

SUMMARY OF MILLIGAN V. MILLIGAN

624 A.2d 474 (Me. 1993)

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.

This case was a quiet title action founded upon a boundary dispute. The boundary dispute arose out of conveyances from a common grantor, a relative to the parties. One or both deeds contained a latent ambiguity. In at least one case, the description for one tract appeared to omit a crucial course. In another instance, a crucial monument cited in one deed was not discovered. Each party hired a surveyor who arrived at conflicting opinions. When the decision was appealed to the Law Court, two justices filed a dissenting opinion.

In arriving at their majority opinion, the Law Court reviewed several common principles of law that are applied to boundary disputes:

1. When the language of a deed is susceptible of more than one meaning, the trial court must determine the grantor's intent from contemporaneous circumstances and from standard rules of construction
2. According to the rules of construction as codified in Maine, boundaries are controlled by, in descending priority, monuments, courses, distances, and quantity unless this produces a result that is absurd or manifestly inconsistent with the party's intentions.
3. The physical disappearance of a monument does not terminate its status as a boundary marker if its former location can be ascertained through extrinsic evidence.

Applying these principles to practice, the land surveyor should:

1. be familiar with the standard rules of construction which hold that monuments are superior to courses which are superior to distances, which are superior to quantity unless this priority produces absurd or manifestly inconsistent results;
2. apply the rules of construction only when the intent is not clear from the operative conveyance or the contemporaneous circumstances; and
3. attempt to locate the former position of the monument by using extrinsic evidence before using courses, distances, and quantity to fix the boundaries.