

Summary of SC89936, *Charles Robert Watson and Carolyn Watson v. Robert K. Mense and Carolyn K. Mense*

Appeal from the Macon County circuit court, Judge Gary Wallace
Opinion issued Nov. 17, 2009

Attorneys: The Menses were represented by R. Timothy Bickhaus of the Law Office of R. Timothy Bickhaus in Macon, (660) 385-3854; and the Watsons were represented by John W. Briscoe and Andrew W. Briscoe of Briscoe, Rodenbaugh & Brannon of New London, (573) 985-3411.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Owners of adjacent parcels of farmland sued each other over ownership of a disputed area between a fence and hedgerow line and a survey line and over a purported easement crossing ownership lines. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirms the trial court's decision in part, reverses it in part and remands (sends back) the case for further consideration. The trial court properly determined one family had acquired ownership of the disputed land through adverse possession and had acquired an easement through prescription (use), and it properly determined the amount of damages for the other family trespassing on the disputed land by tearing down posts. The trial court erred, however, in calculating the damages for ejectment (the non-owners' use of the owners' land) and in describing the location of the easement and the new border between the properties.

Facts: Charles and Carolyn Watson own two 40-acre parcels of farmland in Macon County connected at a single diagonal point, connected by a path and a gate. The land has been in the Watsons' family since 1958, when Charles Watson's mother, Jane Boulton, farmed various crops and grazed cattle on the land. She often moved cattle, trucks and farming combines between the two parcels using the path through the corner intersection. Abutting the Watsons' parcels to the south and west is an 80-acre parcel originally owned by Frank Bush and now owned by Robert and Carolyn Mense. Bush and Boulton recognized a hedgerow and a fence as creating the border between their properties. During the 1980s, Bush bulldozed part of the hedgerow and fence, leaving an elevated "hump" of ground, but he never crossed the hump or the remaining fence. Bush later sold his land, and in 2006, the Menses bought it. Robert Mense, believing the border was eight feet north of the hump, planted corn up to the assumed border. Charles Watson erected a post on the eastern side of the hump, lined up with the remaining fence line, to mark where he believed the border should be. Mense used his tractor to tear out the post, parked the tractor in front of the diagonal gate between the two Watson parcels and placed a sign there threatening to arrest anyone who moved the tractor and offering to pay half the cost of a survey. Watson later tried to replace the post, and Mense again

removed it. In the summer of 2006, a surveyor the Menses hired determined that the true border was eight feet north of the fence, and the next spring, Mense planted soybeans up to the survey line.

The Watsons subsequently sued the Menses, seeking damages for ejectment and trespass, quiet title, a prescriptive easement over the diagonal path between their two parcels, and an order prohibiting the Menses from interfering with their easement. The Menses counterclaimed, seeking damages for ejectment and trespass. Before trial, the Menses consented to judgment quieting title to the record land descriptions but maintained their contest over the disputed area north of the hedgerow and hump. The trial court granted judgment in the Watsons' favor, finding they had established claim to the disputed area through adverse possession and awarding \$75 in damages for removal of the two posts and \$90 in damages as the value of the soybeans wrongly planted on the Watsons' parcel. The court also determined there was a prescriptive easement between the two parcels and ordered the Menses not to interfere with that easement. The Menses appeal.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) The trial court properly found the Watsons acquired title to the disputed area north of the hedgerow and hump through adverse possession. To acquire title in this way, possession must be hostile (under a claim of right), actual, open and notorious, exclusive, and continuous for at least 10 years before the claim is brought. The Menses challenge only whether the Watsons' possession of the disputed area was hostile or actual. There need not be an actual dispute between the Watsons' and Menses' predecessors in title for the possession to be hostile; the element is satisfied even if the possessor only mistakenly believes he or she owns the land and then occupies the land in question. Here, the trial court's finding that the Watsons believed they owned the eight feet north of the fence line and hump is sufficient. There also was substantial evidence supporting the trial court's finding as to actual possession. The evidence showed that the Watson family had been farming, cultivating and using as pasture land the disputed area since 1958; that the Watsons and Boulton had farmed up to the fence line for a continuous 45-year period; and that the Watsons' and Menses' predecessors in title respected the border even after part of the fence and hedgerow were removed. This evidence was supported by 45 years of aerial survey photos.

(a) There is substantial evidence supporting the trial court's award of damages for trespass. The trial court found credible Charles Watson's testimony that the two posts Mense removed were worth \$75.

(b) The trial court erred in awarding the Watsons \$90 in damages for ejectment for the value of the soybeans the Menses planted in the disputed area. When crops are planted wrongfully, however, the proper measure of damages in ejectment is not the value of the crops but rather the fair rental value of the land for the time the

owner was deprived of possession. While the value of the soybeans is some evidence from which fair rental value may be inferred, it does not take into account the Menses' expenses, the value of their labor, or any value for the risk the Menses undertook in raising and harvesting the soybeans. Judgment on this point is reversed; on remand, the trial court must determine damages in accordance with fair rental value.

(2) The Menses do not challenge whether the Watsons have acquired an easement by prescription, and substantial evidence supports the trial court's determination that this easement is 24 feet wide and that, by parking a tractor in front of the gate, the Menses interfered with the Watsons' use of the easement.

(3) The trial court did not err in omitting specific uses from its description of the easement. Because the character and extent of a prescriptive easement is fixed by the use under which it is gained, the trial court's findings that the Watson family had moved cattle, combines and other farming equipment between the two parcels necessarily defines the acceptable uses of the easement. If the Watsons unreasonably exploited the easement beyond these uses, the Menses could sue to enjoin the behavior.

(4) The trial court erred in failing to specify that only half the width of the prescriptive easement burdened the Menses' land and in designating the "fence row" as the actual border between the Watsons' and Menses' properties. As to the easement, the testimony at trial indicated the easement burdened the Menses' property and that of a non-party equally. On remand, the trial court carefully should describe the burden of each owner and shall specify the portion of the easement that burdens the Menses' property. As to the description of the property border, although the trial court's judgment establishing the border as the "fence line" is affirmed, mere reference to a fence – without further description of that fence's actual location – fails to describe the land adjudicated with reasonable certainty. On remand, the trial court shall take the steps necessary to describe, by metes and bounds, the location of the fence line in conformity with its previous judgment.