

Date: 20011127  
Docket: S.AT. No. 2482

IN THE SUPREME COURT OF NOVA SCOTIA  
[Cite as Grover v. Hayne, 2001 NSSC 172]

Between:

**Douglas Grover** and **Dorothy Grover**, both of Country  
Harbour Cross Roads, Guysborough County, Nova  
Scotia;

Plaintiffs and Defendants by Counterclaim

-and-

**David Hayne** and **Noreen Hayne**, both of Country  
Harbour Cross Roads, Guysborough County, Nova  
Scotia;

Defendants and Plaintiffs by Counterclaim

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DECISION

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**Heard Before:** The Honourable Justice Douglas L. MacLellan

**Place Heard:** Antigonish, Nova Scotia

**Date Heard:** September 5, 6, 10, 2001

**Decision:** November 27, 2001      **Written Release:** November 27, 2001

**Counsel:** William F. Meehan, Esq., for the plaintiffs and defendants by  
counterclaim  
Shawn F. MacLaughlin, Esq., for the defendants and plaintiffs  
by counterclaim

**MacLellan, J. :**

- [1] This action involves a boundary dispute between the parties in regard to lands located at Country Harbour Cross Roads, Guysborough County, Nova Scotia.

**FACTS**

- [2] On October 14th, 1970, Douglas Grover, one of the plaintiffs purchased a piece of property from Roy and Elva Mason. The description of the property was as follows:

All that lot, piece or parcel of land situate, lying and being at Country Harbour Cross Roads, in the County of Guysborough, and Province of Nova Scotia, bounded and described as follows; Beginning at the point where the southern boundary line of lands of Stanley Mason and George Mason intersects the base line of lands at Country Harbour; thence in a westerly direction following the said southern boundary line of lands of Stanley Mason and George Mason to an established boundary line; thence southerly and parallel with the aforesaid base line to the northern boundary line of lands of Douglas Grover; thence in an easterly direction following the northern boundary line of lands of Douglas Grover to the base line aforesaid; thence northwardly following the said base line to the place of beginning, containing one hundred thirty-five (135) acres, more or less, and being a part of the land conveyed to the said Roy Warner Mason by Margaret Matilda Mason by Deed dated the seventh day of June, A.D., 1965, and recorded at the office of the Registrar of Deeds at Guysborough, N.S., in Book No. 65, page 117;

- [3] The issue in this trial is a determination of where is located the western or “established boundary line” as described in the Deed. The other three boundary lines of Mr. Grover’s property are not in dispute.
- [4] It should be noted that the description used in this Deed and other Deeds involved in this action all indicate that the Country Harbour River is on the western side of the lands in dispute. A sketch prepared by Nova Scotia Land Surveyor Clive MacKeen locates the Country Harbour River on the southern side of the lands in dispute.
- [5] For purposes of clarity, I intend to follow the descriptions as they are set out in the various Deeds and assume for purposes of this action that the Country Harbour River is in fact on the western side of the land in dispute.
- [6] In 1970, Douglas Grover owned 200 acres of property adjacent to the property purchased from the Masons. It was located to the south of Mr. Mason’s property.
- [7] The Mason property and the property owned by Mr. Grover were originally two Crown Grants which ran east and west from the Country Harbour River to the rear base line. The Roy Mason property in 1970 contained 190 acres, more or

- less, and would be about 700 feet wide at the river. It maintained that width back to the base line. What Mr. Grover purchased was basically the back portion of the Mason original Crown Grant.
- [8] Mr. Grover's evidence is that he knew where the western boundary line of the property he was purchasing was located, because it was a blazed line running across the property starting from a square post located on his northern boundary line and continuing to the northern boundary line of the Mason property.
- [9] The location of this blazed line is not in dispute as it has been conferred by a sketch done of the property (Exhibit 2) by Clive MacKeen, a Nova Scotia Land Surveyor.
- [10] The defendants David and Noreen Hayne purchased the western portion of the Mason property from Elva Mason in 1984. Roy Mason had died in 1979.
- [11] The defendants' Deed provided that the eastern boundary of their property would be Mr. Grover's western boundary.
- [12] Douglas Grover is now 91 years old. He testified that in October 1970 he purchased the land from Roy and Elva Mason. He was, at that time, living on lands adjacent and to the south of lands of Roy Mason. His evidence is that he knew where the "established boundary line" was located because it was a blazed line and that the day following the purchase he walked that line. He said that since 1970 he has used all the land east of that established boundary line as his own. He said he trapped animals on the land, cut Christmas trees on the land, and arranged in 1993 to have Seward Grover cut logs and pulp on the land in dispute. He said he built a road through the lands in dispute so that he could access the back of the property.
- [13] He said that neither Roy or Elva Mason ever objected to his use of the land to the east of the blazed line which he considered to be the established boundary line. Roy Mason died in 1979, and in 1984, his widow, Elva Mason, sold the lands to the west of the blazed line to the defendants David and Noreen Hayne. He said that from 1984 until 1999, Mr. Hayne did not complain about the location of the boundary line between the two properties.
- [14] Mr. Grover said that prior to the purchase of the land from Roy Mason he had obtained permission from Mr. Mason to build a road through the disputed area so that he could access the back of his property. He said that when he purchased the land from Mr. Mason in 1970, he intended to purchase the area where this road was located. That road, as shown in the sketch plan, originates on Mr. Grover's property and extends over the lands in dispute.
- [15] Mr. Grover said that following the purchase from Roy Mason he maintained the blazed line by re-cutting the blazes on the trees along the line.

- [16] Mr. Grover said he never saw Mr. Hayne or his wife on the lands in dispute doing anything to indicate that they owned the land. He disputed the suggestion that they cut Christmas trees on the land. He said that David Hayne, prior to 1999, actually asked his permission to use the road over the disputed lands to transport pulp being cut on other lands. Mr. Grover said that Mr. Hayne cut trees on his land to the west of the blazed land, but never went over the blazed line. He also denied in rebuttal evidence that he ever discussed with David Hayne his right to continue to use the road over the disputed land if Mr. Hayne purchased it from Mrs. Mason.
- [17] John Lewis Hudson testified that he lived next door to Mr. Grover. He said that he knew Mr. Roy Mason in 1970 and that he was aware that Roy was thinking of selling some of his land to the Department of Lands and Forests. He said that Roy Mason was intending to sell all his land east of the highway. At that time Mr. Mason's house was on the western side of the highway. Since then, a new highway was constructed to the west of where Mr. Mason used to live.
- [18] Mr. Hudson said that he told Mr. Mason that he should keep some land on the eastern side of the highway because his well was located there. He said he suggested that he keep about 100 feet of property.
- [19] William Hodgson testified that in 1982-83 he cut Christmas trees for Douglas Grover on the lands in dispute.
- [20] Kenny Langley testified that he is a pulp contractor and that he worked for Douglas Grover on the lands in dispute.
- [21] John Joseph Delorey is a Crown Land Surveyor working for the Department of Natural Resources. He produced into evidence Exhibit No. 3 which he explained he retrieved from the files of the Department of Natural Resources, formerly the Department of Lands and Forests. This document is dated September 4th, 1970 and is a cruise tally sheet used by the Department to estimate the amount of lumber on a piece of property. It shows Roy Mason's land at Country Harbour. It shows the land in question as extending to the highway as it existed at that time. The plan has, what appears to be, an added pencil line in the approximate area of the blazed line. It appears this line was added after the plan was prepared.
- [22] Clive MacKeen is a land surveyor. He testified that he did a sketch of the lands in dispute. He said he also identified blazes on trees on what has been called the blazed line being the boundary line proposed by Mr. Grover. He said that he was able to age the blazes on the trees and that they were of various ages

- including up to 29 years. He said his estimates of the ages of the blazes would be within one or two years of when they were actually made.
- [23] Douglas Hayne testified that he purchased land from Elva Mason, widow of Roy Mason, in 1984. His Deed indicated that he was getting 55 acres, more or less, and exempted three small lots already sold by Mrs. Mason.
- [24] Mr. Hayne testified that he was familiar with the land in dispute and that in the late 1960's the land was more pasture land and that the boundary line he purports to be the proper one was a pasture fence to the east of the blazed line advanced by Mr. Grover. He said that when he purchased it in 1984, he assumed that he was getting to that old fence as his eastern boundary and not the blazed line as proposed by Mr. Grover.
- [25] He said that between 1984 and 1999 he did not raise with the plaintiff the issue of the boundary line because he had other family things to worry about.
- [26] Mr. Hayne said that Mr. Grover told him prior to his purchase that he, (Grover), owned down to the fence. He said he understood that to be the pasture fence he earlier described.
- [27] Mr. Hayne said that he used the land in dispute for hunting and that he cut small amounts of wood off it including Christmas trees. He said he intended to retain lumber on that property for later use.
- [28] He said that in 1993 he was aware that Seward Grover was cutting on the disputed property. He said at that time he could not afford to challenge Mr. Grover about his ownership of the property and therefore he did nothing until 1999. He said that Mr. Grover also arranged cutting on the disputed line in 1998. In 1999, when Kenneth Langley started cutting he approached him to stop. That incident resulted in this court action.
- [29] Mr. Hayne said that in 1984 Mr. Grover approached him indicating that he was concerned that if he bought the Mason land that he could continue to use the road over it. He said he told him that would be no problem.

### **ISSUE**

- [30] The central issue in this case is the location of the boundary line between the properties owned by the parties and purchased by both of them from Roy and Elva Mason.
- [31] The second issue is whether if the boundary line is as alleged by the defendants, the plaintiffs have established title to the lands in dispute based on exclusive possession.

### **FINDING**

[32] I have no difficulty finding here that the proper boundary line is the one advanced by the plaintiffs, that is, the blazed line as found by the land surveyor.

[33] I conclude this for the following reasons:

- (1) I accept the evidence of Douglas Grover that he started using the lands east of the blazed line immediately after he purchased it from Roy Mason in 1970 and therefore I conclude that Roy Mason was aware of his use and accepted it as proper. Roy Mason was the best person to know where the established boundary line was located. He obviously instructed his solicitor to use that phrase in the Deed. He would be best able to object if Mr. Grover was encroaching on his land after the Deed was signed. There is no evidence that Roy Mason objected to Mr. Grover's use of the land in dispute.
- (2) I accept the evidence of John Lewis Hudson that he discussed with Roy Mason the fact that he should retain for himself some land east of the highway because his well was located there. I find that Exhibit No. 3 corroborates Mr. Hudson's evidence that Roy Mason intended initially to sell the land to the Department of Lands and Forests and that he initially intended to sell all of the land east of the highway. I believe and conclude that the pencil mark added to Exhibit No. 3 represented his decision to request from Lands and Forests that he retain a portion of land east of the highway. I believe following that decision that Lands and Forests blazed a line at the approximate location of the pencil mark. I find support for that based on the evidence of Mr. MacKeen who aged one blazed mark at 29 years.

I believe that following the establishment of the blazed line by Lands and Forests that Mr. Mason decided to sell the land to Mr. Grover and used the description "an established boundary line" in the Deed.

- (3) I conclude that in 1970 there was no other established boundary line on Mr. Mason's property except the blazed line. I reject the evidence of Mr. Hayne when he testified that Mr. Grover told him that he bought the property to the fence. I believe the fence was a pasture fence and in no way would be referred to by Mr. Mason as an established boundary line. I do that because I believe people would not refer to a pasture fence which simply encloses a pasture as a boundary line. However, if one has just negotiated with Lands and Forests for the sale of lands and they have blazed a line for purposes of establishing a

boundary line, it would be quite natural to refer to that new line as an established boundary line.

- (4) I find it unconvincing that Mr. Hayne would be aware of trespassing and removal of lumber from his land and do nothing about it, not even a telephone call to the alleged trespasser. I believe Mr. Hayne did nothing about the cutting of lumber on the disputed line by Seward Grover and others after 1984 because he considered the cutting to be on Mr. Grover's land. Only in 1999 did he object when he felt after the survey sketch that he could establish a claim to the land in dispute.
- [34] The plaintiffs in the alternative have submitted that if the Court determines that the boundary line advanced by the defendants was the intended boundary line when the Deed was prepared in 1997 that they have a claim to the disputed line based on adverse possession.
- [35] In light of my finding about the intention of the parties at the time the Deed to Mr. Grover was prepared in 1970, it is not really necessary to decide this case based on adverse possession. However, I would indicate that I am satisfied that the plaintiffs have established adverse possession to the lands in dispute for the period from 1970 to the present.

### **CONCLUSION**

- [36] The plaintiffs claim is allowed and an order will issue indicating that the boundary line between the properties of the plaintiffs and the defendants is the blazed line as indicated on the survey sketch of the former Roy and Elva Mason property at Cross Roads Country Harbour, Guysborough County, Nova Scotia.
- [37] The plaintiff will have their costs of this action and if the parties cannot agree on an appropriate amount of costs, I will hear from counsel.

J.