

SUMMARY OF MARKLEY V. SEMLE

713 A.2d 945, 1998 ME 145

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.

Landowners involved in a boundary dispute sought a declaratory judgment on the location of their common boundary. The plaintiff presented over two days of testimony by their surveyor. The defendant did not offer any testimony by a surveyor. Instead they attacked the testimony of the plaintiff's surveyor and creating doubt as to its credibility. The court declined to find for the plaintiff. As a consequence, the court failed to recognize the location of the boundary advanced by the plaintiff. However, since the defendant failed to present evidence for a location, the court could not fix an another location. The result is that after several years of litigation and thousands of dollars in costs, the parties still do not know where the common boundary is located but they do know it is not where the plaintiff stated it was.

The ramifications of this case are several fold.

1. The plaintiff has the burden of proof and must present credible and clear evidence in support of their arguments.
2. The surveyor must be prepared for the cross-examination. A good attorney will do a credible job of portraying the weaknesses in the surveyor's opinion.
3. While the plaintiff has the burden of proof, if the defendant fails to provide evidence of an alternate location, the court may not fix a location in a declaratory judgement. This may leave the parties in a legal limbo.

This is a case that does little to advance the layperson's faith in the court system. The justices and the attorneys should be chastised. What is a legally defensible decision is not a rational decision. The parties who spent several thousand dollars and years in preparation for the litigation got nothing. While it may be true that the surveyor's testimony was not without doubt – most testimony is subject to attack given the lack of evidence surrounding old boundaries and the stress imposed on the witness during cross examination. All courts have the power to order

further fact-finding. The Maine court has the power to appoint a surveyor - that should have been done in this situation.