

SUMMARY OF MONTANA V. BLOUNT

232 Ga.App. 782, 98 FCDR 2400 (1998)

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 dealt with the question of ownership and ownership rights within the roads and paper streets of a subdivision. A subdivision plan was prepared and recorded. One or more lots were sold along a paper street. A narrow gravel road was constructed within the paper street. At a later time, the subdivider began removing trees from within the boundaries of the paper street easement to expand the width of the gravel road. The adjoining lot owner objected to the subdivider removing the trees. The court determined that the subdivider had the right to remove the trees within the easement if reasonably necessary for the use of the road. (The court failed to address the fact that in most cases, the easement holder has the right to remove the trees but the trees belong to the abutting lot owner.)

The court discussed several common law principles that could be important to surveyors.

1. Where a subdivider creates a subdivision plat, shows lots and streets, and sells one or more lots with reference to the plan, the owner of the lots will have an express easement in the paper streets. This easement is appurtenant to all the lots in the subdivision. This easement is separate and distinct from the public easement that may arise in the same streets.
2. The fee-simple title of abutting lots extend to the center of the streets even if the deed does not expressly include this area. (Some states by statute divest the abutting owner of the fee in the street and vest the fee in the municipality upon acceptance of dedication by the public.)
3. Barring express words in the grant, those rights incident to the fair and full enjoyment of the easement pass to the appurtenant property.
4. Where a width is shown there is a legal but rebuttable presumption that reasonable and necessary use, fair use, or

reasonable enjoyment of the easement requires full use of street.

With these principles in mind, surveyors are cautioned to consider the following when providing services involving a subdivision:

1. In preparing the subdivision plan, the side lot lines should be shown extending into the center of the paper streets to avoid disputes regarding the direction of the side boundaries and extent of ownership in the street easement.
2. A surveyor that has agreed to survey a subdivision lot and show possible easements and encroachments would be obligated to examine all the streets in the subdivision to discover encroachments on any streets since all the streets in the subdivision are easements appurtenant to the lot.
3. Where the municipality has vacated its interest in a subdivision street, a private easement will often continue to exist. Consequently, abutting landowners take a risk in placing improvements in a former public street that has been vacated or discontinued by the municipality.