

decided **guidance:** case examinations

Bryant v. Blevins

We are back in Northern California looking at Bryant v. Blevins. We have three topics to cover in this case, the opinion, the dissenting opinion, and the agreed boundary doctrine but first we need to talk about the survey and the surveyor.

This case seems to be a rare bird. The retracement surveyor fulfilled his professional commitment by delivering a faithful retracement survey that was accepted by both the plaintiff and defendant. The Court recognized the applied retracement methodology as well as the strength of the original 1909 survey and the grant descriptions in between. There was no argument regarding the retracement survey or the original subdivision. Big thumbs up to Monte Seibel who performed the retracement survey in this case. He experienced professional nirvana!

“Upon surveying Lot 57, Seibel discovered that the fence erected by defendants, at the same location as the previous barbed wire fence, was not located on the true boundary between the eastern and western halves of the property. In reaching this conclusion, Seibel verified his survey measurements against those set forth on the 1909 subdivision map, finding no significant discrepancies. Employing what he testified was the standard method for locating a property boundary where there has been a subdivision, Seibel identified the location of the boundary separating the parties’ parcels [9 Cal. 4th 52] by dividing Lot 57 into portions of equal area by means of a line drawn parallel to the outside boundary of the first parcel conveyed, that is, a line drawn parallel to the western edge of the west one-half of Lot 57. Defendants did not dispute Seibel’s methodology in conducting his survey (which Seibel recorded, pursuant to Business and



“The uncontroverted survey performed by Monty Seibel in 1987...was not at variance with either the original subdivision map drawn...or with the undisputed deed descriptions...”

Professions Code section 8762) or its accuracy, and, in fact, stipulated to the admission in evidence of the survey at trial.”

So what did Seibel do that was right?

1. Seibel was intimate with the property. He placed himself on the true boundary of the 1909 survey and identified that the fence was inconsistent with the first and senior parcel conveyed.
2. Seibel testified that he held the local standard of care for locating a boundary within a subdivision.
3. Seibel’s methods respected the senior deed in the chain of title.
4. Seibel recorded his survey as prescribed by law.

5. Seibel produced such an accurate and reliable survey that the defendant stipulated its admission in Court.

Monte Seibel’s survey became a reliable tool for the Court to resolve the matter at hand. Conversely in most of our cases we see that the surveys are part of the question and confusion. I’m not sure if he was just the right guy in the right place, at the right time, or if the planets aligned, or whatever, but he sure did make it look easy!

I’m going to armchair quarterback a few plays behind the offensive line of hindsight. According to the record and my figgerin’ the fence was a minimum of 11 feet from the boundary and directionally skewed away

from the line at a fuzz over 3°. That's not what I'd call a good fit of occupation. Considering that the original subdivision was a well defined 10 acres square, and your average farmhand could rip off 330 feet (half) within a couple feet, I can't make a connection with the fence replicating original evidence of the platted subdivision or either senior/junior deeds. Without any testimony indicating otherwise, that's just a hard pill to swallow. Seibel seemed to recognize the same.

Now let's add a context to the scenario. Seibel was hired because his client found the discrepancy between the fence and the record info. The neighbor was aware of the conflict and had no explanation. So Seibel presumably is in tune with the scene right from the get go and is "en garde" with his effort. He recognized that he was retracing a series of land conveyances rather than slicing up property for future sale.

Seibel's reconstruction of the boundary is a Mona Lisa. He doesn't use some self

derived interpretation of "half" or try to force fit some "equitable" distribution of "record" distances along external lines. Nope, he does exactly what he is supposed to by honoring the senior grant. He holds half of the area and draws a line parallel with the outside boundary of the first parcel conveyed. Remember *Wood v. Mandrilla* from the October 2016 issue of *The American Surveyor*? Well, that case was decided just down the road from here and whether or not Seibel knew it, he followed what the Supreme Court of California laid down nearly a century prior. The meaning of "half" in the Golden State is half of the area. Seibel testifies that this is the standard of care in a subdivision and according to my notes he's 100% spot on! What is the standard of care in your jurisdiction?

I won't dwell on the importance of recording your work. It is a contemporary standard of practice and adopted through regulation in every jurisdiction that I hold license. I

will simply point out that the Court took notice of this. Mandatory recording came to fruition in my jurisdiction in the 1970's and didn't gain steam until the 1980's and 1990's. Perhaps there's an outside context with that era and the Court's notice?

The Court awards Seibel a gold medal with the following statement. "*Plaintiffs' contention that the disputed area belongs to them is premised upon the uncontroverted survey performed by Monty Seibel in 1987, which, as noted, was not at variance with either the original subdivision map drawn in 1909, when Lot 57 was drawn and subdivided, or with the undisputed deed descriptions of the respective parcels, each of which refers to the ownership of one-half of Lot 57.*" It's because of that statement and all of the conditions surrounding this case that I believe Monte Seibel hit a "hole in one" and performed the perfect retracement survey.

I'm extremely sad to say that Monte Seibel lost his fight with cancer just a few months ago. He is of course professionally memorialized and honored in the dockets of the California Supreme Court. My research to contact Monte led me to this wonderful narrative of Monte's life, family, and faith. <https://goo.gl/HPUW6P>

Barbershop Barrister Sarcasm, parody, and humor

The purpose of Decided Guidance is nothing more than providing continuing education to Land Surveyors and related professionals. I'm talking about our personal desire to expand our knowledge rather than buying a 3.5 credit hour certificate of slumber from a software manufacturer. The format itself is a guide to teach folks how to read, research and report. We attach the case reference so that the reader can do just that and form opinions independently. Whether we agree or argue, we are learning from the success and mistakes of our predecessors, each other, and more importantly we create exposure to common law guidance.

It is paramount to remember that I have every advantage of hindsight when writing. I also characterize and perhaps dehumanize the subject surveyors in the best or worst light apparent. This is done to emphasize the magnitude of our professional opinions when offered to the public. I feel this is justifiable mostly because the cases are so old that these folks are long expired and the only picture we see is the Court record itself. We may only see the worst of otherwise fine surveyors captured in a few sentences and the best of a few lousy attorneys catching a windfall of good luck. I honestly can never really tell.

These Surveyors are under an immense amount of stress during these cases and are fighting for their life on the stand. They most likely have not seen the inside of any courtroom let alone understand procedure. I'd say it might approach stress levels of a prisoner of war being interrogated. The Attorneys on the other hand have years of experience and comfort in Court and are trained to be somewhat insensitive.

Decided Guidance is not offered to boost your ego or belittle any particular Surveyor, nor anyone for that matter. Let's be clear about our profession. The Courts do not hand out participation trophies for lousy surveys. Sarcasm, parody, and humor are employed as mental bookmarks to help reinforce the understanding of our unmatriculated judicial role.

Yep, unmatriculated is our big word of the month and here I go. Our most important function in a free society, judicial service, is neglected in the contemporary education system. As stewards of our profession we must fill that void and provide opportunities. Professional development is an individual responsibility that manifests in the person professionally aroused. It is out there for all of those whom seek it.

On that sentiment I walk away amused by my newly coined sarcastic catch phrase "certificate of slumber".



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1939-2017

In the next installment we will see how this Court implemented this perfect retracement survey to examine a boundary dispute born in principle.

Note: A pdf copy of this case is available at <http://www.amerisurv.com/docs/BryantVersusBlevins.docx> ■

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