

9-1-2005

## Coussens v. Stevens 113 P.3d 952 (Or. Ct. App. 2005)

Brandon Saxon

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

---

### Custom Citation

Brandon Saxon, Court Report, Coussens v. Stevens 113 P.3d 952 (Or. Ct. App. 2005), 9 U. Denv. Water L. Rev. 264 (2005).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

Coussens v. Stevens 113 P.3d 952 (Or. Ct. App. 2005)

## OREGON

**Coussens v. Stevens 113 P.3d 952 (Or. Ct. App. 2005)** (holding that where a landowner conveyed land by laying out a plat which details specific blocks and lots, there is a presumption that any portion of land not explicitly conveyed in that plat was not part of the conveyance).

A group of residents in the Elk Creek Park subdivision (“Landowners”) in the City of Cannon Beach (“City”) owned lots in a subdivision adjacent to Ocean Avenue, which runs parallel to the shoreline of the Pacific Ocean. All lots owned by the Landowners were on the east side of Ocean Avenue. Irving and Jeanette Stevens (“Stevens”) owned similarly situated oceanfront property outside of the Elk Creek Park subdivision, directly to the south.

The dispute surrounded a disagreement between the parties concerning the Landowners’ proposed dune creation, sand grading and vegetation management plan (“management plan”) for the waterfront area between Ocean Avenue and the mean high tide line. Both parties claimed title to the disputed area.

In 1903, Otto Kraemer, the former owner of the area, recorded a subdivision plat that laid out lots along identified streets in the present day Elk Creek Park subdivision. Kraemer also owned the land west of Ocean Avenue, but he did not specifically convey that land in the 1903 subdivision deed.

In 1983, the Stevens purchased quitclaim deeds to land south of the subdivision, including the disputed area west of Ocean Avenue, from one of the original landowners. In 1988, the Stevens filed an action to quiet title to a large portion of the disputed area west of Ocean Avenue. In their 1988 action, the Stevens did not personally serve any party in interest; notification of service was only by publication. The Clatsop County Circuit Court granted the Stevens a default judgment quieting title to the land in question.

In 1999, the Landowners formed a Management Association in order to implement the management plan. At that time, after reviewing the Landowners’ plans, the City considered the Stevens to be the owners of the land where the proposed grading was to occur. Prior to approving the plan, the city deemed the Stevens’ approval of the project necessary; however, the parties could not reach an agreement.

The Landowners then filed suit to quiet title in themselves for the disputed area in Clatsop County Circuit Court. Citing the 1903 charter document of the subdivision, the Landowners claimed that their lots extended from Ocean Avenue to the mean high water line of the Pacific Ocean. The Stevens opposed the motion, claiming that they held superior title to the disputed land either by the 1998 default judgment, or alternatively by adverse possession. The trial court granted sum-

mary judgment for the Landowners on the basis that the 1903 conveyance from Kraemer included the disputed area west of Ocean Avenue.

The Stevens appealed to the Oregon Court of Appeals. On appeal, the only issue the court considered was whether the Landowners' title extended west, past Ocean Avenue and into the disputed area. Before evaluating the case on its merits, the court established the Landowners' specific burden of proof. Citing previous Oregon Supreme Court cases, the court held that for the Landowners to secure a judgment quieting title, they must prevail on the strength of their own title, and not on the weaknesses of the Stevens title.

The court then evaluated the 1903 deed from Kraemer and found that it conveyed only specific lots within the plat of the subdivision located east of Ocean Avenue and retained for Kraemer the area west of Ocean Avenue, including the disputed land. The court then turned to an analogous Oregon Supreme Court case, and found that where a street separated platted lots from the waterfront, a conveyance of lots and street blocks located across the street from the waterfront, there was no implied conveyance of the land between the conveyed street and the waterfront. Rather, such a conveyance indicated the owner's intent to reserve the waterfront property to the grantor.

Applying that reasoning to the facts, the court found that Kraemer conveyed only specific platted parcels that were all located east of Ocean Avenue. The court explained that when a street separates platted lots from waterfront property, Kraemer's conveyance by designating lots and blocks of parcels located across the street from the waterfront did not convey the waterfront or any of its appurtenant rights. Rather, his conveyance "by lots and blocks" indicated Kraemer's intent to reserve the shoreline for himself.

The court reasoned that Kraemer's conveyance specifically identified the blocks and lots conveyed in the deed, and was silent as to the parcel west of Ocean Avenue. As such, the court found that the disputed parcel belonged to the original grantor and his successors in interest.

The court found that the Landowners' ownership of the lots extended no further on the west than Ocean Avenue, and did not extend to any portion between the road and the high tide line. Therefore, the court held that the trial court erred in granting summary judgment for the Landowners and reversed the decision of the lower court.

*Brandon Saxon*

**Waterwatch of Or. Inc. v. Water Res. Comm'n, 112 P.3d 443 (Or. Ct. App. 2005)** (holding administrative rules that allow water users to moderate rather than maintain the free-flowing nature of the scenic waterways in the Deschutes Basin invalid because Oregon statutes require that appropriated stream flows be fully replaced, not moderated, to lessen the environmental impact of appropriation).