

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

11/18/09 Transcript of Remanded Hearing with Judge Souder:

Page 2 Judge Souder: All right. I did review the Opinion of the Court of Special Appeals a couple of times and it is my understanding that the case has been remanded because of a dispute of fact regarding the nature and / or legal effect of a conversation between, or that to which Ms. Ann Collins testified and about which Ms. Senez testified regarding the construction of a fence next to or on top of the wall that existed at the time. And where is what I had with it? All right. The Court does find that the testimony of Ann Collins is credible. And in particular the Court finds that Ms. Senez acknowledged the Collins ownership of the disputed area by requesting their permission to build a fence. In other words, I give credit to the testimony of Ann Collins that a request to build the fence took place, and I am rejecting the testimony of Ms. Senez, that she did not request permission. It's my understanding pursuant to the Opinion of the Court of Special Appeals that that conversation having taken place as Ms. Collins recounted would defeat the hostility required for the Adverse Possession Claim made by Ms. Senez. So, the Court will again enter judgment as previous.

Senez: This wasn't a hearing at all. Judge Souder walked in and said in about the first three sentences that, "The Court does find the testimony of Ann Collins more credible".

The fact that it seems to be so confusing to everyone reading it is a direct result of Mr. Carney interchanging fence and wall and the wrong addresses.

Senez: Judge Souder didn't want to hear anything; her mind was made up before she walked into the court room. She had to revise her original trial ruling because she basically gave away my property as an easement to the Collins which isn't based on case law and isn't legal.

The Court of Special Appeals then overruled Judge Souder and told her she was wrong on several issues, she wasn't happy about that. Since she didn't want to reverse her ruling, Judge Souder decided to just say the Collins were more credible. That way she couldn't be challenged again. Judge Souder was trying to save face over her first two rulings.

I never asked this question and it's the dumbest question that I could have ever asked.

- 1- If the Collins came back and said no, I would have to take the fence down.
- 2- The Collins could cross over the fence line and have full access to my yard and my boat ramp.
- 3- I've had Labrador Retrievers for the last 30 years. I had two Labrador Retrievers at the time. I couldn't have people coming into my yard, wandering around whenever they felt like it. The Collins, their family, friends and pets coming over at all times of the day and night. I didn't even know the Collins at that time.

In addition:

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- 1- Collins never said anything to Mr. Myers about the fence being on their property. This is evidenced by the fact that it wasn't in their complaint, interrogatories or Mr. Myers deposition.
- 2- Mr. Covahey and now Judge Ensor never knew about the supposed question, "can the fence follow the wall instead of the property line."
- 3- Mr. Carney never told me about the supposed question.
- 4- Why did the Collins make up so many other accusations if they knew where the property line was and I asked permission?
- 5- If I knew the property line wasn't the wall and it cut thru the boat ramp I probably wouldn't have bought the house. I certainly would have negotiated differently.

Collins filed suit 9/28/04. Trial court 12/08/06 was the first time I heard the Collins say that I asked that question. That's 21 months after they filed suit. This question was something the Collins came up with as they learned more about Adverse Possession!

Mr. Covahey: Your honor, may, may I be heard beyond what's in my argument?

Senez: Mr. Covahey asked to be heard and Judge Souder reluctantly agreed.

Judge Souder: Yes, Yes.

Senez: Mr. Covahey went on to speak for the next 20 to 25 minutes with some interjection by Judge Souder.

Keeping in mind that Judge Souder presided over my case for seven hours and she had a brief from opposing counsel and my counsel, Bruce Covahey and she was still confused. She was confused in trial court and is still confused.

Page 9 Judge Souder: But she, you're saying at the time the conversation took place she's not, she does not have title?

Page 9 Judge Souder was not aware that I built the fence in 2000 before I settled on the property. That at the time I had the conversation I didn't have title.

Trial Transcript Day 1 page 18 & 36 Ann says fence there before I moved in.

Page 9 She does not have title

Page 10 Transcript page 154

Page 10 Judge Souder again says she doesn't know that's a fact on the record. Ann Collins says on page 18 and 36, Steve Collins says this on pages 65 and 66 of the trial transcript. I say it on page 99. The Court of Special Appeals said it on page 12.

Obviously Judge Souder didn't even review the Court of Special Appeals Opinion or Mr. Covahey's brief.

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Page 11 Mr. Covahey: I cannot direct your honor to specific testimony as I stand here, but I believe the testimony was undisputed and Ms. Senez testified the was erected in November of 2000 concurring with the, the date set forth in the answer.

Page 11 Judge Souder: Well at the time the fence is constructed she does have title.

Mr. Covahey: No. She still did not have title.

Judge Souder: No?

Mr. Covahey: at the time the fence was constructed. That was done with Mr. Myers permission to allow her to build in on the grassy area.

Senez: Trial transcript Ann Collins page 18 says & 36 there before I moved in. Steve Collins page 65 & 66 – states the fence was up before she settled. Trial transcript Senez page 99 – I stated that I had the fence built before I settled on the property. The Court of Special Appeals said it on page 12.

Again its obvious Judge Souder didn't review the Court of Special Appeals Opinion or Mr. Covahey's brief.

Page 12 Mr. Covahey: Transcript page 114 if there's any acknowledgement on the part of Ms. Senez that could possibly break the twenty year period it would have been as to building atop of the wall as opposed to adjacent to the wall.

Page 12 Mr. Covahey: The conversation continued. And that's when Mr. Collins told me that half of the boat ramp was his.

Page 15 Judge Souder: Well, if it was hostile as a matter of law I mean, The Court of Appeals, I mean, The Court of Special Appeals could have so held, and they did not.

Covahey: It' doesn't, it's not necessary that someone has to have a proper belief as their property line is based on for example a deed that has a description that turns out to be erroneous. And I'm referring to the case in that, with regard to that is Tamborough v. Miller 203 Maryland 329, 1953.

Senez: Tamburo, 203 Md. 329. The Court Of Appeals followed what it called the "modern trend" and held that "where visible boundaries have existed for the period set forth in the Statue of Limitations, title will vest in the adverse possessor where there is evidence of unequivocal acts of ownership." The Court also held that "the fact that the possession was due to inadvertence, ignorance, or mistake is entirely immaterial." The Collins and I both acted in a manner which indicated we didn't know where the property line was before 2004.

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Page 18 Covahey: Transcript of Steve says, Question: she went ahead and had the fence erected prior to the time that she actually settled and moved into the property? Steve Collins: That's correct.

Trial transcript Steve Collins page 65 & 66

Page 19 Thompson: So, I would urge the Court that her testimony on page 114 that my colleague just referred to where she talks about building the fence up to the wall or on top of the wall, that's all a red herring your honor because she understood where the property line was. I really don't think there was any doubt about that. So, her testimony here on page 114 notwithstanding I will urge you to recall that the evidence adduced at trial was that she understood or had been shown where the property line was.

Page 20 Judge Souder: All right. Mr. Meyers testified that he provided the property survey which showed where the line was.

Thompson, that's correct your honor, showed it to Ms. Senez.

Page 21 Judge Souder: No. He said he provided it to her in his deposition.

Page 22 Judge Souder: He didn't say he brought it to her attention. He said, I gave it to her with the papers is my recollection

Senez: Mr. Myers did not say he gave it to me with the papers! Does any one read?

Page 22 Judge Souder: Yeah. At page, I have a note. Page 62 that he got the survey and Myers put the survey in the sales materials and showed to prospective buyers. Maybe its page 66 or 68

Senez: Mr. Myers never said he showed me a survey. When asked in the deposition Mr. Meyers turned and asked me: Did I ever point that out to you. The house wasn't on the market when I had the realtor approach Mr. Myers.

The Court of Special Appeal opinion supports this on page #17 say, Mr. Myers deposition does not contain a specific assertion that he showed the survey to appellant in particular.

Page 20 Judge Souder: says that Mr. Myers provided the property survey which showed where the line was.

Thompson : says, and that he showed it to Ms Senez.

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Judge Souder comments that it's hard to judge Mr. Myers credibility because all she had was his deposition. Judge Souder certainly couldn't tell the Collins were lying and they were right in front of her.

Senez: The Court of Special Appeals page 17 says; "Mr. Myers deposition does not contain a specific assertion that he showed the survey to appellant in particular."

Judge Souder: says, and it's undisputed testimony that he did provide the actual property survey showing the property line to be where it was on Ms. Senez's side of the wall.

Senez: This is not true! The only information I received was from the HAS Realty company and they do not and have never had a survey in their files!

Mr. Covahey: page 21 says but the testimony isn't really flat out that Mr. Myers said, I provided the survey to Ms. Senez.

Senez: I explained to Mr. Carney the day of the deposition and again on 10/30/06 and 12/4/06 that the house wasn't on the market when I had the realtor approach Mr. Myers. I never saw a survey and had witnesses to verify I never saw a survey.

The dialogue from Mr. Myers deposition on the survey is on pages 32 and 33.

Mr. Carney asks Mr. Myers, When you were made aware of this situation by your surveyor, what if anything did you do at that time?

Mr. Myers responded, "Basically, I put it in the sales thing.

Mr. Carney: Tell me what you mean.

Mr. Myers: Basically I showed it to the prospective buyer.

Mr. Carney: As being---Let me be clear for the record what did you show to your prospective buyers?

Mr. Myers: the survey.

Mr. Carney: and specifically, you pointed out to the prospective buyers that the wall was about a foot inside the property line of 339?

Mr. Meyers: Did I ever point that out to you. (Mr. Myers was asking me!)

Ms. Senez: (No response)

Mr. Lanzi: Objection

Page 25 Judge Souder says, "All right. Well, I issued my ruling and then heard argument. So, (inaudible) already taken care of the argument, of the ruling.

Senez: The ruling was already issued!