

Carney Statement of the Case Brief for Court of Special Appeals Default Judgment Hearing on 12/9/09- Rebuttal

Rev. 8/04/14

Carney Statement of the Case Brief Filed 5/20/10:

Page 2: Specifically, the Court, in its ruling from the bench stated, “I found that there was insufficient evidence produced by either side that was – by either side that there was hostile possession for a significantly long period of time to prove that either one had acquired the property of the other”

Senez: Mr. Carney took Mr. Myers deposition on 10/25/06. Mr. Myers stated that the property line wall was there when he purchased the home. Mr. Carney should have immediately taken steps to establish the length of time the wall was there.

Myers deposition:

Wall there before Myers purchased; pages 23, 24, 37, and 55.

Mr. Myers had no idea who put the wall in, Page 55.

Wall there 20 years; pages 23, 32, and 38.

I gave Mr. Carney the names of three people that could testify as to how long the wall was there. I have since acquired signed affidavits from twelve individuals that have personal knowledge that the wall was there in the early mid 70’s. That’s 25 years prior to me purchasing the home. The affidavits also acknowledge that the Cooks knew the wall wasn’t on the property line but decided to let it go.

Page 3: Following the motions hearing, Appellant terminated Appellee’s representation and retained new counsel to appeal the trial court’s ruling on her adverse possession claim.

Senez: This is a lie! I had emailed Mr. Carney that I wanted to go forward. I asked Mr. Carney several times to get the trial transcript; but he never did. Judge Souder basically gave the Collins a patio in my front yard with her easement ruling. The final ruling on 12/19/06, left out the wording, “absent an agreement to the contrary,” which was in the Courts ruling. The first ruling stated remove any gate or fence blocking mutual access by the parties for the mutual enjoyment and use of the entire boat ramp by all parties, presently located on the east side of No. 341 Worton Rd.

The second final ruling on 12/20/06 added the wording back in, “absent an agreement to the contrary,” but everything else was the same. This isn’t a legal ruling or based on law. Neither judgment was an option as far as I was concerned and Mr. Carney knew that. There never was any mutual enjoyment of the boat ramp. I would have to worry that the Collins, friends, pets and family would come on my side of the fence and have free access to

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my entire yard any time day or night. This wasn't an option for many reasons, additionally I have dogs.

Mr. Carney filed a Motion to amend and alter and the hearing was on 2/7/07. The language was changed as follows; Defendant is hereby ORDERED, absent an agreement by the parties to the contrary, to remove any gate or fence blocking access by the parties for the enjoyment and use of the boat ramp presently located on the east side of 339 and 341 Worton Road at Norman Creek. Plaintiffs own approximately fifteen (15%) percent of the boat ramp on the side closest to their property; Defendant owns the remaining eighty-five (85%) percent. The wording was changed because Judge Souder had no legal basis for her ruling of granting mutual benefit!

Mr. Carney sent me two letters stating he wouldn't represent me. One on 2/26/07 and another on 2/27/07. Carney then filed to withdraw his appearance on 4/11/07. Mr. Carney terminated me and left me hanging on filing a timely appeal for the adverse possession after he made a mess of my case by not presenting information and now I couldn't use that information on appeal.

62, Mr. Myers said that he lived next door to the Collins for four months.

71, Mr. Myers said that they got along well with the Collins.

62, 71, 72, Myers said the Collins didn't use boat ramp, (as the Collins said.)

88, Mr. Myers didn't recall Collins ever launching a boat from the boat ramp.

72, Mr. Myers says, I don't remember Mrs. Collins using the boat ramp."

Page 4: Appellant was successful on appeal, the case was remanded to the Circuit Court

Senez: It wasn't successful! The case was remanded back to Judge Souder who thought that I did all the things the Collins accused me of. The only issue that mattered was the adverse possession. Judge Souder ruled against me saying Mrs. Collins had more credibility than Ms. Senez! Mrs. Collins who lied about everything in court which can be proved by the exhibits used in the Circuit Court trial is more credible!

Prior to the trial Mr. Carney always told me the Collins accusations were bogus. See his emails of 5/1/06, 5/12/06, 5/9/06, 7/19/06 and 8/31/06. Even knowing that was Mr. Carney's belief, I went ahead and gathered information, documents and witnesses to prove the accusations were all a lie. Mr. Carney didn't present that information to the trial Court and didn't defend the accusations. Mr. Carney didn't depose the Collins. Mr. Carney now

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states that he knew that Ann Collins was going to say that I asked if my fence could follow the wall in instead of the property line. I don't know how Mr. Carney knew that because it wasn't in the original complaint, interrogatories, Answer to Counterclaim or Mr. Myers deposition. It wasn't known by me or prior counsel. Mr. Carney never discussed this with me and never explained how this would affect the outcome of my case.

If the Collins could lie and make up a story that the boat ramp was a cooperative effort for a co-owned boat ramp, I certainly think they could make up a story that I asked if my fence could follow the wall instead of the property line.

Page 5: The case was remanded back to the Circuit Court, a hearing was held on November 19, 2009 at which time the Court ruled against Appellant without considering oral arguments of counsel, and the matter was again appealed to this Court and is pending,(case now over)

Senez: This wasn't a hearing at all. Judge Souder walked in and said in about the first two minutes that, "The Court does find the testimony of Ann Collins more credible". Judge Souder wasn't open to any discussion; her mind was made up before she walked into the court room. Her ruling was already written! Judge Souder had to revise her original trial ruling because she basically gave away my property as an easement to the Collins which isn't based on case law and isn't legal.

The Court of Special Appeals overruled Judge Souder and told her she was wrong on several issues, she wasn't happy about that. Judge Souder wasn't about to change her ruling since she was basically was told by the Court of Special Appeals that she didn't understand Adverse Possession on pages 34, 39 & 43. This was a second slap at her original ruling indicating she had no idea what Adverse Possession was about.

The first erroneous ruling Judge Souder made was the totally illegal ruling she made and had to amend on 2/26/07. Judge Souder said, "Absent an agreement to the contrary, to remove any gate or fence blocking mutual access by the parties for the mutual enjoyment and use of the entire boat ramp by all parties." That gave away my property.

Since Judge Souder didn't want to reverse her ruling, Judge Souder decided to just say the Collins were more credible. That way she couldn't be challenged again.

I never asked Mrs. Collins the question and it's the dumbest question that I could have ever asked!

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- 1- If Collins came back and said “no,” I would have to take the fence down, after I just paid to have it put up.
- 2- Collins could cross the fence line and would have full access to my yard and boat ramp. The Collins, their family, grandchildren, friends and pets coming over at all times of the day and night. I didn’t even know the Collins at the time.
- 3- I’ve had Labrador Retrievers for the last 30 years. I had two Labrador Retrievers at that time. I couldn’t have people coming into my yard, wandering around whenever they felt like it.
- 4- Collins free access would be a huge liability issue. If I had known about the property line that would have been a deal breaker on buying the house. And I’m sure it would be for others as well.

In addition:

- 1- Collins never said anything to Mr. Myers about the fence being on there property. And they both testified they were friendly. And lived side by side for four months.
- 2- Mr. Myers never said anything to me, he was still living there. He recommended the contractor.
- 3- Mr. Covahey and Judy Ensor, now Judge Ensor, never knew about the question, Ann Collins was going to say I asked.
- 4- Mr. Carney never told me about the supposed question and what it would mean to my case.
- 5- Why did the Collins make up so many other accusations if they knew the property line and I asked permission? The “question” wasn’t in their complaint, answer to the counterclaim, interrogatories or Mr. Myers deposition.

Collins filed suit 9/28/04. Trial court 12/08/06 was the first time I heard the Collins say that I asked that question. That’s 21 months after they filed suit. This question was something the Collins came up with as they learned more about Adverse Possession!

Keeping in mind that Judge Souder presided over my case for seven hours in December 2006 and she had the Court of Special Appeals Opinion, a brief from opposing counsel and my counsel, Mr. Covahey, she was still confused. She was confused in the trial court and in the remanded hearing.

Judge Souder was not aware that I built the fence in 2000 before I settled on the property. That at the time I had the conversation I didn’t have title to the property. Trial Transcript Day 1 page 18 & 36 Ann Collins states the fence was there before I moved in. Steve Collins page 65 & 66 – states the fence was up before she settled. Trial transcript Senez pages 99, 100 & 148 – I stated that I had the fence built before I settled on the property. The Court of Special Appeals said it on page 12.

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Judge Souder was confused and thought Mr. Myers said he showed me a survey. When asked in the deposition, Mr. Meyers turned and asked me: Did I ever point that out to you? This is on pages 32 and 33 of Mr. Myers deposition. Mr. Myers doesn't say he showed me a survey. The house wasn't on the market when I had the realtor approach Mr. Myers. I told Mr. Carney this during a break in the deposition, again in an email on 10/30/06 and again on 12/4/06. The only information I received was the original house listing from when the house "was" originally on the market. HSA Realty does not and never had a survey for the property. Mr. Carney never asked me in court if I saw a survey.

The Court of Special Appeal opinion supports this on page #17 and says, "Mr. Myers deposition does not contain a specific assertion that he showed the survey to appellant in particular."

Obviously Judge Souder didn't review the trial transcript, the Court of Special Appeals Opinion or Mr. Covahey's brief.

Page 14: In reality, the trial court's statement that Appellee was successful in defeating the seven counts against Appellant was technically accurate..... "It is established as a general principle that only a party aggrieved by a court's judgment may take an appeal....This principle is borne out by the fact that Appellant did not appeal the trial court's ruling with regard to those counts when she appealed the adverse possession ruling.

Senez: What a ridiculous statement! The only real issue in my case was the adverse possession. The other accusations were all bogus and Mr. Carney should have filed summary judgment to have them taken off the table at trial. All of the things the Collins accused me of were nothing but lies and an intimidation tactic to have me take down my boat house. Mr. Carney basically said those counts were bogus, see his emails dated 5/1/06, 5/12/06, 5/9/06, 7/19/06 and 8/31/06.

Page 15: Indeed to prevail on a claim for legal malpractice, a former client must prove (1) the attorney's employment, (2) the attorney's neglect of a reasonable duty, and (3) loss to the client proximately caused by that neglect of duty.

Senez: 1) I have an agreement which proves employment 2) Mr. Carney didn't defend me against the allegations proves negligence of a reasonable duty. Mr. Carney's agreement said he would defend me against the accusations. Mr. Carney never followed thru or had me follow thru with how long the existing walls were there or additional tacking. That's

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neglect of a reasonable duty, since it's a key element in adverse possession. 3) The only reason that I didn't have any credibility is because Mr. Carney didn't defend the accusations against me.

I was asked I heard over and over and over that I lost based on credibility. The Court of Special appeals ruling after the remand said I didn't have any credibility. The Collins lied about everything in court. The boat ramp, the jog, permits, citations, every measurement was wrong in their favor, the lights, view, higher terrace / retaining wall, drainage, re-grading, all of this is documented. The best of all is the lie that I asked that ridiculous question, "Can my fence follow the wall instead of the property line." This would have been the stupidest question I could have asked. In addition that question wasn't in Collins Complaint, Interrogatories, Answer to Counterclaim or Mr. Myers deposition. It also wasn't known by prior counsel.

Mr. Carney asked me 38 questions about permits, 25 questions about drainage, 2 questions about zoning and 12 questions about my sump pump a total of 80 questions. This could have all been eliminated by having Baltimore County Code enforcement testify as they had agreed to. I gave Mr. Carney their names and told him they said they would testify on my behalf. Baltimore County testified on my behalf at my zoning variance hearing. The appearance of the 80 questions was that I did something wrong.

Mr. Carney asked me 33 questions about lights. I have one coach light, 100 watt max bulb on the north side of my house which is the side the Collinses are on. Steve Collins does admit to that on page 44 of the trial transcript.

Page 16: However, the totality of the "abundance of sworn facts" amount to an incompetent affidavit of a professional expert witness which is wrought with conclusory statements.....Appellant is unable to show that her case was lost as a result of any neglect of duty by Appellee as required by the third element of a legal malpractice claim.

Senez: I disagree see my response above, page 15 #3. The fact that I lost based on credibility proves it was a result of Mr. Carney's neglect. I had all the elements but Judge Souder believed Mrs. Collins. The reality was that everything the Collinses were saying was a lie. I had it all documented and it was all in Mr. Myers deposition. Mr. Carney could have taken the wind right out of the Collins sail if he had just pointed out that the wall was there prior to Mr. Myers purchasing the house and therefore there wasn't a cooperative effort for a boat ramp! That the property wall was their first therefore had nothing to do with the jog in Mr. Myers terrace retaining wall or a co-owned boat ramp.

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Myers deposition:

Pages 23, 24, 37 and 55. The wall was there before Myers purchased the property, therefore not a cooperative effort for a co-owned boat ramp.

Page 55, Mr. Myers has no idea who put the wall in.

Pages 23, 32, 38. Wall was there 20 years.

Pages 25, 62, 67, the wall was for runoff and erosion, (not a boat ramp.)

Page 72, Myers didn't discuss with Collins why wall was built, as the Collins had said.

Property Wall other; pages 25, 27, 29, 30, 54, 69, 76, 80.

Mr. Carney could have cited Mr. Myers deposition:

Myers deposition: Pages 14, 37, 38, 48, 49, 55, 83, 71, 82, 83, 89

Page 38 no complaints the ramp encroached onto 339's property

Page 49 Myers went from south to north to inside boat ramp. Then he had pile driver come back and put one on the other side because they (the Cooks) were losing property.

Page 49 Mr. Cook not involved in any way

Page 55 Mr. Myers not aware of property line that's going through both properties

Pages 38, 59, 60, 70, 71, 89 and 90. The boat ramp was used with permissive use only.

Pages 62, 71, 72 and 88. Collins didn't use boat ramp;

Page 71, Myers intention was that he was selling the boat ramp with the house.

Page 72, Mrs. Collins used the boat ramp. "I don't remember Mrs. Collins using the boat ramp."

Mr. Carney and Mrs. Lippincott like to twist this all around and say it was my behavior that got me sued. He has the time frame mixed up! I got a peace order against the Collins on 6/26/04 because they were vandalizing my property and harassing me and my family. The Collins filed suit 9/28/04. I didn't put up signs or do anything for over a year. This can all be documented. Signs are not illegal, vandalism is!

The nosey neighbor sign was put up 10/20/05 and the Mick Jagger tongue was put up 11/02/05, hoping the Collins would leave me alone. It's all in our email exchange. The Collins would stalk me whenever I was outside. They would follow me up and down the yard or stand at the fence wherever I was standing. Mr. Collins would hide behind his garage and stare at me, my father, friends people in general as they stopped over. Mr. Collins would call people over to the fence line and talk to them in some kind gibberish. Mr. Carney never presented any information as to why I resorted to signs. They were not mentioned in the complaint or interrogatories, with the exception of the no trespassing sign that was taken down after the peace order hearing on 6/26/06.

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I was tired of the Collins watering my cars in the summer which leaves water marks on hot days that have to be buffed out and their ornamental grass hanging all over my cars which dripped a film on the cars which again had to be buffed out. Mr. Carney was aware of all of this but he never brought it up in court.

Mr. Carney's emails to me of, 5/1/06, 5/09/12/06, 5/12/06, 7/19/06,8/31/06, and our other emails are evidence that Mr. Carney is now twisting this all around to benefit himself.

Page 17: Appellee's Memorandum in Support of Motion to Alter or Amend, is a death knell to Appellants' ability to show a substantial and sufficient basis for an actual controversy as to the causation element of her legal malpractice claim/defense.

Senez: Mr. Carney's Motion to Alter or Amend was too late! This should have all been prepared and presented at trial. The horse was out of the barn. This also didn't defend me against the accusations the Collins made. Judge Souder believed I did all those things the Collins accused me of.

One of the most talked about items in my trial transcript was my lights. But I wasn't asked to point out where the lights were and why they didn't interfere with the Collins. One of the others was Collins view which has no legal remedy.

In court I was not asked about the same issues the Collins were asked about:

Shared or co-owned boat ramp why this would be unacceptable

About walls being there when Myers purchased the property

Settlement negotiations because of survey, there were none.

If Mr. Myers showed me a survey.

About the ladder ramp

About the height of my terrace / retaining wall or elevation

Any property measurements

Backing a boat down to the ramp

Jog in property line wall and terrace / retaining wall

How long the boat house has been there. If you take it down can't put back up

Fence extensions that Mr. Collins called spite fence

About signs on other side of my house

About the Collins not having access to my side because of the property line wall

Citations/ violations

The disputed area

The Caution tape

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Other questions Carney never asked:

Carney never asks Collins or me why I supposedly all of a sudden, four years later didn't allow the Collins on the ramp anymore!

Carney says my father is 70 which isn't really old but he never asks me about my fathers health. I took care of my father who was very sick and had asbestosis and COPD. My father was on oxygen.

Didn't ask why I thought the wall was Collins?

Didn't ask how long the boat house was there?

Didn't ask if I repaired the boat house.

Didn't ask if the boat house was an asset.

Didn't ask about coast guard requirement for light on boat house?

Didn't ask about the damage to Collins bulkhead

Didn't ask me about the grading of my property

Didn't ask about the only way the Collins could get to my side of the wall was by jumping t
he wall or a 3-4 spread across the water.

The Collins timeline is wrong.

Topography Map that Collins got to color on

The purpose and necessity of weep holes in a wall 40 inches high.

Did they ask what day the pictures were taken????

Never asked me about what I thought of Collins exhibits before or during court.

Carney only asked me one question on the boat ramp

Never asked how much it cost for me to repair the boat ramp.

Didn't ask if I asked Collins to split the repair cost of the boat ramp.

Or if Collins offered to split to the repair cost.

Never asked me if I discussed with the Collins splitting the costs

The Collins produced one picture of Ann Collins and her granddaughter on the boat ramp feeding the geese but they supposedly used the boat ramp from August to November while Mr. Myers still lived there and four years while I lived there. Ann Collins asked me for permission and that picture is taken between November 2000 and 6/22/02, you can see the wire fence I had put up when I moved in. The wood fence was put up 7/14/02. That's all they had to show!

Page 19: Notably, on appeal in the underlying action, it was Appellant's position that the Court committed various errors that resulted in the loss of her adverse possession claim.

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Senez: Judge Souder believed it was a co-owned boat ramp as evidenced by her closing remark on page 192, “Unless the parties reach an agreement, both parties have A right to use the boat ramp just as they have done.” However, it was Mr. Carney’s job to point out that these things were all lies. It was Mr. Carney’s job to educate the trial judge on the elements of hostility if she was unclear.

If the Collins and there counsel could sit there in court and continue the ridiculous story of a co-owned, cooperative boat ramp and the jog in the property line wall and terrace /retaining wall being a necessity, even after Mr. Myers said that it wasn’t, it would be nothing for them to say I asked, “if my fence could follow the wall instead of the property line.”

If the Collins could sit in court and give every measurement incorrectly all in their favor to support their position of a co-owned boat ramp with a survey and Mr. Myers deposition on heights and distances entered into evidence, the lie about the supposed question they say I asked would be of little consequence to them.

Page 20: Appellant now argues the antithesis of her prior argument, i.e. that Appellee was the cause of her loss, and not the trial judge, as determined to be the case by this Court. The effect of Appellant’s change of position amounts to a fraudulent attempt to avoid payment of fees to the counsel that established and developed the trial record upon which she successfully appealed trial court’s erroneous decision.

Senez: Not true! I always blamed Mr. Carney for not presenting documents, information and witnesses which would support my position that the Collins accusations were bogus and all based on lies. The Judge only knows what they are presented with. Mr. Carney is the reason the court made such an erroneous ruling. The Collins wanted me to take down the boathouse; this was all an intimidation tactic. They were obsessed with a view and if I wasn’t going to take down the boat house they wanted that view to be across my front yard. This is all in the Collins interrogatories and the email exchange between Mr. Carney and me.