

**FILED**  
AT 339 O'CLOCK M

JUL 1 1 2007

Court Administrator  
Circuit Court for Lane County Oregon  
BY \_\_\_\_\_ DEPUTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

ASPEN FLO, LLC,

Plaintiff,

v.

DONALD V. SAXON and NORMA L. SAXON,

Defendants.

Case No. 16-06-02162

OPINION and ORDER

Lann D. Leslie tried the cause and filed the trial memorandum for plaintiff.

Michael E. Farthing tried the cause and filed the trial memorandum for defendants.

### SUMMARY

This matter requires the Court to determine the boundary between the properties of Plaintiff Aspen Flo, LLC (Aspen Flo) and Defendants Donald and Norma Saxon (Saxons). In making this determination, the Court must decide two issues: (1) whether either party established a substantial interest or claim to the property lying between the U.S. Government Meander Line of 1879 and the Mean High Tide Line and (2) whether the Saxons acquired title to property between County Road 65 and the U.S. Government Meander Line of 1879 by adverse possession. The Court holds the Saxons established a substantial claim to the property lying between the U.S. Government Meander Line and the Mean High Tide Line, but did not establish a claim by adverse possession to property between the County Road and the U.S. Government Meander Line. Therefore, the Court reaches the ultimate conclusion that the boundary between the parties' properties is the U.S. Government Meander Line of 1879.

### DISCUSSION

#### I. Factual and Procedural Background

This case arose from a disagreement between the parties as to the boundary of their properties. Aspen Flo claims ownership of all property within Lot 4, Section 26, Township 18 South, Range

12 West of the Willamette Meridian up to the Mean High Water Line. The Saxons claim ownership of “all that portion of Government Lot 4 lying easterly of the U.S. Government Meander Line in Section 26, Township 18 South, Range 12 West of the Willamette Meridian.”<sup>1</sup>

**A. Plaintiff's Land**

Aspen Flo purchased real property by statutory warranty deed in Florence, Oregon, from Florenco, LLC in 2005. The legal description attached to the statutory warranty deed described the deeded property, in pertinent part, as:

Parcel III:

Beginning at a point where the center line of the highway formerly known as the Roosevelt Highway intersects the North line of Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian; run thence Southerly along said highway center line 298.80 feet; thence East 446.05 feet, more or less, to the intersection with the center line of the road formerly known as the Eugene-Florence Road; thence Northerly along the center line of said last mentioned road to the North line of Lot 4; and thence West along the North line of said Lot 4 to the point of beginning, in Lane County, Oregon.

ALSO: Beginning at a point in the center of the highway formerly known as the Roosevelt Highway, 298.80 feet South of the North line of Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian; running thence Southerly along said highway, 738.25 feet to the intersection of said highway with the County Road formerly known as the Eugene-Florence Road; thence Northeasterly along said Eugene-Florence Road 884.50 feet, more or less, to a point due East of the point of beginning; thence West to the point of beginning, in Lane County, Oregon.

ALSO: That part of Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian, lying Easterly and Southeasterly of the Southeasterly boundary of County Road 65, known as Eugene-Florence Road.

SAVE AND EXCEPT: The South 30 feet of that part of Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian, lying between the Southeasterly boundary of County Road 65, known as the old Eugene-Florence Road, and the U.S. Meander Line on the Southeasterly boundary of said Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian, in Lane County, Oregon.

SAVE AND EXCEPT: Any portion lying below the high water line.<sup>2</sup>

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<sup>1</sup> Defts.'s Am. Answer and Countercl. at 1.

## B. Defendants' Land

The Saxons purchased real property in Florence, Oregon, from Dorothy C. Wilson in 1988. The warranty deed from Ms. Wilson to the Saxons described the land, in pertinent part, as “[a]ll tidelands fronting and abutting on . . . Lot 4 in Section 26 . . . , Township 18 South, Range 12 West of the Willamette Meridian, being in Lane County Oregon[.]”<sup>3</sup>

In order to resolve the boundary dispute, Plaintiff brought action to quiet title and for declaratory relief as to all property described in the statutory warranty deed it received from Floenco (OJIN 3). In response, Defendants brought (1) a counterclaim to quiet title as to all that portion of Lot 4 lying easterly of the U.S. Government Meander Line, or in the alternative, a counterclaim for ownership of the same land resulting from adverse possession; and (2) a counterclaim for ownership of land lying between the U.S. Government Meander Line and County Road 65 by adverse possession (OJIN 27). The matter came before the Court on May 30, 2007, for trial.

## II. Legal Analysis

In determining the boundary between the parties' properties, the Court must determine: (1) if either Aspen Flo or the Saxons established a substantial claim to the property lying between the U.S. Government Meander Line of 1879 (USGML) and the Mean High Tide Line (MHTL); and (2) if the Saxons acquired title to property between County Road 65 and the USGML by adverse possession.

In reaching its decision, the Court is cognizant of the fact that both parties' deeds and the deeds within their respective chains of title contain terms that require definition, lest the terms be misconstrued and the intent of the parties and their predecessors in interest lost. The first term requiring definition is “meander line.” Meander lines are run in government surveys to determine the amount of land disposed of in government sales and are generally not intended to serve as actual boundary lines.<sup>4</sup> In a recent case dealing with meander lines, the Court of Appeals stated that “[a] meander line is a survey line demarking the contours of a navigable body of water. Where a meander line of a body of water is given as a boundary in a property description, the water itself, and not the meander line as shown on the government survey, is the true boundary of the riparian proprietor.”<sup>5</sup> According to the testimony of Land Surveyor Robert Ward, a meander line, while generally not intended to serve as an actual border, may become the actual border if the meander line is specifically referred to or “called out.” The U.S. Government Meander Line of 1879 was a survey done to “demarc the contours” of the Siuslaw River flowing

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<sup>2</sup> Am. Compl. at Ex. A (OJIN 3). The only reference to a meander line of any sort is in an exception to the legal description.

<sup>3</sup> Aff. of Donald V. Saxon at Ex. 117 (OJIN 16).

<sup>4</sup> *Allison v. Shepard*, 285 Or 447, 453 (1979).

<sup>5</sup> *Coussens*, 200 Or App at 173 n.5 (2005) (citing *Weiss v. Oregon Iron etc. Co.*, 13 Or 496 (1886)).

through Florence, Oregon. No survey has been done since 1879 to reflect changes in the flow of the river.

The next term requiring definition is “tidelands.” Tidelands are “lands covered and uncovered by the tides, . . . which at common law is that land lying between ordinary high and low water mark.”<sup>6</sup> Tidelands are not permanent, but rather change with the changing landscape of a body of water’s flow. The ordinary high and low water marks may also be referred to as the mean high and mean low tide lines.

### A. Action to Quiet Title

In the present suit, each party calls upon the Court to quiet title in their favor as to portions of the disputed land. At trial, Aspen Flo maintained title should be quieted in its favor as to all land between County Road 65 and the MHTL. The Saxons, on the other hand, maintained title should be quieted in their favor as to all land between the USGML and the MHTL.

To secure a judgment quieting title, “[a moving party] must prove that [it has] a substantial interest in, or claim to, the disputed property and that [its] title is superior to that of [the responding party].”<sup>7</sup> The Oregon Supreme Court has held that a moving party’s right to relief is dependent on the strength of moving party’s title, not the weakness of responding party’s title.<sup>8</sup> Here, the Court must determine whether the parties have established, “as a matter of law and uncontroverted fact, the requisite strength of their title[s].”<sup>9</sup> In reaching its decision, the Court’s “task is to discern and effectuate the intent of the grantor as evinced in the documents of conveyance and surrounding circumstances.”<sup>10</sup>

A brief recitation of the history of the property is informative and helps guide the Court’s analysis. Prior to 1934, Lane County owned all property located within Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian. In 1934, Lane County deeded the following property to Clinton and Emma Carlson, the Saxons’ predecessor in interest: “All tide lands fronting and abutting on Lots 3 and 4, Sec. 26 and Lot 7, Sec. 35, Twp. 18 S. Range 12 West, W.M. being 64.91 acres, EXCEPT 15 acres [as described in the deed].”<sup>11</sup> In 1940, the Carlsons deeded the property, using nearly identical language, to the Gourdouxs.<sup>12</sup> In 1946, the Gourdouxs conveyed the tidelands fronting and abutting on Lot 4 to the Wilsons.<sup>13</sup> The 1946 conveyance from the Gourdouxs to the Wilsons does not set forth the specific acreage of the tide lands, but includes a reference to the 15 acres excepted from the conveyance, because that land was previously conveyed to another person.<sup>14</sup>

<sup>6</sup> *Hardy v. California Trojan Power Co.*, 109 Or 76, 81 (1923).

<sup>7</sup> *Coussens v. Stevens*, 200 Or App 165, 171 (2005) (citing ORS 105.605).

<sup>8</sup> *Id.* (citing *Faw v. Larson*, 274 Or 643, 646 (1976); *Jones et al v. Jackson et al*, 195 Or 643, 659 (1952)).

<sup>9</sup> *Id.* at 171.

<sup>10</sup> *Id.* at 172 (citing *Tab Enterprises v. Heare*, 37 Or App 879, 884-85 (1978)).

<sup>11</sup> Defs.’ Ex. 111 at 1.

<sup>12</sup> Defs.’ Ex. 112 at 2.

<sup>13</sup> Pl.’s Ex. 8 at 1.

<sup>14</sup> *Id.*

In 1943, Lane County deeded property within Lot 4 to W.A. and Olive Seaman, Aspen Flo's predecessor in interest. The deed describes the property as "Lot 4," and then excepts out a portion of that land.<sup>15</sup>

In 1953, the Seamans deeded to Siuslaw School District "that part of lot 4 . . . lying between the southeasterly boundary of County Road #65 . . . and the U.S. Meander line on Southeasterly boundary of said lot 4[.]"<sup>16</sup> The Seamans deeded this property "free from all incumbrances, except the interest of any persons claiming ownership of "Tide Lands" lying below the U.S. Government meander lines of lot 4 . . . [.]"<sup>17</sup>

In 2004, Siuslaw School District executed two deeds with Ross Murry conveying property within Lot 4. In the Bargain and Sale Deed, Siuslaw School District conveyed "that part of Lot 4 . . . lying Easterly and Southeasterly of the Southeasterly boundary of County Road 65 . . . to the mean high water line."<sup>18</sup> The Warranty Deed conveyed all property within Lot 4 lying northwesterly of County Road 65.<sup>19</sup>

In April 2005, Ross Investments deeded the property within Lot 4 which had been deeded to it by Siuslaw School District to Florenco. Of particular note in this deed is the following property, given without any warranty whatsoever: "That part of Lot 4 . . . lying Easterly and Southeasterly of the Southeasterly boundary of County Road 65 . . . to the mean high water line."<sup>20</sup> The entire property was deeded "free of encumbrances created or suffered by the Grantor except as set forth on the attached Exhibit A," a list including 12 exceptions to which the property was subject.<sup>21</sup> Among the exceptions in Exhibit A is #6, which states the property is taken subject to "the interest of any persons claiming ownership of 'Tide Lands' lying below the U.S. Government meander lines of Lot 4 . . . as disclosed by deed from W.A. Seaman, et us., to School District 97J[.]"<sup>22</sup>

The parties do not dispute Aspen Flo's ownership of property within Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian up to County Road 65, formerly known as the Eugene-Florence Road.<sup>23</sup> The parties also do not dispute the Saxons' ownership of tidelands that currently front and abut Lot 4, as defined both legally and generally. Rather, the parties dispute the ownership of property lying "Easterly and Southeasterly of the Southeasterly boundary of County Road 65, known as Eugene-Florence Road," as described in Paragraph

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<sup>15</sup> Pl.'s Ex. 1 at 1-2.

<sup>16</sup> Pl.'s Ex. 2 at 1. This deed makes no reference to property within Lot 4 lying northwesterly of County Road 65.

<sup>17</sup> *Id.*

<sup>18</sup> Pl.'s Ex. 3 at 1.

<sup>19</sup> Pl.'s Ex. 4 at 1.

<sup>20</sup> Pl.'s Ex. 5 at 2.

<sup>21</sup> *Id.* at 4-5.

<sup>22</sup> *Id.*

<sup>23</sup> Plaintiff Aspen Flo's undisputed property is legally described in Paragraphs One and Two of subheading "Parcel III" of the legal description contained in Exhibit A attached to the statutory warranty deed. Defs.' Ex. 110 at 3.

Three under subheading “Parcel III” of the Statutory Warranty Deed from Florenco to Aspen Flo.<sup>24</sup>

### 1. Analysis of Plaintiff’s Deed

Florenco conveyed and warranted the property to Aspen Flo free of liens and encumbrances, except as set forth in Exhibit “B” attached to the Statutory Warranty Deed.<sup>25</sup> This exhibit contains many of the same restrictions and exceptions as the exhibit attached to the deed from Ross Investments to Florenco. Of particular interest is Exception 5, which states the property is taken subject to the “interest of any person claiming ownership of **‘Tide Lands’ lying below the U.S. Government meander lines** of Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian, as disclosed by deed from W.A. Seaman, et ux, to School District No. 97J, recorded June 23, 1953[.]”<sup>26</sup>

Aspen Flo established a substantial claim to the property lying between County Road 65 and the USGML. Aspen Flo’s claim is supported not only by its own deed, but also by the deeds in its chain of title, which reflect the selling of this particular part of the disputed property. The reference to the USGML is a “calling out,” as it was referred to by Mr. Ward, and sets the USGML, and not the water as would be in a traditional sense, as the specific point beyond which the land easterly is subject to potential claims. Aspen Flo’s claim to property lying below the USGML, however, is subject to a claim of ownership to “Tide Lands” lying below the line. The Saxons have asserted such a claim.

### 2. Analysis of Defendants’ Deed

At trial, Aspen Flo asserted the Saxons are the owners of only the tidelands currently fronting and abutting on Lot 4. Conversely, the Saxons asserted they are the owners of not only the present day tidelands, but also all land lying between the USGML and the MHTL. The Saxons claim is based on their belief that all land lying easterly and southeasterly of the USGML was historically known as the “Tide Lands” and the land was conveyed with the understanding and intent that the buyer would acquire all land between the USGML and MHTL.

The Saxons assertion is similar to the one raised by the plaintiff in *Hardy v. California Trojan Power Company*.<sup>27</sup> In *Hardy*, the plaintiff acquired title to tidelands in Columbia County that had previously been sold by the State of Oregon on December 31, 1883.<sup>28</sup> The deed from the State to S.G. Caudle, plaintiff’s predecessor in interest, described the property as “[a]ll the tidelands east of and fronting and abutting on section 1, township 6 north, range 2 west of the Willamette meridian, containing 13.36 acres, more or less.”<sup>29</sup> The plaintiff initiated suit to quiet

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<sup>24</sup> *Id.*

<sup>25</sup> Defs.’ Ex. 110 at 1.

<sup>26</sup> *Id.* at 5 (emphasis added).

<sup>27</sup> *Hardy*, 109 Or 76.

<sup>28</sup> *Id.* at 80.

<sup>29</sup> *Id.*

title in the tidelands and the trial court quieted title in plaintiff's favor.<sup>30</sup> The defendant appealed, arguing the trial court erred in ruling in favor of the plaintiff, because "plaintiff failed to prove at the trial that the lands described in his complaint were tide-lands on December 31, 1883 [and] because the plaintiff failed to identify with reasonable certainty any particular lands as being tide-lands on December 31, 1883."<sup>31</sup> The Oregon Supreme Court affirmed the ruling of the trial court and held that the trial court did not err in quieting title in the tidelands to plaintiff, because plaintiff met his burden.<sup>32</sup> The Court reasoned:

The burden is upon the plaintiff in this suit, if he would have his title quieted, to show that on December 31, 1883, the dates on which the land was sold and conveyed by the state, there was in existence tide-land to which the language of the deed applied. The deed must describe the land with sufficient certainty to enable a competent surveyor to establish the boundary lines of the tidelands conveyed by the state to Caudle.<sup>33</sup>

In order to have title quieted in their favor to land lying between the USGML and the MHTL, the burden is the Saxons. They must establish that (1) on September 25, 1934, there were tidelands to which the language of the deed from Lane County to the Carlsons applied and (2) the deed "describe[s] the land with sufficient certainty to enable a competent surveyor to establish the boundary lines of the tidelands . . . [.]"<sup>34</sup>

In addition to evidence of their chain of title, which is set forth above, the Saxons presented evidence of surveys done of the area during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries.<sup>35</sup> In these surveys, land lying to the east of the USGML is labeled as "Tide Lands." Exhibit 102 shows the "tide lands" fronting and abutting Lots 3, 4, and 7 to be 65 acres. This exhibit does not specifically identify the U.S. Government Meander Line, but comparison of this survey with Exhibit 104, which specifically identifies the U.S. Government Meander Line, leads the Court to conclude that the line forming the western boundary of the "Tide Lands" in Exhibit 102 is the USGML. Exhibit 104 focuses specifically on the "tide lands" fronting and abutting Lots 4 and 7. This survey shows the acreage of Lot 4 as 31 acres, the acreage of Lot 7 as 7.91 acres and the land east of the USGML in Lots 4 and 7 as 29.52.<sup>36</sup>

Analysis of these surveys, when done in conjunction with an analysis of the deeds contained within the Saxons chain of title leads the Court to conclude that at the time of the 1934 sale from Lane County to Carlson: (1) there were tidelands fronting and abutting Lots 3, 4, and 7 totaling 64.91 acres; (2) these tidelands were located easterly of the USGML; and (3) these tidelands

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<sup>30</sup> *Id.* at 77.

<sup>31</sup> *Id.* at 78.

<sup>32</sup> *Id.* at 83 (finding the plaintiff had met his burden of establishing the existence of the tidelands, conveyance of the tidelands, and ability of the tidelands to be identified).

<sup>33</sup> *Id.* at 81

<sup>34</sup> *Id.*

<sup>35</sup> Defs.' Exs. 102, 103 and 104.

<sup>36</sup> Defs.' Ex. 104.

were described with sufficient certainty to enable a competent surveyor to locate them. The deed from Lane County to Carlson refers to the tidelands themselves as they existed in 1934. At that time, the tidelands laid just easterly of the USGML and extended the entire length of the USGML as it cut across Lots 3, 4, and 7. At some point, as is typical with an ever changing river and the surrounding landscape, the tidelands receded and/or moved to the location they are today. Although the land once referred to as tidelands could no longer be classified as such in the traditional sense because it was not covered and uncovered by the ebb and flow of the water, predecessors in interest of both parties continued to refer to land east of the USGML as “tide lands,” reflecting the land’s historical nature. It was the intent of the Saxons’ predecessors in interest to convey all land lying easterly of the USGML to their respective buyer and that buyers and sellers of property within Lot 4 continued to referred to land lying east of the USGML as “tide lands” even though part of the land was no longer covered and uncovered by the ebb and flow of tidelands in the traditional meaning of the word. As a matter of law and uncontroverted fact, the Saxons have established a claim to all land in Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian lying between the USGML and MHTL. As such, title is quieted in them as to this land.

#### **B. Adverse Possession**

In addition to their counterclaim to quiet title, the Saxons maintain they acquired an interest in the land between County Road 65 and the USGML through adverse possession.

Actions to acquire title by adverse possession are governed by ORS 105.620, which states in pertinent part:

- (1) A person may acquire fee simple title to real property by adverse possession only if:
  - (a) The person and the predecessor in interest of the person have maintained actual, open, notorious, exclusive, hostile and continuous possession of the property for a period of 10 years;
  - (b) At the time the person claiming by adverse possession or the person’s predecessors in interest, first entered into possession of the property, the person entering into possession had the honest belief that the person was the actual owner of the property and that belief: (A) By the person and the person’s predecessor in interest, continued throughout the vesting period; (B) Had an objective basis; and (C) Was reasonable under the particular circumstances; and
  - (c) The person proves each of the elements set out in this section by clear and convincing evidence.



(3) Absent additional supporting facts, the grazing of livestock is insufficient to satisfy the requirements of subsection (1)(a) of this section.<sup>37</sup>

Defendants bear a “heavy burden” in trying to establish an adverse possession claim.<sup>38</sup> In *Hoffman*, the Oregon Supreme Court analyzed each of the elements of an adverse possession claim and set forth the requirements of each element.<sup>39</sup> The **actual use** requirement “is satisfied if the claimants establish a ‘use of the land that would be made by an owner of the same type of land, taking in to account the uses for which the land is suited.’”<sup>40</sup> Use is **open and notorious** if it is “‘of such a character as to afford the [owner] the means of knowing it, and of the claim.’”<sup>41</sup> Use is **exclusive** if the use is “similar to that which would be expected of an owner in like circumstances.”<sup>42</sup> To establish **hostile** use, “a claimant must demonstrate a subjective intent to ‘possess[ ] the property intending to be its owner and not in subordination to the true owner.’”<sup>43</sup> Use is **continuous** if it is “constant and not intermittent.”<sup>44</sup> All of these elements must be maintained for a ten year period.

The Saxons have no independent claim to the land through adverse possession. Since the Saxons acquired the property in 1988 they cannot prove that the ten year limitation period was mature before bringing this action. ORS 12.250 precludes the use of the limitation period in a claim of adverse possession against the state, county, or other public corporation.<sup>45</sup> The Siuslaw School District, who owned the disputed property from 1953 until 2004, is such a corporation.<sup>46</sup> Since a claim for adverse possession cannot be made against the school district, the ten year limitation period began to accrue only after the school district sold the land to private hands in 2004. Ten years has not passed since 2004; hence the Saxons claim of adverse possession is not ripe and the Saxons’ claim fails.

Although the Saxons fail to establish a current claim of adverse possession over the land, the Saxons may establish a claim based on interest acquired by their predecessors in interest. Any claim of adverse possession by their predecessors in interest must be established before the

<sup>37</sup> ORS 105.620(1)(a) to (c) and (3) (1999).

<sup>38</sup> *Whitley v. Jacobs*, 278 Or 541, 547 (1977).

<sup>39</sup> *Hoffman v. Freeman Land and Timber, LLC.*, 329 Or 554 (1999).

<sup>40</sup> *Id.* at 560 (quoting *Allison v. Shepherd*, 285 Or 447, 452 (1979)).

<sup>41</sup> *Id.* (quoting *Hicklin v. McClear*, 18 Or 126, 138 (1889)).

<sup>42</sup> *Id.* (citing *Russell v. Gullett*, 285 Or 63, 67 (1979)).

<sup>43</sup> *Id.* at 561 (citing *Faulconer v. Williams*, 327 Or 381, 389 (1998)).

<sup>44</sup> *Id.* at 560.

<sup>45</sup> ORS 12.250.

<sup>46</sup> Black’s Law Dictionary defines public corporations as “[a] government-owned corporation that engages in activities that benefit the general public, usu. while remaining financially independent. • Such a corporation is managed by a publicly appointed board.” Black’s Law Dictionary (8th ed. 2004). In Black’s definition of “quasi-corporation” it uses the example of a school district as “a public corporation with limited authority and powers.” *See Shasta View Irrigation Dist. v. Amoco Chemicals Corp.*, 329 Or 151, 157 (1999) (“[A] public corporation is a corporation formed for the public’s benefit or for a public purpose.” A public school district is undoubtedly for the public’s benefit.)

Siuslaw School District acquired the land in 1953. Any claim that had not matured before the purchase by the school district was terminated.<sup>47</sup>

The Saxons predecessors in interest who possessed the disputed land before 1953 are the Carlsons, the Gourdouxs, and the Wilsons. At trial, the Court heard testimony from at least three witnesses regarding use of the land lying easterly of County Road 65, including Donald Saxon (current owner), Ed Wilson (son of former owners), and Lester Nordahl (neighbor/friend of former owners). Testimony from Mr. Wilson and Mr. Nordahl established that the land was used primarily for grazing cattle in relation to a dairy operation run by the Carlsons, and later by the Gourdouxs. At one time a fence stood just to the east of the County Road, presumably to keep cattle from wandering onto the road.

The Court finds the facts and circumstances of the present case similar to those in *Hoffman v. Freeman*. In *Hoffman*, the defendant claimed a certain portion of land by adverse possession because its predecessor in interest grazed cattle on the piece of property, crossed the property occasionally, posted “no-trespassing” signs, and maintained the property.<sup>48</sup> The Oregon Supreme Court held that defendant did not prove hostility by clear and convincing evidence, and therefore, could not establish a claim by adverse possession.<sup>49</sup> The Court reasoned that (1) use of the fence as a means to keep cattle from crossing the road, (2) occasional crossing of the disputed property, (3) thinning of bushes and (4) posting of “no-trespassing” signs did “not amount to clear and convincing evidence that defendants or their predecessors intended to claim land against the true owner.”<sup>50</sup>

Similarly, the Saxons have failed to prove hostile use of the disputed land by their predecessors in interest by clear and convincing evidence. Evidence of cattle grazing during the operation of the dairy and the placement of the fence, absent additional supporting facts, is insufficient to establish the necessary elements required of an adverse possession claim. Because the Saxons predecessors in interest do not have a legitimate claim for adverse possession of the land prior to 1953, and the Saxons do not have a valid independent claim, the Saxons have failed to establish a claim of adverse possession.

IT IS HEREBY DECLARED that title is quieted in Defendants Donald and Norma Saxon to all that portion of Lot 4, Section 26, Township 18 South, Range 12 West of the Willamette Meridian lying between the U.S. Government Meander Line of 1879 and the Mean High Tide Line. The boundary between the parties’ properties is the U.S. Government Meander Line of 1879.

The Court finds in favor of the defendants on action of quiet title; finds against the plaintiff on action of quiet title; and finds against defendant on the claim of adverse possession.

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<sup>47</sup> *State, By and Through Dept. of Transp., Highway Division v. Rosanbalm*, 31 Or App at 726.

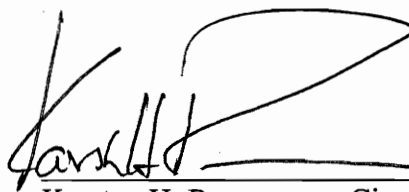
<sup>48</sup> *Hoffman*, 329 Or 554.

<sup>49</sup> *Id.* at 564.

<sup>50</sup> *Id.*

Mr. Farthing shall prepare the judgment, which shall incorporate by reference this Opinion and Order.

Dated: June 11, 2007.

A handwritten signature in black ink, appearing to read 'Karsten H. Rasmussen', written over a horizontal line.

Karsten H. Rasmussen, Circuit Judge