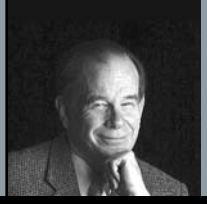

By James J. Demma, LS, Esq

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Boundaries—A Dispute Between Dueling Neighbors

The very unusual case that I have selected to discuss in this issue has to do with a dispute between neighboring landowners. What else is new? This fairly recent appeals case from Rhode Island is cited *Santurri v. DiPietro*, 818 A.2d 657 (R.I. 2003).

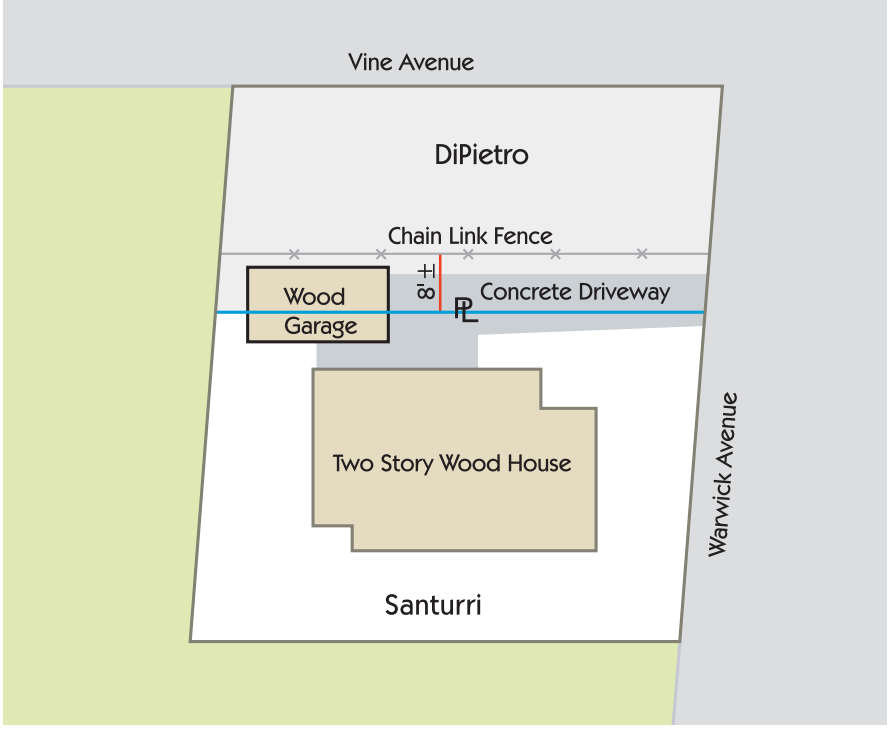
It goes like this. The plaintiff, Santurri, purchased his property in 1996 from his predecessor in title, Esposito. The property was improved by a two-story house, a paved driveway, and a one-car garage that was connected to the home by a breezeway. The defendant, DiPietro, owned the land immediately north of and adjacent to Santurri's property. There was a low retaining wall and chain-link fence between the properties that appeared to any passerby to serve as an identifiable boundary line.

Ten years earlier, in 1986, a survey had been conducted by DiPietro that showed his property extended southerly approximately eight feet beyond the retaining wall and included a portion of the land, then owned by Esposito, on which the garage and driveway were situated. When the boundary discrepancy was brought to the attention of Esposito, he acknowledged the problem but took no action to quiet the title or claim ownership by adverse possession. The evidence at trial disclosed that DiPietro had allowed Esposito the full use of the driveway and garage, as it had been previously used under joint ownership by Esposito and his grandmother.

However, after Santurri acquired this disputed land, DiPietro began using the northern portion of the Santurri driveway for parking and storage of various service trucks and wrecked automobiles, claiming the use of the land by "right of ownership." Distressed by DiPietro's claims and the junk vehicles that detracted from his own engineering and design business, Santurri rigorously protested.

In 1999 Santurri filed suit alleging the deprivation of the use of his garage and driveway and interference with the peaceful and quiet enjoyment of his property. DiPietro continued to claim ownership as established by the 1986 land survey and alleged that Santurri had actual knowledge of the true boundary lines from his predecessor in title.

Santurri appeared *pro se* at trial (meaning that he represented himself), and the trial justice issued a decision and finding that there was no adverse possession, based **upon Esposito's permissive use of the parcel and DiPietro's acquiescence therein**. The trial justice held that although Esposito clearly had a claim for adverse possession, he chose not to perfect it and thus abandoned the claim. The trial justice then proceeded to fashion a remedy whereby Santurri would be given the opportunity to purchase at fair market value the disputed area owned by DiPietro. However, the parties were unable to reach an agreement on price based upon this "Solomonic" approach to justice, and the trial justice then determined that "the equitable and fair" solution was for the Santurri to pay to



DiPietro one-half the value of the property as set forth in an appraisal, and ordered DiPietro to execute a quitclaim deed to Santurri for the disputed land. DiPietro refused to do so and filed this appeal.

DiPietro challenged the correctness of the court's decision, stating that the trial justice committed error by ordering the sale of his property to Santurri.

The trial justice had found that at the time of the conveyance, Esposito, the seller, had made it known to Santurri of the existence of an accurate survey, and, further, that Esposito deliberately disclosed the existence of the encroachments at the time of sale. Although the trial justice opined that Esposito's real estate agents may have failed to provide Santurri with a copy of the survey, he was made, or should have been made, alert to the existence of a survey. (Ah–the importance of a real survey at the time of closing.)

However, despite the finding that the property in question belonged to DiPietro, the appeals court stated that there was **no authority** to order the prevailing party to a boundary dispute to convey the very property the court has decided he or she owns. The appeals court held that this attempt on the part of the trial justice constituted "an improper exercise of judicial power wholly unsupported by legal authority." The appeal's court further stated that:

> *Although he [*the trial justice*] clearly appreciated the practical reality that his decision would not resolve the underlying **tensions between two dueling neighbors**, he was not at liberty to craft an unsolicited remedy that mandated an unwilling party to convey his property, particularly at a price that was half its appraised value as accepted by the trial justice.*

Here is a case where a lower court judge attempted to fashion a reasonable remedy over and above the resolution of the adverse possession claim, and did so in a manner inconsistent with the judgment that the defendant was the rightful owner of the property in question.

Author's Note: This column is designed for all of you who enjoy reading about how the law interacts with land surveying. If there is a particular legal topic that you may wish that I discuss on these pages, please forward your suggestions via the "Contact Us" section of *www.theamericansurveyor.com.*