

SUMMARY OF LAWLER AND COMPANY V. HARE

587 So.2d 387 (Ala.Civ.App. 1991)

by

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Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

The case involves a dispute over payment for surveying services. A landowner refused to pay a surveying firm for services contending the survey was not performed, directed by, supervised by, or under the responsible charge of a licensed surveyor. During the trial evidence was introduced to show that the licensed surveyor never visited the property and was not even in Alabama at the time of the survey. The survey was conducted by an employee of the licensed surveyor. The employee maintained and operated a branch office some distance from the main office where the licensed surveyor worked. The licensed surveyor testified that he did review the field notes, signed, and certified the plat. The court noted that under Alabama's registration laws a non registered employee of a registered land surveyor may engage in such work if it "is done under the responsibility and supervision" of the registered surveyor. The court went on to find that the failure of the surveyor to visit the site or take part in the field survey does not provide the appropriate direction and responsible supervision required by the Alabama statute. As a result, the client is not obligated to pay for the survey. In review, the appellate court affirmed the trial court's finding. There was a dissenting opinion. The dissenting opinion stated that "out of a simple fee dispute case, the trial court's judgment, if it stands, may very well establish a new standard that could stifle a professional's effective use of auxiliary personnel. Indeed, as the same pertains to licensed land surveyors, it appears to suggest that the licensee be on one end of the chain." (p. 389)

While the decision will probably not have the reach suggested by the dissenting opinion, it does have ramifications for a surveying firm with branch offices. It places restrictions on branch offices managed by unlicensed persons. While one licensee can own two or more branches under management of a non-licensed person, direct and responsible charge requires the licensed surveyor visit the survey site and take more interest than a review of the notes and information provided by a non-licensed person. While many surveyors are appalled at the decision, in retrospect few other professions would endorse such professional behavior that the licensed surveyor insisted was proper in this case. Some professions go so far as to view similar situations as unlicensed practice. (Would licensed surveyors want to visit a doctor's office and be examined by a non-licensed person who dispenses medical advice after consulting with the physician by phone while being charged the going medical rates?) For the licensed practitioner, the case does suggest that direct and responsible charge requires the surveyor at least visit the survey site before arriving at a professional opinion and expecting payment for services.

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