

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

11/18/09 Transcript of Remanded Hearing with Judge Souder:

Rev. 8/4/14

Page 2 Judge Souder: All right. I did review the Opinion of the Court of Special Appeals a couple of times and it is my understanding that the case has been remanded because of a dispute of fact regarding the nature and / or legal effect of a conversation between, or that to which Ms. Ann Collins testified and about which Ms. Senez testified regarding the construction of a fence next to or on top of the wall that existed at the time. And where is what I had with it? All right. The Court does find that the testimony of Ann Collins is credible. And in particular the Court finds that Ms. Senez acknowledged the Collins ownership of the disputed area by requesting their permission to build a fence. In other words, I give credit to the testimony of Ann Collins that a request to build the fence took place, and I am rejecting the testimony of Ms. Senez, that she did not request permission. It's my understanding pursuant to the Opinion of the Court of Special Appeals that that conversation having taken place as Ms. Collins recounted would defeat the hostility required for the Adverse Possession Claim made by Ms. Senez. So, the Court will again enter judgment as previous.

Senez: This wasn't a hearing at all. Judge Souder walked in and said in about the first three sentences that, "The Court does find the testimony of Ann Collins more credible."

This was a ridiculous hearing and Judge Souder acted like we were bothering her. Judge Souder didn't want to hear anything; her mind was made up before she walked into the court room. She had to amend her original trial ruling on 2/26/07 because she basically gave away my property as an easement to the Collins which isn't based on case law and wasn't legal.

"Judgment on Count IV (possession of property) is hereby entered in favor of Plaintiffs and against Defendant in that Defendant is hereby ordered, 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, presently located on the east side of No. 341 Worton Rd."

The Court of Special Appeals really understood the issues and gave Judge Souder an easy out to correct the ruling.

The Court of Special Appeals overruled Judge Souder and told her she was wrong on several issues. This was a second slap at her original ruling indicating she had no clue what Adverse Possession was about. She was basically admonished on pages 34, 39 & 43 in the Court of Special Appeals Opinion. Judge Souder wasn't about to change her ruling. Since she 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 believe Judge Souder was trying to save face over her first two rulings. This however has extreme consequences for me.

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

I never asked permission to put my fence against the wall instead of the property line. Why would I, I thought the property was mine just as Mr. Myers did. This is the dumbest question I could have ever asked.

- 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- The Collins could cross the fence line to access their property and would have full access to my yard and boat ramp. The Collins, their family, 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. Anyone with dogs would understand this.**
- 4- That 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 their property. And they both testified they were friendly while they lived there about four months.**
- 2- Mr. Myers never said anything to me, he gave me permission to put the fence up and 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? It was vexatious litigation. If it were true they would have brought it up a lot earlier in the litigation process.**

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!

The fact that Mr. Myers deposition seems to be so confusing to everyone is a direct result of Mr. Carney interchanging fence and wall and the wrong addresses. Apparently he didn’t do a very good job. He wasn’t listening to what Mr. Myers was saying.

Mr. Covahey: Your honor, may, may I be heard beyond what’s in my argument?

Senez: Mr. Covahey asked to be heard and Judge Souder reluctantly agreed.

Judge Souder: Yes, Yes.

Senez: Mr. Covahey went on to speak for the next 20 to 25 minutes with some interjection by Judge Souder.

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

Keeping in mind that Judge Souder presided over my case for seven hours, could have access to the trial transcript and she had The Court of Special Appeals Opinion which really outlined the important issues, she really didn't understand. Judge Souder had a brief from opposing counsel and my counsel, Bruce Covahey and she was still confused. She was confused in trial court and is still confused in this hearing. I'm sure she could have obtained a copy of the original trial transcript if she wanted to review for a better understanding.

Page 9 Covahey: At the point in time that this conversation took place Ms. Senez had not taken title to the property.

Judge Souder: Right.

Covahey: She did not settle on the title. And in—

Judge Souder: In two, this is in 2000?

Covahey: Correct. Late 2000.

Judge Souder: But she, you're saying at the time the conversation took place she's not, she does not have title?

Senez: Judge Souder here is not aware that I built the fence in 2000 before I settled on the property. That at the time I asked the supposed "question" I didn't have title to the property. This was however clearly presented.

Page 9 Judge Souder: She does not have title

Page 10 Covahey: She does not have title at that time point in time. So, she was still tacking on Mr. Myers use of—

Judge Souder: Wait. I don't know that that's a fact on this record because I don't know that we had—

Page 10 Transcript page 154

Mr. Jenkins: Am I correct to understand when you had the fence erected in November 2000 you did ask permission of the Collins for that?

Senez: No, I did not ask permission. I discussed with them, putting the fence on top of the wall to minimize and reduce four inch space between the wall and the fence, and it was only in a passing thought as to what to do. I never heard back from them. I really didn't pursue it.

Page 10 Judge Souder again says she doesn't know that's a fact on the record. In the trial transcript Ann Collins states on pages 18 and 36, Steve Collins states on pages 65 and 66. I said it on pages 99, 100 & 148. Carney said it on page 100. Mr. Covahey said it on page 2 of the remanded hearing brief. The Court of Special Appeals said it on page 12.

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

Obviously Judge Souder didn't review anything for this hearing. She had already made up her mind and written the ruling before she heard oral argument! This is not an appropriate behavior for a Judge they should be impartial and evaluate the facts.

Page 11 Mr. Covahey: I cannot direct your honor to specific testimony as I stand here, but I believe the testimony was undisputed and Ms. Senez testified the was erected in November of 2000 concurring with the, the date set forth in the answer.

Judge Souder: We have the, we have an answer on page 100. An answer the fall of 2000.

Mr. Covahey: I cannot direct your honor to specific testimony as I stand here, but I believe the testimony was undisputed and Ms. Senez testified the as erected in November of 2000 concurring with the, the date set forth in the answer.

Judge Souder: Well at the time the fence is constructed she does have title.

Mr. Covahey: No. She still did not have title.

Judge Souder: No?

Mr. Covahey: at the time the fence was constructed. That was done with Mr. Myers permission to allow her to build in on the grassy area. Even, I think even if we talk about permission being asked the testimony indicates that she asked about, the discussion was about putting the fence on top of the wall.

This is ridiculous!

Senez:

Circuit Court Trial transcript:

Ann Collins page 18 & 36 states there before I moved in.

Steve Collins page 65 & 66 – states the fence was up before she settled.

Senez pages 99, 100 & 148 – I state that I that I had the fence built before I settled.

Carney stated on page 100.

The Court of Special Appeals Opinion said it on page 12.

Bruce Covahey had it in his remanded hearing brief on page 2.

Again its obvious Judge Souder didn't review the Court of Special Appeals Opinion or Mr. Covahey's brief because she had already made up her mind and she still isn't listening.

Page 12 Mr. Covahey: Transcript page 114 if there's any acknowledgement on the part of Ms. Senez that could possibly break the twenty year period it would have been as to building atop of the wall as opposed to adjacent to the wall.

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

Mr. Covahey: The conversation continued. And that's when Mr. Collins told me that half of the boat ramp was his.

Page 15 Judge Souder: Well, if it was hostile as a matter of law I mean, The Court of Appeals, I mean, The Court of Special Appeals could have so held, and they did not.

Covahey: It doesn't, it's not necessary that someone has to have a proper belief as their property line is based on for example a deed that has a description that turns out to be erroneous. And I'm referring to the case in that, with regard to that is *Tamborough v. Miller* 203 Maryland 329, 1953.

Senez: Tamburo, 203 Md. 329. The Court Of Appeals followed what it called the "modern trend" and held that "where visible boundaries have existed for the period set forth in the Statue of Limitations, title will vest in the adverse possessor where there is evidence of unequivocal acts of ownership." The Court also held that "the fact that the possession was due to inadvertence, ignorance, or mistake is entirely immaterial." The Collins and I both acted in a manner which indicated we didn't know where the property line was before 2004.

Page 18 Covahey: Transcript of Steve says, Question: she went ahead and had the fence erected prior to the time that she actually settled and moved into the property? Steve Collins: That's correct.

Senez: Trial transcript Steve Collins page 65 & s, fence was up before she settled. But it's also in the trial transcript, Ann Collins page 18 & 36 there before I moved in. Trial transcript Senez page 99, 100 & 148 – I stated that I had the fence built before I settled on the property. And the Court of Special Appeals Opinion said it on page 12.

Its obvious Judge Souder didn't review the Court of Special Appeals Opinion or Mr. Covahey's brief. This is not how a Judge should act! It only goes to further prove that her ruling is totally wrong and I should be granted a new trial or the ruling should be overturned.

Page 19 Thompson: So, I would urge the Court that her testimony on page 114 that my colleague just referred to where she talks about building the fence up to the wall or on top of the wall, that's all a red herring your honor because she understood where the property line was. I really don't think there was any doubt about that. So, her testimony here on page 114 notwithstanding I will urge you to recall that the evidence adduced at trial was that she understood or had been shown where the property line was.

Senez: There's nothing on page 114 that talks about building the fence up to the wall or on top of the wall. Thompson is throwing out red herrings! Page 114 of the trial transcript says that Mr. Collins told me that half of the boat ramp was his. "And again, I was a little

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

surprised because I assumed my property line had gone to the wall. Collins asked me if I ever measured the width of my property, did I know how much property I had there and I had nothing at that point in time to reference it.” I never measured the width of my property. That had never occurred to me. And clearly half the boat ramp isn’t the Collins as they stated and as evidenced by the surveys we both had done in June 2004.

I have no idea what evidence Thompson is saying was adduced at trial that I knew and understood where the property line was. Mr. Myers testimony does not say that!

Survey The dialogue from Mr. Myers deposition on the survey is on pages 32 and 33.

Mr. Carney asks Mr. Myers, When you were made aware of this situation by your surveyor, what if anything did you do at that time?

Mr. Myers responded, “Basically, I put it in the sales thing.

Mr. Carney: Tell me what you mean.

Mr. Myers: Basically I showed it to the prospective buyer.

Mr. Carney: As being---Let me be clear for the record what did you show to your prospective buyers?

Mr. Myers: the survey.

Mr. Carney: and specifically, you pointed out to the prospective buyers that the wall was about a foot inside the property line of 339?

Mr. Meyers: Did I ever point that out to you. (Mr. Myers was asking me!)

Ms. Senez: (No response)

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

I believe the property went to the wall just like Mr. Myers did.

Page 20 Judge Souder: All right. Mr. Meyers testified that he provided the property survey which showed where the line was.

Senez: This is not correct! The house wasn’t on the market when I had the realtor approach Mr. Myers. I had given Carney the names of the realtors that could testify that I never saw a survey and that HSA Realty never had a survey in their file. I had no idea or reason to believe the wall wasn’t the property line. My side of the property line wall extends out a lot further than the Collins side and Mr. Myers built the ramp and bulkhead.

Everyone seems to say in court whatever they want! They also don’t read.

Thompson, that’s correct your honor, showed it to Ms. Senez.

Senez: I’m sure Thompson also had a copy of Mr. Myers deposition and the Court of Special Appeals Opinion and I’m sure he read what both of them said. So this is just a lie!

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

Judge Souder comments that it's hard to judge Mr. Myers credibility because all she had was his deposition. Judge Souder certainly couldn't tell the Collins were lying and they were right in front of her.

Senez: The Court of Special Appeals page 17 says; “Mr. Myers deposition does not contain a specific assertion that he showed the survey to appellant in particular.”

Judge Souder: says, and it's undisputed testimony that he did provide the actual property survey showing the property line to be where it was on Ms. Senez's side of the wall.

Senez: This is not true! The only information I received was from the HSA Realty and they do not and have never had a survey in their files!

Mr. Covahey: page 21 says but the testimony isn't really flat out that Mr. Myers said, I provided the survey to Ms. Senez.

Senez: I explained to Mr. Carney the day of the deposition during a break and again on 10/30/06 and 12/4/06 that the house wasn't on the market when I had the realtor approach Mr. Myers. I never saw a survey and had witnesses to verify I never saw a survey. This is all documented in our email exchange.

The dialogue from Mr. Myers deposition on the survey is on pages 32 and 33.

Mr. Carney asks Mr. Myers, When you were made aware of this situation by your surveyor, what if anything did you do at that time?

Mr. Myers responded, “Basically, I put it in the sales thing.

Mr. Carney: Tell me what you mean.

Mr. Myers: Basically I showed it to the prospective buyer.

Mr. Carney: As being---Let me be clear for the record what did you show to your prospective buyers?

Mr. Myers: the survey.

Mr. Carney: and specifically, you pointed out to the prospective buyers that the wall was about a foot inside the property line of 339?

Mr. Meyers: Did I ever point that out to you. (Mr. Myers was asking me!)

Ms. Senez: (No response)

Mr. Lanzi: Objection

Mr. Carney however never asked me during the trial if I ever saw a survey.

Page 21 Judge Souder: No. He said he provided it to her in his deposition.

Page 22 Judge Souder: He didn't say he brought it to her attention. He said, I gave it to her with the papers is my recollection

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

Senez: Mr. Myers did not say he gave it to me with the papers! Doesn't anyone read? In addition Mr. Myers wasn't aware of any issues on the north side of the property his concern was the south side where he built a fence. This fits in with the garage zoning variance Mr. Myers filed for in February 10, 1984, for a one foot side yard setback instead of the two and a half foot required.

Mr. Myers is the only one with personal knowledge and his testimony is directly contradictory to what the Collins said in court!

Mr. 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.

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

Pages 88 Myers didn't recall Collins ever launching a boat

Page 82 Myers deposition no knowledge where the exact line was

Page 71 Myers deposition his intention was he was selling the boat ramp with the house.

Page 22 Judge Souder: Yeah. At page, I have a note. Page 62 that he got the survey and Myers put the survey in the sales materials and showed to prospective buyers. Maybe its page 66 or 68

Senez: Mr. Myers never 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. The house wasn't on the market when I had the realtor approach Mr. Myers. See the dialogue outline on page six above. I didn't respond to Mr. Myers in the deposition.

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

Page 25 Judge Souder says, "All right. Well, I issued my ruling and then heard argument. So, (inaudible) already taken care of the argument, of the ruling.

Senez: The ruling was already issued! This ruling is based totally on erroneous information! Judge Souder never understood:

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

- I put the fence up before I settled on the house, Mr. Myers approved.
- Mr. Myers never said he showed me a survey.
- That the property line wall was already there when Mr. Myers purchased the property and therefore had nothing to do with a co-owned boat ramp. This was the elephant in the room.
- Mr. Myers built the terrace wall after he purchased the property so he wasn't concerned about backing a boat down and it had nothing to do with a co-owned boat ramp
- The walls had been there for 20 years.
- The elements of hostility.
- That I never did the things the Collins accused me of.

If the Collins could make up a story that the wall was a cooperative effort for a co-owned boat ramp which is directly contradictory to Mr. Myers deposition and Mr. Myers garage variance from 2/10/84, then they are perfectly capable of making up a story that I asked if my fence could follow the wall instead of the property line.

Collins stated in court that I directed massive amounts of water to their property so they plugged the 10 weep holes in the property line wall. On 11/22/13 the Collins finally removed the wall that had fallen and slopped their side up to the height of my property 30 plus inches. This just further proves there never was a drainage issue since they would now get all the runoff from my property if there ever was any!

I now have twelve signed affidavits that say the wall was there in the early mid 70's. George Cook III, Iris P. Wallis, Sharon Danielczyk (son and daughter(s) of Mr. Cook) said they realized the wall wasn't on the property line sometime in 1975 when the Rodgers on the other side of the Collins, 337, had a survey done. The Cooks decided to just let it go. I also have a signed affidavit by John (Jack) Rodgers and a copy of the survey. I have an signed affidavit from Dennis Danielczyk, Sr. and his son Dennis Danielczyk, Jr. who launched boats from the boat ramp. This proves the Collinses are liars!

It was all a lie to get me to take the boat house down, just read the interrogatories. It was the Collins main objective. Check with Baltimore County and their files. I should be granted a new trial or the ruling should be reversed.

The Collins had 176 pages of testimony and I only had 66 pages. The Collins where asked to describe 34 exhibits. I was asked to describe 5 exhibits. In addition to the Collinses own exhibits each one of them was asked to review and describe more of my (defendants') exhibits than I was.

One of the most talked about item 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. The second was Collins view which has no legal remedy.

Judge Souder Remanded Hearing – 11/18/09 - Rebuttal

In court I was not asked about the issues the Collins were asked about or other significant issues:

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

Settlement negotiations because of survey

If Mr. Myers showed me a survey

If I ever saw a survey prior to the one I had done.

If I had a settlement survey and what it showed.

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 walls being there when Myers purchased the property

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 boat house light being a Coast Guard requirement

Damage to Collins bulkhead

The grading of my property

Access from 339 to 341

Jumping the wall.

The fence extensions Collins referred to as "spite fence."

If I had adequate representation prior to and during the trial this would have all been presented to the court.