

May 09, 2010

State of Oregon
Water Resources Department
725 Summer Street N.E. Suite A
Salem, OR 97301-1266

RECEIVED
MAY 14 2010
WATER RESOURCES DEPT
SALEM, OREGON

RE: Response to public comment for Application #R-87574

To Whom It May Concern:

Thank you for the opportunity to respond to public comment issued by James Michael Bunch and Jennifer J. Bunch.

In Response to Paragraph #2:

All construction of pond, including excavation, fill and culverts are on My property. A portion of my property is still in court proceedings. In 2009 Judge Phillip Nelson, of Clatsop County Courts, found in my favor, that this "Property" is mine. The Bunch's asked the courts for a retrial, but their request was denied. After being denied a retrial, the Bunch's filed with the court of appeals, case #A140319.

In Response to Paragraph #4:

Surface water has always backed up on the Bunch's property. The over flow of water from my pond is at the same elevation and place that it has always been, which can be attested by Bill Hughs excavation, whom did the pond work for me. Also, the Department of Fish and Wildlife have been out to this site and have complete approval. As well as Wickiup Water Department, giving there complete approval.

In Response to Paragraph #5:

All state and local agencies have been satisfied. DSL did not fine me. I did pay for all costs of applications and went through mitigations for the wetlands on my property.

In Response to Paragraph#6:

There are 2 culverts that feed this pond. One is at surface elevation and one at a depth of approximately 4 feet from an under ground spring.

The statement of them noticing a significant drop in Ferris Creek would and could only depend on local rain fall.

As for my garden hose, I have running water supplied by Wickipup Water District. I have three outdoor hose bibs. One bib is at my house, one at my shop and one at my pond.

In Response to #4 PROPERTY OWNERSHIP:

The property in question here is my property always has been my property, since the day I purchased it, and always will be my property. Before I purchased this property it was owned by Michael McCall, before the it was owned by Kent Isreal; given to him by his parents Clarence and Ruby Isreal. All of this has been proven in a court of law. The Bunch's refuse to except Judge Nelson's final say.

In Reponse to #5 ENVIROMENTAL IMPACT:

All local and state agency's i.e.; Oregon Department of Land, DEQ, Department of Fish and Wildlife, Wickiup Water and Knappa-Svenson Fire Department have all approved. It seems that the Bunch's are the one's that seem to think they know better than any and all of these agency's

I see no reason this permit should not go through.

Thank you.

Sincerely,



John A. McCall
40942 Hillcrest Loop Road
Astoria, Oregon 97103
(503) 458-5314

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WATER RESOURCES DEPT
SALEM, OREGON

R-87574



McCall's Tire Center, Inc.
1167 Marlin Avenue, Warrenton, OR 97146
Telephone (503) 861-3252
Fax (503) 861-2659
Mccalltire1@hotmail.com

TO:

MICHELE MCALEER

FAX NUMBER:

503-986-0901

FROM:

JOHN MCCALL - 503-458-5314 (H)

DATE:

5-29-10

503-861-3252 (W)

OF PAGES (including cover):

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IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL AS SOON AS POSSIBLE!

COMMENTS:

RE: WATER PERMIT

R-87574

21 October 2008
[Signature]

FILED
CLATSOP CIRCUIT COURT
2008 AUG -7 AM 8:06
TRIAL COURT ADMINISTRATOR

BY *[Signature]*

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLATSOP

BUNCH,)	
)	Case No. 07-2124
Plaintiff,)	
)	GENERAL JUDGMENT
v.)	
)	
McCALL,)	
)	
Defendant.)	

This case came on regularly for trial on June 11 and 12, 2008. The parties stipulated that all Claims for Relief raised by the parties would be dismissed except for defendants' Claim that they were the owners, based upon adverse possession, of a parcel of plaintiff's property described in paragraph 1(a) of plaintiff's Amended Complaint. The parcel claimed by defendants laid between plaintiff's north title line and the fence line to the south, which parcel is detailed in the HLB Partition Plat No. 1996-012 (Trial Exhibit #12). Defendants' First Counterclaim for adverse possession was tried before Honorable Philip L. Nelson without a jury. Plaintiff appeared by and through his attorney, D. Richard Fischer. Defendants appeared by and through their attorney, Scott O. Pratt.

The attorneys made opening statements on behalf of their respective clients, introduced testimony and other evidence in support of their respective cases and rested. Closing arguments were made in writing to Judge Nelson. Judge Nelson issued a letter opinion dated July 5, 2008, a copy of which is attached as Exhibit 1, containing the Court's findings of fact and conclusions of law.

GENERAL JUDGMENT IS GIVEN AS FOLLOWS:

1. Plaintiff's Claims for Relief are dismissed with prejudice.

Scott O. Pratt
Attorney at Law
The Jackson Tower, Suite 1200
806 S.W. Broadway
Portland, OR 97205-3383

OSB# 813423 *[Signature]*
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Tele: (503) 241-5464
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R-87574

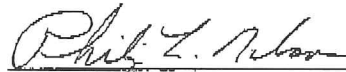
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2. Defendants' Second Counterclaim is dismissed.

3. Plaintiffs prevailed on their First Counterclaim for adverse possession. Based upon the Court's findings and conclusions, defendants established their ownership of the ~~subject parcel by adverse possession.~~ Defendants have obtained ownership of a parcel of real property that is contained in the legal description of plaintiff's real property described in paragraph 1(a) of plaintiff's Amended Complaint. The parcel is the rectangular parcel encompassed by the north line of plaintiff's property described in paragraph 1(a) of plaintiff's Amended Complaint and the fence line to the south, as monumented by the HLB Partition Plat No. 1996-012 (Trial Exhibit #12). A copy of the Partition Plat showing the parcel is attached as Exhibit 2 to this General Judgment. This General Judgment may be supplemented by a more specific legal description of the property that has been adversely possessed by defendants.

4. Defendants' are awarded their costs and disbursements against plaintiff in an amount to be determined pursuant to ORCP 68C.

August 6, 2008



Philip L. Nelson
Circuit Court Judge

SUBMITTED BY:

Scott O. Pratt
Attorney for Defendants

R-87574

21 October 2008
[Signature]

FILED
CLATSOP CIRCUIT COURT
2008 OCT -1 PM 3:33
CLERK OF COURT ADMINISTRATOR
BY *[Signature]*

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLATSOP

JAMES M. BUNCH,)
)
Plaintiff,)
)
vs.)
)
JOHN A. McCALL and)
RITA M. McCALL, Husband and Wife,)
)
Defendants.)

Case No. 07-2124
ORDER DENYING PLAINTIFF'S MOTION
FOR A NEW TRIAL

12 Plaintiff filed a Motion for a New Trial pursuant to ORCP 64. On Tuesday, September
13 23rd, the Court heard arguments from counsel: Plaintiff's attorney Richard Fischer appeared
14 personally; Defendant's attorney Scott Pratt appeared by telephone.

15 After considering the submissions and arguments of counsel and the Court revisiting the
16 facts and law, the Court issued its letter of opinion, attached as Exhibit 1, denying the Plaintiff's
17 motion.

18 Now, therefore, it is
19 **ORDERED** that the Plaintiff's Motion for a New Trial is denied.

Dated this ~~30th~~^{1st} day of ~~September~~^{October}, 2008.

[Signature]
Philip L. Nelson, Circuit Court Judge

22 Prepared and presented
23 this 30th day of September by:

[Signature]
Richard Fischer (OSB 69051)
RICHARD FISCHER, LLC.
990 Astor Street
Astoria, Oregon 97103
(503) 325-2301
Attorney for the Plaintiff

RICHARD FISCHER, LLC
Attorney at Law
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ASTORIA, OR 97103
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R-87574

Philip L. Nelson
Circuit Court Judge
(503) 325-8555



CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLATSOP
Clatsop County Courthouse
749 Commercial
PO Box 835
Astoria, OR 97103

September 25, 2008

Mr. Scott O. Pratt
Attorney at Law
The Jackson Tower, Suite 1200
806 S.W. Broadway
Portland, OR 97205-3383

Mr. Richard Fischer
Attorney at Law
990 Astor Street
Astoria, OR 97103

RE: Bunch v. McCall
Clatsop County Circuit Court Case No. 07-2124

Dear Mr. Pratt and Mr. Fischer:

Taking up Mr. Fischer's invitation to review some of the cases cited, I reach the same conclusion. I do not see how plaintiff can read Faulconer as supporting his position. The Oregon Supreme Court indicates having property surveyed and showing the correct markers being different from what was believed to be the boundary does not defeat a claim of "pure mistake". I also took the time to read some of the other appellate decisions, including Hoffman and Scholl.

I spent a considerable amount of time, including a good part of a weekend, trying to reach the correct decision in this case last summer. I had my notes from the trial, the exhibits and stacks of books spread out on my desk and the table in my office. It is difficult to reconcile the appellate decisions on adverse possession. Despite the inferences in the motion for new trial and plaintiff's argument, I did pay attention to the testimony as it was given and did read and several times reread the cases cited. I could have simply written: "Defendant wins." Instead, since both sides expended considerable time and effort with this case, I wanted to set out what I found the evidence established, what cases I reviewed which I thought applied and how I reached the decision I did.

R-87571

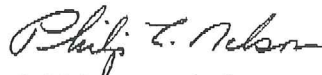
Mr. Scott O. Pratt and Mr. Richard Fischer
Page 2
September 25, 2008

I am not going to go back through and repeat what I said previously. I always try to make the correct legal decision in order to save the parties the cost of an appeal. If I made the wrong decision, then I apologize for the cost both sides will incur for an appeal.

One thing about this type of case, if plaintiff chooses to appeal, review is *de novo*. The Court of Appeals will have the entire transcript to review and points (elephants) plaintiff believes I have disregarded can be brought to their attention.

In order for Mr. Fischer to protect his client's appeal rights, he can submit an appropriate order within the deadline required for a motion for new trial.

Sincerely,



Philip L. Nelson
Judge