



Important Stuff:

- **THIS MONTH:**
We are leaving our Adverse Possession series for the moment and considering Parol Evidence.
- **NEXT MONTH:**
There will be no issue next month, this is the end of the monthly Editions of TLL. Editions past and future will continue be on our website:

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Judge & Jury: Parol Evidence XI

The Case: *Hall v. Staley* - North Carolina Court of Appeals 2003

Unfortunately, we are not given any location information about the property involved other than located in Yancy County, N.C. So, we will have some props to go along with the discussion. **Figure 1**, below is a short list of the Rules of Construction for the interpretation of Deeds. These rules along with many others have been generated the courts over the centuries for the interpretation of written documents when they are ambiguous or uncertain as to meaning and affect. The larger list of the Rules are used to interpret almost any written document, including but not limited to, contracts, affidavits, laws & statutes, treaties, and even the U.S. Constitution. There is no exhaustive list that

I am aware of. They were born out of the common law and that is where they must be found. Important to our discussion is "Parol Evidence" and its role in deed interpretation. This rule can also be applied by the surveyor.

Another short list tailored for the surveying profession is what we refer to as the "Priority of Calls." They are simply rules for the interpretation of legal descriptions in the boundary surveying context. What I would consider to be an exhaustive list is our [SKETCH](#) on **Page 2**. While the Priority of Calls are somewhat universal, meaning they are operative in all jurisdictions, they are not universally applied in practice. Most notably, the priority of bearings and distances is often reversed, and a call for an adjoiner is sometimes missing.

Usually, this is when we ask: Who wins? Since this is such a short case we will discuss the whole thing in the [VERDICT](#) is in on **Page 2**. JNL

RULES OF CONSTRUCTION

Court-Made Rules for the Interpretation of Deeds

A Short List of Some of the Rules:

- The Intent of the Grantor is Paramount.
- Ambiguity Allows for Extrinsic Evidence.
- Parol Evidence may Explain Uncertain Calls.
- The Four Corners of the Document Must be Searched.
- A Conveyance is Construed Against the Grantor.
- The Most Certain Terms are Given the Greatest Weight.
- A Call to a Monument is to the Center of the Monument.
- Particular Words Control General, Unless Absurd Results.
- A Junior Conveyance is read in the Light of the Senior.
- The Deed is Applied to the Land, not the Land to the Deed.

Figure 1

A Short List of Some of the Rules of Construction for the Interpretation of Deeds, Primarily, the Description within the Deed.

The Legal Angle: By Jeff Lucas, Editor

This month's case is a little smaller than most, but that's okay. I believe it all comes out in the wash. This is an important case because it is all about deed interpretation, extrinsic evidence, parol evidence, and making good retracement surveying decisions. As I have said on many occasions, parol evidence is the most important evidence that the retracing surveyor most ignores. In this case the Plaintiff, Hall, hired at least two surveyors who may have worked independently or collaborated, it's hard to tell. Defendants, Staley, hired at least one surveyor but they are referred to in the plural. In the final analysis there are only two competing surveys discussed in the Opinion. The point of this is only one surveyor utilized parol evidence to aid in making his boundary determination. And, consequently, that one surveyor, Hughes, won the day in court.

That's another point is, when you go to court in a boundary dispute case you want to be on the winning side. There is less liability involved when you are. I can attest to this from personal experience, but that story is for another day. As a practicing retracement surveyor you may find yourself in court willing or not. When you choose to go to court willingly it is probably because you have been hired as an expert in an ongoing case. My advice is to pick and choose carefully. Only accept cases that you believe in. Get an upfront non-refundable retainer to evaluate a case before accept. That doesn't mean you will be on the winning side, but if you believe in the case your odds are better than if you don't believe and just want the money.

If you are going to court because your survey is part of the litigation, then the die is cast relative the results that appear on your survey. You're not going to be able to change your survey results if your survey is already implicated, not without losing all credibility. This is a certainty when going to court over a surveying issue, when you lose your credibility you are done. So, the obvious conclusion is that you should treat every survey you do as if it will eventually end up in court. In a boundary dispute case that means you need to make the correct determination on the location question. The only way you can do that is by gathering and evaluating the best available evidence, which often is parol evidence that you may have ignored. Perhaps this case can give you some insight on the subject. Enjoy!

If you are reading this Edition of TLL, then you know this will be the last monthly issue. I am saddened and nostalgic at the same time. This has occupied 17 years of my life. Thank you all for your participation. JNL

Points to Ponder:

- For whatever reason, only the common boundary between the Plaintiff and the Defendants properties was at issue and perhaps the surveyors only surveyed that one boundary. Given the description we have of the common boundary line, how likely would it be that you would have sought out Old Timer?
- The only surveyor in the case who used parol evidence for "guidance" regarding the location of the common boundary was James Hughes. How do you suppose Hughes was able to find, not just one, but two Old Timers?
- Do you think Hughes looked them up in the phone book? Does anyone out there know what a phone book is?
- You know that land surveyors carry around a lot of eye-candy that attracts Old Timers like flies, right? That "camera-thingy" on that tripod and the "satellite-gizmo" on the pole that talks to you from outer space are too much for Old Timer to resist. Most field technicians try to beat Old Timer away with a stick. What should the prudent professional surveyor do when encountering Old Timer in the field?
- My retirement fantasy is to own a section of land in the country and become the resident Old Time for the township. What's yours? [GO TO OPINION](#)

RULES OF CONSTRUCTION

Court-Made Rules for the Interpretation of Deeds

The Priority of Calls (Other Rules of Construction):

- Natural Monuments are Superior to Artificial Monuments.
- Call to an Adjoiner can be a Type of Natural Monument.
- Artificial Monuments are Superior to Measurements.
- Call for an Adjoiner can be a Type of Artificial Monument.
- Call for a Line Actually Run (Surveyed).
- Bearing (or Distance) is Superior to Distance.
- Distance (or Bearing) is Superior to Bearing.
- Area Calculations.
- The above is subject to absurd results.

SKETCH

Our Surveying "Priority of Calls" are Simply Court-Made Rules of Construction for Description Interpretation.

The Verdict Is In: *Hall v. Staley* - North Carolina Court of Appeals 2003

The two tracts of land involved in this case, were conveyed out of a common grantor. On May 3, 1977 at 9:04 a.m. the "First Parcel" was conveyed without an acreage description. On May 3, 1977 at 9:05 a.m. the other (Second) Parcel was conveyed to Plaintiff Hall, reciting 255 acres. In May of 1987, the First Parcel was conveyed to the Defendants Staley, describing the parcel as containing "approximately thirty acres." These two Parcels adjoin along a common boundary, with Defendants to the west and Plaintiff to the east. The description of the common boundary is described as follows:

"A Northeast course to a White Oak stump; thence running a Southerly course to a stake in the Northeast corner of the 3 acre tract; thence running with the old fence row to a White Oak; thence running from the White Oak a Southeasterly course with the old fence row to a Dogwood at what is known as the old crossing at the upper side of the old flat fields; thence a Southwest course to a Wild Cherry."

All we know about the litigation is the common boundary line was in dispute. With a description like that, I can't imagine why. All the attention in the Opinion is given to Plaintiff's surveyors, Hensley and Hughes. They both surveyed the Hall property. Hensley testified that he found all of the monuments in the description except the "3 acre tract" and the "old crossing." Hughes apparently found a couple of "Old Timers" in the form of William and Grady Fender. We are left to our imaginations on how they are related, where they came from, or how Hughes encountered them. We are told is that Hughes "followed a neighbor's guidance regarding the location of the '3 acre tract' and the 'old crossing' listed in the boundary description." This resulted in a survey for Hall, indicating the Staley Parcel to be approx. 23.570 acres.

We have much less info. on the surveying activity for the Defendants. Really, all we know is that Defendants' surveyors testified that they "located every monument" in the description and created a 42.220 acre overlap with Plaintiff's survey. The resulting acreage for Defendants' Parcel, according to their surveyors, is 65.377 acres. That is a bit more than the "approximately thirty acres" recited in Defendants' deed. The evidence was given to the jury with the court's instructions on the law. The jury returned a verdict in favor of Plaintiff Hall. The Staleys appealed citing errors in the judgment. In particular, that parol evidence should not have been admitted and that the trial court improperly omitted the issue of superior title from the jury instructions. In other words, since Defendants' conveyance was first out of a common grantor, they have senior rights to the overlap. Who Wins!

Parol Evidence: Parol evidence is in nature extrinsic evidence. That is, evidence that exists outside of the written document. The Staley argument (as expanded by me) is that the testimony of the two Old Timers (and Hughes) was inadmissible because their deed was not ambiguous or uncertain; and because their surveyors were able to retrace their boundary from their deed. Therefore, extrinsic evidence could not be admitted into evidence because the deed was sufficient as written. What they were claiming was that the deed overlapped and because they had senior rights out of a common grantor the overlap belonged to them. They did not get that charge into the jury instructions because either their lawyer dropped the ball or they are making that charge for the first time on appeal.

Senior Rights: As a Rule of Construction, generally speaking, if a common grantor sequentially conveys the entire estate in two transactions, then the senior is conveyed what the senior gets and the junior is conveyed what is leftover, more or less. In other words, a juniors conveyance must be read in the light of the senior conveyance. These are Rules of Construction. The jury thought otherwise.

Credibility: Is the more credible survey result one that returns 24 acres or 65 acres, when the Defendant's deed says "approximately 30 acres"? I realize that acreage is low-man on the Priority of Calls, but that is not a hard-and-fast rule.

[GO TO OPINION](#) JNL

"When the terms used in the deed leave it uncertain what property is intended to be embraced in it, parol evidence is admissible to fit the description to the land."

JOHNNY HALL, Petitioner/Plaintiff,
v.
ARLENE BANKS STALEY and husband, MICHAEL ENOCH STALEY,
Respondents/Defendants.

NO. COA02-1020.

Court of Appeals of North Carolina.

Filed July 15, 2003.

LUCAS LETTER HEAD NOTES [LLHN]:ⁱ

Real Property Law; Deeds; Deed Interpretation; Legal Description:

Real Property Law; Deeds; Deed Interpretation; Calls:

Real Property Law; Deeds; Deed Interpretation; Parol Evidence:

Real Property Law; Deeds; Deed Interpretation; Intent:

[LLHN1] When the boundaries of a tract can be determined by reference to the description in a deed, Parol evidence is not admissible. The statements and acts of adjoining landowners are not competent evidence of the location of a boundary when the boundary can be located by the calls in a deed. But when the terms used in the deed leave it uncertain what property is intended to be embraced in it, parol evidence is admissible to fit the description to the land.

Civil Procedure; Judgments; Directed Verdict:

Civil Procedure; Pleading & Practice; Motions; Non-Moving Party:

[LLHN2] When considering a motion for directed verdict, a trial court should consider the evidence in the light most favorable to the non-moving party and give the non-movant the benefit of every reasonable inference from the evidence.

Civil Procedure; Judgments; Directed Verdict:

Civil Procedure; Pleading & Practice; Motions; Non-Moving Party:

[LLHN3] A directed verdict is generally considered inappropriate in processioning proceedings because the determination of the boundary is a question for the jury.

PROCEDURAL POSTURE:

Appeal by defendants from judgment entered 21 December 2001 by Judge James L. Baker in Yancey County Superior Court. Heard in the Court of Appeals 19 May 2003.

Yancey County, No. 99 SP 5.

COUNSEL:

Donny J. Laws for plaintiff-appellee.

Staunton Norris for defendant-appellants.

OPINION:

EAGLES, Chief Judge.

Defendants Arlene Banks Staley and Michael Enoch Staley appeal from a judgment based upon a jury verdictⁱⁱ that adopted plaintiff Johnny Hall's interpretation of the location of their common property line. Defendants assert three arguments on appeal: (1) the trial court should have granted defendants' motion for a directed verdict; (2) parol evidence offered during the testimony of plaintiff's surveyor and several

neighbors should not have been admitted; and (3) the trial court improperly omitted the issue of superior title from the jury instructions.ⁱⁱⁱ After careful consideration of the record and arguments of counsel, we discern no error.^{iv}

By a deed recorded on 3 May 1977 at 9:04 a.m., Dewey and Laura Hensley conveyed two pieces of land to Lucille and Thurman Banks. The parcel designated as “First Parcel” within the deed did not contain an acreage description. This parcel was conveyed to defendants in May 1987. The 1987 deed described the parcel as containing approximately thirty acres of land. In a separate deed recorded on 3 May 1977 at 9:05 a.m., Dewey and Laura Hensley transferred a 225-acre piece of land to plaintiff and his wife. Plaintiff’s deed stated that his 225-acre parcel of land was subject to several exceptions outlined in other deeds in the public record. Plaintiff’s deed specifically excepted the “tract of land conveyed to Lucille H. Banks containing about 30 acres.” The two parcels of land conveyed to plaintiff and defendants are separated by a common boundary. The location of this boundary is the subject of this litigation. In the Lucille and Thurman Banks deed, the boundary is described as follows:

“[A] Northeast course to a White Oak stump; thence running a Southerly course to a stake in the Northeast corner of the 3 acre tract; thence running with the old fence row to a White Oak; thence running from the White Oak a Southeasterly course with the old fence row to a Dogwood at what is known as the old crossing at the upper side of the old flat fields; thence a Southwest course to a Wild Cherry”^v

The boundary line in question forms the eastern boundary of defendants’ land and the western boundary of plaintiff’s land. At trial, plaintiff’s surveyor Eric Hensley testified that he had located all of the [Page 2] monuments listed in the boundary description, with the exception of the “3 acre tract” and the “old crossing.” However, another surveyor for the plaintiffs, James Hughes, testified that he had followed a neighbor’s guidance regarding the location of the “3 acre tract” and the “old crossing” listed in the boundary description. This testimony about what neighbor William Fender [a.k.a., “Old Timer”] told plaintiff’s surveyor was allowed by the trial court in order to corroborate William Fender’s later testimony about the location of these two monuments. Grady Fender [a.k.a., “Old Timer No. 2”] also testified regarding the location of the monuments in the boundary description. According to plaintiff’s evidence, the boundary line was drawn so that defendants’ deed granted defendants approximately 23.570 acres of land. The boundary line propounded by plaintiff was designated “A-B” on the trial court’s exhibit map.

Defendants’ motion for directed verdict at the close of plaintiff’s evidence was denied. Defendants’ surveyors testified that they had located every monument listed in the boundary description. However, defendants’ surveyors placed the boundary line further east than plaintiff’s surveyors did. Approximately 42.220 acres of land covered the area between the two proposed boundary lines.^{vi} The boundary line propounded by defendants (designated “C-B”) would have resulted in their ownership of a 65.377-acre tract. After presenting their evidence, defendants renewed their motion for a directed verdict on the evidence and on the basis of a superior title from a common grantor.

The issue of the boundary’s location was submitted to the jury.^{vii} The jury placed the boundary line according to plaintiff’s interpretation “A-B.” The jury’s verdict resulted in a 23.570-acre parcel for defendants. The trial court denied all defendants’ motions for directed verdict and motion for new trial. The trial court entered judgment granting title to the disputed 42.220 acres to plaintiff, with the boundary drawn according to plaintiff’s interpretation. Defendants appeal.

Defendants argue that the trial court improperly allowed admission of parol evidence in order to locate the disputed boundary. [LLHN1] “When the boundaries of a tract can be determined by reference to the

description in a deed ... parol evidence is not admissible.... [T]he statements and acts of adjoining landowners are not competent evidence of the location of a boundary when the boundary can be located by the calls in a deed.”^{viii} *Canady v. Cliff*, 93 N.C. App. 50, 55, 376 S.E.2d 505, 508, *disc. rev. denied*, 324 N.C. 432, 379 S.E.2d 239 (1989)(citations omitted). “But when the terms used in the deed leave it uncertain what property is intended to be embraced in it, parol evidence is admissible to fit the description to the land.”^{ix} *Powell v. Mills*, 237 N.C. 582, 588, 75 S.E.2d 759, 765 (1953). Here, the trial court properly admitted the parol evidence regarding boundary markers that was given by William and Grady Fender. The deed in question referred to physical monuments that could be removed or altered over time. In addition, the general descriptions contained in the boundary line “fit” two possible alternate interpretations on the ground.^x Therefore, it was proper and necessary for the court to receive parol evidence from both parties indicating where the boundary line was commonly understood to lie. A mere reading of the deed, because it contained references to natural monuments instead of metes and bounds, did not make it possible to locate the land described by the deed. Therefore, we find no error in the trial court’s admission of the parol evidence by the Fenders or the use of that parol evidence during Mr. Hughes’s testimony.^{xi}

Defendants also assign error to the trial court’s denial of defendants’ motion for a directed verdict. Defendants contend that plaintiff did not present evidence regarding the location of several of the monuments that formed the disputed boundary. Namely, plaintiff’s surveyor Hensley was unable to find the stake described as being in the northeast corner of the three-acre tract and the dogwood at the “crossing at the upper side of the old flat fields.” However, plaintiff’s other surveyor witness, James Hughes, testified that he had located the dogwood at the crossing and the stake in the three-acre tract after getting information from the Fenders. The testimony of William and Grady Fender further corroborated the plaintiff’s interpretation of the location of the boundary.

[LLHN2] When considering a motion for directed verdict, a trial court should consider the evidence in the light most favorable to the non-moving party and give the non-movant the benefit of every reasonable inference from the evidence. *See Atlantic Tobacco Co. v. Honeycutt*, 101 N.C. App. 160, 398 S.E.2d 641 (1990), *disc. rev. denied*, 328 N.C. 569, 403 S.E.2d 506 (1991). Here, all of the evidence taken in the light most favorable to plaintiff shows that plaintiff’s witnesses located each of the boundary markers consistent with his interpretation of the boundary’s location. The law does not require that a surveyor’s testimony regarding a boundary marker be the only type of competent evidence in every case. In addition, **[LLHN3]** a directed verdict is generally considered inappropriate in processioning proceedings because the determination of the boundary **[Page 3]** is a question for the jury. *See Beal v. Dellinger*, 38 N.C. App. 732, 248 S.E.2d 775 (1978); *Sipe v. Blankenship*, 37 N.C. App. 499, 246 S.E.2d 527 (1978), *cert. denied*, 296 N.C. 411, 251 S.E.2d 470 (1979), *overruled on other grounds by Walls v. Grohman*, 315 N.C. 239, 337 S.E.2d 556 (1985). Because the evidence in the light most favorable to plaintiff put forth a location for each boundary marker, we hold there was no error in the trial court’s denial of defendants’ motion for a directed verdict.

Defendants’ final argument concerns the failure of the trial court to instruct the jury on the issue of superior title. Defendants contend that the defense counsel’s agreement to omit the superior title issue from the jury instructions was the result of a mistake. It is unclear whether the instruction was omitted because of a mistaken agreement or whether the point was conceded by defense counsel. In either event, we hold that the trial court’s omission of the superior title instruction was not in error. This case was structured as a boundary settlement proceeding. It did not concern deeds that contained overlapping property boundary descriptions.^{xii} The issue in this case was the location of the monuments that formed defendant’s eastern boundary line and plaintiff’s common western boundary line. Since the question of

superior title from a common grantor was not relevant to the physical location of the boundary monuments, the trial court did not err in omitting this jury instruction.

For the reasons stated above, we hold that no reversible error occurred in this trial.

No error.

Judges BRYANT and LEVINSON concur.

Endnotes:

ⁱ All headnotes (a.k.a., the law of the case or the “Black Letter Law”) in this opinion are provided by the Editor of TLL for the convenience of our readers. All endnotes, such as this one, are also provided by the Editor of TLL and may include the Editor’s commentary to the opinion, which should be considered only as the Editor’s opinion and not as the law of the case. Footnotes, if any, are as provided by the court. JNL.

ⁱⁱ In my experience, boundary dispute cases are most often bench trials, meaning without a jury. Given the present case we are studying, that is certainly not a universal rule. There are several reasons juries might not be involved in a boundary dispute case. Possibly the most common reason is that a boundary dispute case is not a legal case, it is a factual determination as is the situation here, and equity is involved. In many of these cases, when it is determined there are no legal issues to be tried and the case is one in equity, the judge will dismiss the jury because only the judge can dispense equity in court. The issue of equity doesn’t come up in this case. A couple other reasons would be that the attorneys don’t want a jury because a boundary dispute often involves surveyors and surveying practice is so esoteric that surveyors don’t even understand it, so what hope is there for a jury? Finally, many times the parties don’t want a jury because somebody is going to have to pay for the cost, usually the loser.

ⁱⁱⁱ As we know, for a trial verdict to go up on appeal the appellant must charge that errors were made at trial. In addition, appeals cost money and if the trial court’s decision is supported by substantial evidence, that decision will not be overturned. Substantial evidence is a lower burden than a preponderance required in civil court. So, the odds are stacked against the appellant. As I have often said, you need to win at the trial court level.

^{iv} Most likely, the Staleys are paying for the appeal.

^v These types of descriptions, of course, are just lawsuits waiting to happen. As the old saying goes: “Penny wise and pound foolish.” Plaintiffs ultimately had to hire two surveyors to get the job done and the Defendants hired at least one.

^{vi} We know that acreage occupies the lowest position in the priority of calls, but sometimes it could play a factor. A difference of 42 acres when defendants were ostensibly conveyed “approximately thirty acres” should grab the retracement surveyor’s attention. Maybe there was other evidence that defendants’ surveyor should have considered. I don’t know, maybe find an Old Timer and see what he has to say. Apparently, there were two available.

^{vii} As I have come to realize over the course of many years of surveying and studying the law, the retracement surveyor’s role in the boundary determination game is much like that of the jury. The members of the jury are generally not lawyers, but average citizens. They sit in the jury box and watch a trial take place. There are opening statements and closing arguments made by the attorneys. Parol evidence in the form of testimony is presented and documentary evidence is proffered to the court for acceptance or rejection. At the close of the trial, the admitted evidence is handed to the jury and the judge tells the jury what the law is. The jury then deliberates, determines the facts in the case out of the evidence provided and then applies the law to the facts as the judge directed. A verdict is then rendered. Out of all of that, the jury never practiced the law—yet—they made a boundary determination based on facts they determined and applying the law to those facts. The only difference between the jury and the retracement surveyor is the evidence gathering and knowing the applicable law, as opposed to having these things delivered on a silver platter.

^{viii} This is as true to deeds as it is to contracts. The words used in both documents must be construed to reveal the intent of the parties to the transaction. The difference between the two is that the description of the property being conveyed in a deed is born with ambiguities and uncertainties, because a property description is an attempt to provide guidance to locate something that exists on the ground. In this case the difference was a massive 42 acres demonstrating that the words alone could not solve the location question. In such a case extrinsic evidence, such as parol evidence, becomes necessary to solve the problem.

of intent. Contracts, generally speaking, do not have the same malady and are strictly construed based on the words used in the contract as opposed to parol evidence to aid in bring meaning to those words.

^{ix} The deed is used to find land that already exists on the ground and parol evidence is often necessary when the words in the deed fail to do so, are ambiguous, or objectively uncertain. This is where Old Timer often appears in these cases to solve the question of intent and location, both of which are factual questions not legal questions.

^x When surveyors are involved and there is more than one possible location of the property on the ground, this is generally considered to be objective uncertainty as opposed to mere subjective uncertainty. Subjective uncertainty is in play when the landowners just don't know where the boundary is located regardless of whether the true boundary can be found or not by an objective third party such as a land surveyor. Objective uncertainty will allow extrinsic evidence to be considered in answering the location question where subjective uncertainty generally does not.

^{xi} Much of what happens in a trial over a boundary dispute has to do with the credibility of the witnesses, especially with the surveyors and surveying results. Think about this, the results of plaintiff's survey was that the defendants ended up with about 24 acres and the stated intent in the deed was that defendants' parcel should be about 30 acres. In contrast, defendants' surveyors had a resulting acreage of about 65 acres. There are only two choices, it is either 24 acres or 65 acres. Which result sounds more credible?

^{xii} This was a boundary dispute case based on two objective but differing surveys. Plaintiff's surveyor correctly used extrinsic evidence in the form of parol evidence to render a well-reasoned opinion on the location of the common boundary and was no doubt deemed more credible than defendants' surveyor.