

A
Summary
of
IVALIS V. HARDING
496 N.W.2d 690, 173 Wis.2d 751 (Wis. 1993)
by
Knud E. Hermansen

Knud is a licensed professional land surveyor, professional engineer, and attorney at law. He teaches at the University of Maine in the surveying engineering technology program and has a consulting practice specializing in boundary disputes, title, land development, liability, and easements. <http://www.umaine.edu/set/svt/articles/>

Note: The principles in this case may not apply to every state.

This case involved an action to quiet title based on adverse possession that arose because of a negligent survey. In 1915 a county surveyor erroneously located a parcel of land in the wrong government lot. The monuments set by the county surveyor were used by subsequent survey practitioners for other surveys. In 1971 a subsequent surveyor relying in part on the county surveyor's monuments performed a retracement survey before the sale of a property. The title to the lot had to be based on adverse possession. The lot owner sought damages from the subsequent surveyor for the cost of asserting their claim and quieting their title. The trial court allowed adverse possession and found the subsequent surveyor liable for damages. The Wisconsin Supreme Court affirmed that adverse possession had ripened into title and that damages against the subsequent surveyor were proper.

The case dealt with several important points that are important to practitioners.

1. While the erroneous location was caused by the county surveyor in 1915, the subsequent surveyor may be held liable for all damages since the subsequent surveyor perpetuated the error.
2. When a practitioner provides services for a client knowing and intending that they be used by others (i.e., subsequent owners), the practitioner may be held liable in tort to the others.
3. In general, costs and expenses of litigation, other than the usual and ordinary court costs, are not recoverable from the other party barring a statute stating the contrary. However, under Wisconsin law a losing party may recover costs where: 1) the wrongful acts of the party have involved the opposing party in litigation with others, or 2) placed the opposing party in such relation with others as to make it necessary to incur expense to protect their interest. Should one of these two events occur the costs and expenses of litigation are treated as damages flowing from the negligent act.
4. In his defense, the subsequent surveyor was allowed to show that the county surveyor's monuments were relied upon by other surveyors, including the experts testifying on the other side. However, the Court concluded that this situation does not mitigate the negligence of the subsequent surveyor and can not stand as a defense. Rather, the acceptance of the erroneous county surveyor's monuments by the other experts goes to the credibility of the other experts' testimony and may in fact be evidence toward their own negligence.

From this case, the practitioner should consider the following:

1. It is not a defense and the practitioner should not take great comfort from a situation where they can and do rely on another practitioner's work even though the work: 1) is relied upon by other competent practitioners in similar situations and 2) has remained uncontested for a long time.
2. The practitioner should always consider the risk and damages they face for negligence not only from their client but also from subsequent reliant parties. For example, the practitioner

who has blazed the approximate boundary in contemplation of logging may face considerable damages because homes are built in justifiable reliance on the blazes.

3. Some practitioners have argued that a surveyor is responsible for showing the client their ownership lines and not necessarily differentiate between possession and record lines. In effect, the surveyor may rely on adverse possession and monument these lines to fix the client's ownership boundary. They go on to state that where adverse possession has ripened into title, the surveyor should not confuse the client and raise dead issues by showing where the ownership, possession, and record boundaries may differ. This case is contrary to that argument. Here a party was awarded ownership based on adverse possession. The client was awarded everything the surveyor said the client should own. Nevertheless, the surveyor was held liable for the costs of making the title marketable. As a consequence the best practice is for a practitioner to locate the correct record boundary and, when present, show other record boundaries and possession boundaries that would call into question the title or marketability of the client's title.