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Edlund v. 4-S, LLC, 702 N.W.2.d 812 (Neb. Ct. App. 2005)

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Edlund v. 4-S, LLC, 702 N.W.2.d 812 (Neb. Ct. App. 2005)

nel. In January 2001, a licensed line surveyor determined the northern-most and southern-most meander lines of the Republican River. From his findings, he derived a legal description of the Montross and Burks properties, setting the boundary at the mean between the north and south meander lines of the river.

In its *de novo* review, the Nebraska Court of Appeals noted that under Nebraska law, title to riparian land runs to the thread or center of the contiguous stream. The thread of a channel is the line that gives the landowners on either side access to the water whatever its stage might be, particularly at its lowest flow. Where the thread of the main channel of a river is the boundary line between two estates and it changes by the slow and natural processes of accretion and reliction, the boundary follows the channel. Avulsion occurs when a stream forming the boundary between two properties suddenly abandons its old bed and seeks a new one. Such a change of channel does not change the boundary line. The boundary remains as it was in the center of the old channel. The court reasoned that the avulsive event of 1935 did not effect a change to the boundary between the Montross and Burks properties. It would remain as it was, in the center of the old channel rather than shifting to the thread of the new channel.

On appeal, the Montrosses claimed that the boundary should have been set at the southern-most boundary of their property, the pre-1935 position of the Republican River. This claim suggested that the river meandered south between 1872 and 1935. The court noted that a party seeking to have title quieted to him or her on the ground of accretion maintained the burden of proving such accretion by a preponderance of the evidence. The court found no evidence to support the Montrosses' claim. The court affirmed the rulings of the trial court, finding no error in recognizing the mean between the meander lines, rather than the location of the thread of the river, as the most equitable solution for all parties.

William S. Hoebel, III

Edlund v. 4-S, LLC, 702 N.W.2d 812 (Neb. Ct. App. 2005) (holding the trial court erred in determining that, because no channel was conclusively established as the thread of the stream, the property line lay equidistant between two main channels of the stream).

Eleanor M. Edlund ("Edlund") brought an action to ascertain and establish the boundary line between her land and the land of 4-S, LLC ("4-S"), a landowner to her north. The parties agreed that the boundary line between their properties was the thread of the stream of the Platte River, but disagreed on the location of the thread. Where the thread of a stream is the boundary between estates and the stream has two channels, the thread of the main channel is the boundary between the estates. Holding the evidence to be inconclusive, the District

Court, Dawson County, determined the boundary to be between two channels.

The district court found that the evidence was insufficient to conclude that any of the channels exhibited any characteristics establishing it as the main channel or the thread of the stream. The district court stated that the weight of the evidence established that the Platte River is composed of at least three main threads. Finding a lack of conclusive data as to which was the main channel, the district court determined that the geographical centerline between the thread of the middle channel and thread of the south channel was the boundary between the Edlund land and the 4-S land.

Edlund appealed the decision to the Nebraska Court of Appeals, arguing that the district court erred in finding that the Nebraska Public Power District ("NPPD") survey did not correctly and accurately depict the location of the thread of the stream of the Platte River, main channel. Additionally, he alleged that the district court erred in finding that such depiction was not a factual determination by the surveyor, which could conclusively establish the boundary between Edlund's property and the 4-S property.

The NPPD survey, which both parties conceded as genuine and accurate, does not directly determine the location of the thread of the Platte River, main channel, forming the boundary between Edlund's property and the 4-S property. Rather, that survey depicts the land and the river channels immediately to the west of the property and river channels at issue. The court found that the NPPD survey provided conclusive evidence that the thread existed in the middle channel on the property along the western boundary of the land at issue. The court further determined that the NPPD survey raised a compelling inference that the thread continued in that channel as it crossed the boundary and continued between the lands belonging to Edlund and to 4-S.

Upon the court's *de novo* review, it concluded that a preponderance of the evidence supported Edlund's position that the thread of the stream of the Platte River, main channel, as supported by the NPPD survey, was located in the middle channel. Therefore, the court reversed that portion of the district court's decision and remanded the case with directions to quiet title to the disputed property in Edlund, establishing the northern boundary line at the thread of the stream of the middle channel, as depicted in the NPPD survey.

Robert Stevens