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Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Minnesota Court of Appeals Case No. A-09-689: Phillips vs. Dolphin, et al
BRIEF LETTER ARGUMENT OF APPELLANT

Dear Clerk:

Pursuant to Rule 128.01, Subd. 2, Minnesota Rules of Civil Appellate Procedure, Appellants submit this brief letter argument along with copies of the following trial court memoranda/documents:

1. Amended Complaint
2. Findings of Fact, Conclusions of Law and Arbitrator's Award
3. Motion to Confirm Arbitrator's Award
4. Phillips Memorandum in Support of Motion to Confirm Arbitrator's Award
5. Dolphin Memorandum Opposing Confirmation of Arbitrator's Award
6. Phillips Reply Memorandum
7. Dolphin Reply Letter (submitted by permission of trial court)
8. Order Confirming Arbitration Award and for Entry of Judgment

Facts

Respondent (Phillips) and Appellant (Dolphin et al) are next-door neighbors, owning single family residential lots in Minneapolis. Both properties are Registered (Torrens). In June of 2006, Respondents caused the common line between the lots to be surveyed by Harry S. Johnson Company, who placed survey stakes on what the surveyor found to be the common line. Appellants caused the removal of the stakes. Appellants had the boundary surveyed by a different surveyor, with a different result. Respondent sued Appellant for money damages for a claimed trespass (removing the survey stakes) and for injunctive relief (seeking removal of a patio claimed to be to close to the property line). Appellants counterclaimed for damages arising out of certain landscaping work done by Respondent. The matter was decided by binding arbitration, the Hon. Robert Lynn presiding, who issued Findings of Fact, Conclusions of Law and Arbitrator's Award dated August 6, 2008.

The Arbitrator dismissed all but one of the parties' claims. The language following the heading **"ARBITRATOR'S AWARD"** awards money damages of $1,260.00 for trespass to Respondent and dismisses all other claims. The money damage award was promptly paid to Respondent. In the Findings of Fact and Conclusions of Law section of the written decision, the Arbitrator found that Respondent had proven by a preponderance of the evidence that the Harry S. Johnson Company survey accurately depicted the common boundary line, but the Findings also stated that all three surveyors who testified at hearing agreed that the monumentation in this particular neighborhood made surveying extremely difficult.

In January of 2009, Respondent brought a motion to Confirm the Arbitrator's Award, but asked that the confirmation include as a part of the judgment a statement that the Findings of Fact and Conclusions of Law also be confirmed, and that the judgment include a statement that established the parties' common boundary line. Appellant objected to the inclusion of language establishing the parties' common boundary line in the judgment. The trial court, the Hon. Denise Reilly presiding, issued an order Confirming the Arbitration Award on February 13, 2009, but in the order for judgment, included the Findings of Fact and Conclusions of Law as a part of the confirmation, and included the language establishing the parties' common boundary line. The following is a side-by-side comparison of the Arbitration Award and the Order for Judgment.

Arbitration Award	**Order for Judgment**
1. Plaintiffs, Ann. S. Phillips and Felix M. Phillips shall recover, and Defendants Kathleen Dolphin and Michael Jonsson, jointly and severally, shall pay Plaintiffs $1,260.00 in damages for trespass and destruction of Plaintiff's property. This sum is to be paid within 10 days of the date of this order.	1. The Findings of Fact, Conclusions of Law and Arbitrator's Award dated August 6, 2008, made by the Hon. Robert H. Lynn, Arbitrator, a copy of which are attached hereto, are confirmed in all respects.
2. All other claims and counterclaims are dismissed with prejudice.	2. Plaintiffs shall have and recover from Defendants the sum of $1,260.00; provided, however, that the court file shall reflect that this

monetary award has been paid to and received by Plaintiffs.

3. Each party shall pay its own costs and attorneys' fees.

3. The correct location of the parties' common Boundary is described in the Certificate of Survey identified in Finding of Fact No. 17 of the attached arbitration award, and the Plaintiff's existing fence is located entirely within their property line.

4. The counterclaims set forth in paragraphs 6 Through 9 of Defendant's Answer and Counterclaim, and as referenced in paragraph 18 of the Arbitrator's Findings of Fact, are hereby dismissed with prejudice.

Issue No. 1: Was it error for the District Court to include elements from the Findings of Fact as a part of the Order for Judgment?

Issue No 2: May boundary line disputes between Torrens properties be resolved by any means other than the procedures outlined in Minnestota Statutes Chapter 508.671?

Argument

Issue No. 1:

A review of the cases collected in Minnesota Statutes Annotated under the Arbitration award confirmation statutes (Minn. Stat. Ch. 572.18 and 572.21) do not produce a case on point. However, it is clear that the Arbitrator's relief under his heading "Arbitration Award" is much more limited than the Order for Judgment. Common sense would dictate that not everything in the written decision of the Arbitrator is part of the "Award". The Arbitrator made twenty separate "Findings of Fact". These were intended to support the Arbitrator's "Award", not to be a part of the Award. To hold otherwise would permit a prevailing party to "cherry-pick" the Findings of Fact for words or phrases that might enhance or expand the actual relief granted and insist that these be made a part of the judgment. This is not the intent of the law. The clear intent of the law permitting a party to have an Arbitration Award confirmed and reduced to judgment would be to facilitate enforcement of the Award, such as in the enforced collection of money damages through levy or garnishment.

In the present case, it was necessary for the Arbitrator to decide between conflicting opinions of surveyors in order to reach a decision on whether or not a trespass had occurred. That decision forms a part of the "law of the case" only, and cannot be used to grant relief that was neither sought nor possible under the statutes governing Torrens properties.

Issue No. 2:

The underlying lawsuit was a suit for money damages and injunctive relief. It was not brought as a Proceeding to determine adverse claims to Torrens boundaries, which procedure is exclusively governed by Minnesota Statutes Chapter 508.671. This procedure requires scrutiny and report by the Examiner of Titles and the eventual placement of judicial landmarks to permanently and properly identify property corners.

The Arbitrator's Award was for money damages only, and the sole purpose of Respondent's motion to include boundary line language in the judgment is to circumvent the requirements of the above cited statute. Respondent cites as authority the adverse possession statute (Minn. Stat. Chapter 559.23, deriving from Minn.Stat. Chapter 559.01, et seq.), which is not applicable to Torrens property (see Minn.Stat. Ch. 508.02). Even if Minn. Stat. Chapter 559.01 and 559.23 were applicable to this case, relief under that statute was not sought in the pleadings (see Amended Summons and Complaint). Finally, language is cited by Respondents to the effect that Minn.Stat. Chapter 559.23 states that a judicial decree obtained under that statute may be filed in the office of the register of titles. It is suggested that such language presumes prior compliance with Minn.Stat. Chapter 508.671.

In a reply memorandum, Respondent claims that Appellants are making this appeal to "plague the (appellants) in the future", by re-litigating the issue of the boundary line. The issue is one of wanting a clear title, not one of a desire for future litigation. In order to comply with the statutes regarding registered lands, one or both parties is going to have to follow the provisions of Minnesota Statutes Chapter 508.671, and the entry of a judgment that was entered without benefit of compliance with that statute is not going to do anything but further confuse the issue. The Appellants accepted the Arbitrator's award of money damages and paid them; they do not accept a Finding of Fact in an

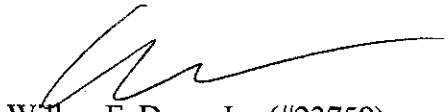
admittedly inconsistent survey situation as a substitute for scrutiny and reporting by an Examiner of Titles and placement of judicial monumentation to correctly and finally establish the correct property line.

Citations and more detailed arguments are contained in the attached memoranda.

Conclusion and Relief Sought

It was error for the lower court to include the Findings of Fact, Conclusions of Law and the language regarding the boundary line into the order confirming the Arbitration Award, and the judgment should either be modified to delete paragraphs 1 and 3 thereof, or remanded for that same purpose.

Respectfully Submitted,



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).