

SUMMARY OF REASOR V. PUTNAM COUNTY

__ .2d ___, (Ind.App.5 Dist. 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 discussed may not apply to all states. The reader is encouraged to research the law in their own state.

This case involves surveyor liability and ethics. Between the late 1960's to 1970, a developer conveyed eight lots immediately north of Reasor Hills Drive to eight different buyers. The developer conveyed the lots from west to east. Rather than preparing a plat of the entire property, the developer had the surveyor perform surveys as each lot was sold. In addition, the surveyor prepared the legal descriptions for all the conveyances with the exception of the first lot which was surveyed by another surveyor. The lots were sold without benefit of corner monuments with the intent to rely on acreage. Before selling the sixth lot from the west, the developer told the surveyor to provide for a 50-foot strip of property between the fifth and sixth lots. However when the developer was selling the lot, the developer and buyer set at least one stake only 31 feet from the corner of lot 5. With knowledge of the width staked by the developer, the surveyor instructed his employees to prepare a legal description for Lot 6 that was parallel to, and fifty feet away from the east line of lot 5. As a result, the description was inconsistent with the property actually being occupied by the owner of lot 6. The descriptions of the two subsequent lots sold, east of the easement, were prepared as if there was a fifty-foot easement. After the developer had passed away, the developer's widow decided to build a fence on the southern border of the remaining property and again employed the same surveyor to stake a fence on the property line between her property and the conveyed lots. The surveyor did not rely on the legal descriptions in the deeds. Instead, he staked the fenceline according to markers found in the field, including evidence of an old fence.

Sometime after the new fence had been completed, the widow was involved in a dispute with the County over damages caused by county road crews. She hired a different surveyor who surveyed the entire original parcel. The second surveyor determined that there was considerable difference between the lots as laid out on the ground and the description. The second surveyor also determined that the fenceline was staked north of the boundary

indicated by the legal descriptions prepared by the first surveyor. As a consequence of the differences and the resulting problems caused by them, the widow sought an explanation from the first surveyor. After hearing the problems, the first surveyor, who was also the county surveyor, consulted with his attorney, who was also the county solicitor. While engaged in negotiations with the widow, the surveyor and his attorney approached the County Commissioners and recommended the County bring a reformation action against the widow. The commissioners approved the lawsuit against the widow. After the lawsuit was commenced, the widow sued the surveyor in a third party complaint for negligence, breach of contract, and for bad faith and breach of his ethical duty as a surveyor for discussing the dispute with others.

At trial, the court noted that "[h]onest surveyors may legitimately differ on starting points and bearing systems." (p. 6) Nevertheless the surveyor was found responsible for some of the problems and was assessed damages. An appeal followed the trial court's decision. The appellate court was not persuaded by the surveyor's arguments. The appellate court found sufficient evidence to determine the surveyor was negligent in performing his professional duties. Moreover, the court found the surveyor negligence for fraud.

Several points were made that surveyors should consider.

1. While a profession's code of ethics does not provide a cause of action for a client to hold a surveyor liable, it does bear on the surveyor's credibility, weight, and evidence. (e.g., It may be used to show a duty.) Violation of a code of ethics while not providing a civil action may subject the practitioner to professional discipline by the licensing board.
2. Perhaps the most important lesson to be learned from the case is to understand what level of services must be provided as a minimum to the client. This case shows a surveyor that was apparently willing to reduce his level of services to the point where the surveyor was no longer able to provide effective professional oversight and judgment or effectively communicate a professional opinion to reliant parties. As a result, no overall plans were prepared, the client and buyer set the monuments rather than the surveyor, and the surveyor relied upon possession lines rather than his own descriptions. This case shows that a professional should know where services can be tailored to a client's needs and where the surveyor must not forego minimum standards in order to protect reliant parties.

