Corp., et al., Defendants* (C4-99-421, filed September 28, 1999 - Beltrami County District Court File No. C09863), Curt's influence can be found. The controversy involved a dispute between adjoining property owners over the location of their common boundary. Timothy and Dorothy Hall appealed the district court's order that rejected their attempt to establish the boundary line by practical location through acquiescence and instead, accepted as the true boundary a line drawn by interpreting the original plat.

Occupation Line." In conducting his survey, Murray measured northward from this line. By relying on lines of occupation, Murray was able to describe lines that were consistent with how the residents were using the property and also consistent with the lot widths shown on the original underlying 1907 plat. The district court found that Murray's method, "though not the 'textbook approach,' established in a logical and persuasive manner the location of the boundary lines."

The court also found that the Halls failed to demonstrate, by clear and convincing evidence, a boundary by

In another case tried in the Tennessee Court of Appeals and decided in 2002, *continued on page 54*

**Curt Brown**, continued from page 56 the appellate tribunal similarly relied on Curt's work. The case, entitled *Stacey J. Stanley v. Daniel Ring, et al.* (Direct Appeal from the Chancery Court for Obion County, No. 21,537 William Michael Maloan, Chancellor, No. W2001-00950-COA-R3-CV2) concerned riparian rights associated with a privately owned lake in a subdivision in Obion County. The trial court found that the boundaries of lots abutting the lake extend into the lake, and that the owners of these lots had riparian rights to limited use of the lake as reasonable under the circumstances. In commenting on the subject of Limited Riparian Rights, the court stated:

*Ms. Stanley asserts that prior owners always had restricted Defendants' use of the lake, and that Mr. Clark never intended to convey any interest in the lake to Defendants' predecessors in interest. She contends that since Defendants do not own any part of the lake bed, they have no right to use the lake. The essence of her argument, as we perceive it, is that Defendants do not have riparian rights to use of the lake.*

*The deeds conveying the lots to Defendants are silent as to any rights to use of the lake, but convey the land "with the appurtenances, estate, title, and interest thereto belonging..." This Court recently addressed riparian rights inherent in such a deed in *The Pointe, LLC v. Lake Management Ass'n*, 50 S.W.3d 471 (Tenn. Ct. App. 2000). In *The Pointe*, we stated, "it is clear that the grant of an appurtenance in a deed is meant to enhance the value and enjoyment of the property." *Id.* at 475. We noted that the inherent value of riparian land is derived from the accessibility and proximity of the water. *Id.* We further noted that when, as here, property adjacent to water is conveyed with all appurtenances, there is a presumption that the right to use and enjoyment of the water is part of the grant. *Id.* These riparian interests are presumed unless the terms of the grant, conveyance or deed expressly exclude them, or unless the description of the property in the deed clearly indicates that such rights are not attached to the property. *Id.* at 476-77. See also, Curtis M. Brown, et al, *Boundary Control and Legal**

*Principles 199 (3rd ed 1986)... These rights are "considered part of the package of rights in the fee." Id. They depend not on ownership of the land beneath the water, but on contact of the landowner's land with the water. Brown, supra.*

In February 2003, a case out of the United States District Court of Maine entitled *United States of America v. Iolanda Ponte, Trustee* (Civil No. 99-281-B-H) involved a dispute about whether an easement line was to be measured along the ground or along a leveled horizontal line. Therein, United States District Judge D. Brock Hornby declared:

*Maine's Law Court has said that the horizontal method is the "common" method of measuring distances, *Town of Union v. Strong*, 681 A.2d 14, 18 (Me. 1996), using as authority a 1962 text, Curtis M. Brown & Winfield H. Eldridge, *Evidence and Procedures for Boundary Location* (1962), a text that was extant at the time this easement was drafted. Another text the Law Court cites states the principle that a surveyor must consider usage at the time a particular deed description was drafted. Walter G. Robillard et al., *Brown's Boundary Control and Legal Principles* 42 (4th ed. 1995) ("The unit of measurement indicated in the description is that unit of measurement used at the time of the survey or when the description was written."). Horizontal measurement, therefore, is appropriate for this 1974 easement. There is nothing to suggest that the parties to this conservation easement had anything different in mind . . . Horizontal is not the only method. The ordinance the Law Court interpreted in *Strong* as requiring horizontal measurement for some purposes required over-the-ground measurement for other purposes. 681 A.2d at 17; see also Walter G. Robillard et al., *Brown's Boundary Control and Legal Principles* 45 (4th ed. 1995):*

*In GLO [General Land Office] surveys the presumption is that all measurements are horizontal along a straight line because the law required the surveyors to perform as such. In the metes and bounds states the early measurements are presumed to be "slope" or "along the lay of the land." However, the contrary may always be*


*proved. [The GLO survey] presumption has not always been in effect; in a few localities proof has been found indicating that original measurements were made along the surface.... [Kentucky case citation].*

*Although Maine was a metes-and-bounds state, see Paul G. Creteau, *Maine Real Estate Law* 204 (1969), horizontal measurement is the "modern" method of measurement according to the Law Court... The method has been advocated since at least the late 18th century. Curtis M. Brown & Winfield H. Eldridge, *Evidence and Procedures for Boundary Location* 112-13 (1962); see also Robillard et al., supra, at 79 (quoting Edward Tiffin's instructions to Northwest Territory surveyors in 1815 to use horizontal measurements, not over the surface of the ground).*

Last but not least, in February 2013, the Montana Supreme Court cited Curt's works in *Wohl v. City of Missoula* (No. DA 11-0490), a case involving the restoration and reestablishment of streets and adjacent lots, noting:

*It is a generally accepted surveying principle that a subdivision plat, being merely a graphical representation of an underlying survey, must yield to evidence of the original survey found in the field. Robillard & Wilson, *Brown's Boundary Control and Legal Principles* § 12.12, 370-71 (original monuments set on the ground control facts given on the plat, unless the intent is clearly otherwise). Hence, the dimensions of platted streets are controlled by the lines run and monumented in the field by the original surveyors, to the extent those lines are ascertainable.*

It is evident that Curt's influence will continue to assist in the resolution of boundary conflicts across the United States and elsewhere. Thus, his works will continue to serve their intended purpose.

—Michael J. Pallamary, PS 

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Author **Michael Pallamary** has compiled the writings and lectures of the late Curtis M. Brown. These works are published in *The Curt Brown Chronicles*.