

St. Regis Mohawk Tribal Court

Kirby Garrow,)	
Appellant)	DECISION AND ORDER
)	
-V-)	Case No.: 15-LND-00002
)	
Michael Garrow,)	
Appellee)	

Procedural History

Kirby Garrow, on behalf of himself filed an appeal of a St. Regis Mohawk Land Dispute Tribunal (hereinafter SRMT LDT) decision dated January 30th, 2015 on March 2nd, 2015.

On March 11th, 2015 a 20-Day Civil Summons was issued to Kirby Garrow to accompany the appeal filed with the Court for service on the Appellee, Michael Garrow.

On April 23rd, 2015 Michael Garrow's Answer with Counterclaims was filed with the Court by his Attorney, Ms. Lorraine White. On the same date a Notice of Appearance was filed by Ms. Lorraine White indicating her representation of the Appellee, Michael Garrow in this matter.

On April 27th, 2015 an Affidavit of Service was filed with the Court showing that the Notice of Appearance and Appellee's Answer was served upon the Appellant, Kirby Garrow.

Historical Background

On November 24th, 1962 Charles Cook sold to Francis Garrow a parcel of land which was described as "a tract or parcel of land measuring 60 feet wide and 330 feet and six inches in length and is located off the highway leading from Hogansburg New York and Rooseveltown New York. The land is bounded as follows: On the north by the highway route 37, on the east by the Conners estate, on the south by Levi Lazore, on the west by Charles R. Cook". *See*, November 24th, 1962 Land Sale Agreement. This became Lot #230. This would make Lot #230 19,800 square feet.

On August 21st, 2008 Francis Garrow relinquished all claim and title to Lot #230 and transferred the parcel to Kirby Garrow (his son). This document was signed by both parties, a witness, and a representative from the St. Regis Mohawk Tribal Clerks office. *See*, August 21st, 2008 Land Transfer Document.

A St. Regis Mohawk Tribe Use and Occupancy was issued to Kirby Garrow on December 9th, 2009 for Lot #230, which contains .52 acre(s) more or less. *See*, December 9th, 2009 SRMT Use and Occupancy Deed to Kirby Garrow Lot #230.

Adjacent to Lot #230 is Lot #231. There is no prior history of this lot in the record before us, and there appears to be two suggested descriptions of Lot #231. A survey with "suggested

descriptions” of Lot #231 was completed by Haynes and Smith Associates for Michael Garrow, and were prepared in October and November 2012. One of the “suggested” descriptions states that Lot #231 contains .901 acres of land, and the other “suggested” description for Lot #231 states that the parcel contains 1.002 acres of land. *See*, October and November 2012 Survey for Lot #231 Haynes and Smith Associates.

On December 24th, 2013 a St. Regis Mohawk Tribe Use and Occupancy Deed was issued to Michael Garrow for Lot #231. This SRMT Use and Occupancy Deed states that Lot #231 contains 1.002 acre(s) more or less. *See*, SRMT Use and Occupancy Deed for Lot #231 issued to Michael Garrow.

Analysis

In the matter at bar there is in the record a survey that was provided by the Appellee, Mr. Michael Garrow, which was completed by Haynes and Smith Associates in October and November 2012. *See*, Haynes and Smith Associates Survey October and November 2012.

It appears that this land survey completed by Haynes and Smith Associates was commissioned and paid for by the Appellee, Mr. Michael Garrow. In previous cases we found that “a surveyor’s utility is only going to be as good as what is placed in their hands.” *See*, *Cole v Thompson 12-LND-00001*. The Court notes this as the survey completed by Haynes and Smith Associates, indicates that there were two iron rods which were **disturbed**. *Id.* One of these “disturbed” iron rods is at the easterly boundary of Lot #231. It appears that this “disturbed” iron rod was utilized as a point to outline Lot #231’s boundaries. There is no way to ascertain whether or not the location of the “disturbed” iron rod is in fact the original location of the rod/point. This disturbed marker is then complicated by the fact that there is NO prior deed for parcel #231 in the record before us. What appears to have transpired was that the Appellee engaged the surveyor, and without any prior deed, the surveyor utilized existing or found markers (like the aforementioned ‘disturbed iron rods’ to ‘lay-out’ parcel #231).

The Court notes that the use of admittedly “disturbed” iron rods to assist in surveying a parcel of land can be problematic, as this leads the Court to question the original location of the parcel boundaries that were surveyed but are in dispute in this matter.

Since the surveyor in this case has ‘determined’ at least two of the rods that were used to set boundaries for Lot #231 were “disturbed”, brings us to question where the correct location for Lot #231 is and where its boundaries lie. Further, the location of the correct boundary points for Lot #231 is questionable given the fact that there are two “suggested” descriptions for Lot #231. These two different “suggested” descriptions of the property known as Lot #231 vary in size as one describes the parcel as containing .901 acre(s), and the other describes the property as containing 1.002 acre(s). What is interesting to note is that when an SRMT Use and Occupancy Deed was issued to Michael Garrow, the larger “suggested” description of Lot #231 (1.002 acres as opposed to .901 acres) was used when the deed was issued.

With respect to Mr. Kirby Garrow’s (Appellants) lot, the Court has already taken notice that the location of the lots in this dispute show their points of beginning as not being entirely clear

from the record before us. In the description of Lot #230, gleaned from the land sale agreement between Charles Cook and Francis Garrow, the lot is described as being 60 feet wide by 330 feet six inches in length. *See*, November 24th, 1962 Land Sale Agreement. Therefore, this parcel should contain 19,800 square feet. This coincides with the dimensions given in the Haynes and Smith Associates survey completed for Michael Garrow.¹ We observe that the 60 feet wide description which is given in the November 24th, 1962 sale agreement between Charles Cook and Francis Garrow, **DOES NOT** match the language used in the SRMT Use and Occupancy Deed issued to Kirby Garrow on December 9th, 2009. The SRMT Use and Occupancy Deed for Lot #230 issued to Kirby Garrow states that Lot #230 is 70 feet wide. The Court finds that this dimension for the width of Lot #230 is incorrect, as the original land sale agreement states the parcel known as Lot #230 is in fact 60 feet wide. The Court notes that in the original sale document dated November 24th, 1962 between Charles Cook and Francis Garrow that measurements of Lot #230 are listed as being 60 feet east to west and 330 feet north to south, making the total square footage of Lot #230 19,800 square feet. In the deed issued to Kirby Garrow on December 9th, 2009 the measurements are given as 70 east to west and 330 feet north to south which then totals 23,100 square feet. The Court has found nothing in the record to support the additional square footage which was added to Lot #230 in the SRMT Use and Occupancy Deed issued to Kirby Garrow on December 9th, 2009. Therefore, the Court, with the assistance of the SRMT GIS department has created a map which accurately lays out the boundaries of Lot #230 in accordance with the original November 24th, 1962 sale agreement between Charles Cook and Francis Garrow.²

We also see from the record that the current dispute is a recent one, as Mr. Kirby Garrow stated, "There was never any question raised about encroachment on the neighboring property until 2013, after all of the property owners with firsthand knowledge had passed away and were not able to verify any facts related to the property." *See*, Letter Kirby Garrow to SRMT LDT August 14th, 2014.

In the record for this matter we find no evidence of any prior land dispute between the previous owners of Lots #230 and #231. It appears no dispute existed prior to the Appellee's purchase of Lot #230 and the subsequent issuance of an SRMT Use and Occupancy Deed in 2013.³⁴ This appears to support the conclusion that the survey conducted on behalf of the Appellee, Mr. Michael Garrow, may contain mistakes which are historical in nature regarding the true location of the parcels. This is further substantiated by the fact that the house and garage in question have apparently been in the same location for a number of years⁵ with no apparent prior dispute between the previous owners of Lots #230 and #231.

¹ *See*, October and November 2012 Survey for Lot #231 Haynes and Smith Associates.

² *See*, Addendum A attached hereto.

³ *See*, SRMT Use and Occupancy Deed for Lot #231 issued to Michael Garrow.

⁴ In the record there is a letter from Kirby Garrow to the SRMT LDT in which Kirby Garrow states, "Francis Garrow went to the Tribal Council with a land dispute in 1991". This alleged land dispute brought to the Tribal Council by Mr. Kirby Garrow's father, Francis Garrow gives no location of the alleged land dispute or with who Francis Garrow was having this alleged dispute with.

⁵ *See*, Letter Kirby Garrow to SRMT LDT August 14th, 2014.

In the matter at bar we find some assistance in deciding this matter by using the principle of 'equity' in order to resolve the dispute in this matter for we have previously determined that it is a far better solution to look for alternatives that can satisfy the current dispute while at the same time negating any future ones. (See, Roundpoint v Chubb 11-LND-00010, where we found that by altering the dimensions of properties equitably, the need for removing a longstanding structure was extinguished.)

It is with equity in mind, and the facts of this case (e.g. that there is no evidence of any sort of longstanding dispute over the property boundaries of Lots #230 and #231, or anything to properly locate either parcel) that the Court will resolve this dispute. The Court notes that although the Appellant has argued adverse possession should be considered in our decision the Court has denied the applicability of adverse possession in deciding land dispute cases in SRMT Court. See, Sawatis v Cook 12-LND-00002. Although the house and garage involved in this dispute are long standing the Court sees no reason to change its position on adverse possession in this matter.

Equity however, affords the Court with a much more palatable solution for this dispute. As the Court has already pointed out, the survey which was conducted by Haynes and Smith Associates on behalf of the Appellee, Michael Garrow, may contain errors which are historical in nature regarding the correct original points of beginning for either Lot #230 OR Lot #231.

With respect to the two "suggested" descriptions for Lot #231, and the subsequent issuance of the SRMT Use and Occupancy Deed to the Appellee, we must find that this also has an error. With no prior deed to assist in determining the location, dimensions, or boundaries of Lot #231, it appears that this is the reason why there are two "suggested descriptions" provided by the surveyors to the Appellee. We find nothing in the record to support the decision to issue a deed to the Appellee utilizing the "suggested description" which describes Lot #231 as containing 1.002. However, we also find that there is nothing in the record which would support utilizing the alternative "suggested description" which describes Lot #231 as having .901 acre(s). We also find nothing to support the survey completed by Haynes and Smith Associates on behalf of Michael Garrow as there is no historical record to certify the survey completed for Lot #231 followed any SRMT Deed or other documents. The Court notes however that there is also nothing in the record to disprove that the survey completed by Haynes and Smith Associates is incorrect. Therefore, we neither accept nor outright dismiss the survey completed for Lot #231.

We note as well that in the "suggested" descriptions for Lot #231, the surveyor altered the dimensions of Lot #230 from west to east, by shortening the width of Lot #230 on their documents from 70 feet to 60 feet. The Court notes that the SRMT Use and Occupancy Deed issued to Kirby Garrow describes Lot #230 as being 70 feet wide from west to east, not 60 feet. Although the Court has previously found that this was an error as the description of Lot #230 is described as being 60 feet wide when Francis Garrow purchased Lot #230 in 1962, the surveyor who prepared the instrument for Michael Garrow should have left the dimensions as described in the SRMT Use and Occupancy Deed and highlighted a possible mistake. Based upon our reading of the SRMT LDRO, it is not within the authority of a surveyor to ignore or amend an SRMT issued Use and Occupancy Deed. For instance, under the SRMT LDRO, the St. Regis Mohawk Tribal Court can highlight an error[s] in an SRMT Use and Occupancy Deed (as we have previously done), and find that the

deed be amended to correct the error[s] that were found. Any authority to amend or correct a deed however, rests solely with the St. Regis Mohawk Tribal Council.⁶

What is clear from the record is that the boundary markers for Lot #230 and #231 may have been moved over the years as evidenced by the fact that the surveyors who completed the survey for Michael Garrow for Lot #231 found “disturbed” rods which were used to complete their survey.

As we found in White v White 10-LND-00009 the more accurate way to determine property boundaries and parcel sizes is square footage. As property boundaries can be very intricate, using square footage to determine/adjust property boundaries is preferred. Coupled with our holding in Roundpoint v Chubb 11-LND-00010 (that equity should be used to avoid further disputes), we find that the eastern boundary line for Lot #230 that is located on State Route 37 should be moved 10 feet east (to ensure that the boundary of Lot #230 including the house and garage is included in the bounds of Lot #230) then 83 feet south so that the house and garage are now clearly within the boundaries of Lot #230 and then 10 feet west back to the property boundary of Lot #230. This portion carved out from the alleged boundaries of Lot #231 totals 830 square feet. Next, the 830 square feet which was ‘allocated’ from Lot #231 will be recovered from the southern portion of Lot #230, and will now be a part of Lot #231 to compensate for the transfer of square footage that was required to carve out the house and garage on Lot #230.⁷ Next, the compensation of 830 square feet, to ensure that the house and garage located on Lot #230 is defined as being within the borders of Lot #230, does not change the Court’s finding that the total square footage that is contained within Lot #230 is 19,800 square feet. The total square footage of Lot #230 continues to consist of 19,800 square feet, the same square footage that the parcel consisted of when it was sold by Charles Cook to Francis Garrow in 1962. We make this equitable determination based upon the foregoing discussion.

In accordance with the St. Regis Mohawk Land Dispute Resolution Ordinance, this constitutes the final decision in this matter by the St. Regis Mohawk Tribal Court.

Signed by my hand this 27th day of June 20 15




Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court

⁶ See, SRMT LDRO V (2).
⁷ See, Addendum A attached hereto.

Addendum

A

State Route

70'

Kirby Garrow
Lot 230
19,800 Sq ft. +/-

83'

10'

Michael Garrow
Lot 231

330'

11.3

74'

50'