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Cox v. F-S Prestress, Inc., No. 97-CT-01547-SCT, 2001 Miss. LEXIS 4 (Miss. Jan. 18, 2001)

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MISSISSIPPI

Cox v. F-S Prestress, Inc., No. 97-CT-01547-SCT, 2001 Miss. LEXIS 4 (Miss. Jan. 18, 2001) (holding a change in the course of a river due to an act of avulsion instead of accretion did not affect title to disputed land).

Cox and F-S Prestress, Inc. ("Prestress") had conflicting claims of ownership to seventeen acres of land located on the Bouie River. The deeds giving each of these parties title of record described the river as the boundary of their properties. Prestress acquired title to the lands west of the river and Cox acquired title to the lands east of the river. The peninsula containing the disputed land lay east of the river until the river created a new main channel that separated the peninsula from the formerly contiguous lands to the east. The disputed land was now situated west of the river channel. This land was not readily accessible and was occasionally used for timber growing. Cox cut timber from the disputed land in 1993. Prestress then sued in Forrest County Chancery Court to quiet title to the land and to seek damages for the timber cutting.

The trial court determined the decisive issue was the process by which the river changed its channel. After hearing testimony from a professor of geography and a neighbor who observed the river changing, the court determined the river changed its course due to accretion. Thus, the trial court held Prestress had acquired title to the disputed land that now lay west of the river and awarded damages for Cox's timber cutting. The trial court did not decide Prestress' claim of adverse possession. Cox appealed and the Court of Appeals of Mississippi affirmed the lower court, but split on whether to grant the petition for rehearing. The Supreme Court of Mississippi granted certiorari.

Cox argued the lower courts misapplied the laws of Mississippi and incorrectly decided the boundaries of the disputed land changed by accretion. The supreme court reviewed the applicable case law. Most importantly, the court cited that when a stream is the boundary between properties, the boundary shifts with the gradual changes in the stream. In contrast, if the course of the stream changes suddenly, then the boundary remains fixed to the location of the stream prior to the change. Accretion involves the gradual change in the course of a stream. Avulsion involves the sudden or rapid change in a stream's boundary. A presumption of accretion exists depending on the contour of the land, length of time involved, and location and direction of the river. However, this presumption is negated where, as in this case, the river moves at right angles to the former channel. The court further stated the law of accretion and avulsion is based on public policy. The rationale for the law of accretion is to give a riparian owner the benefit of access to water. The rationale for the law

of avulsion is to mitigate the hardship of a change in title resulting from a sudden movement of a river.

The court noted this case involved a novel fact situation in which some facts illustrated accretion and other facts illustrated avulsion. The court found it important that the new main channel formed very rapidly after the peninsula was cut off and that the disputed land existed in the same form before and after the change in the course of the river. The court noted that in circumstances such as this, both federal and state case law recognize an exception to the generalized definitions of accretion. This exception is analogous to the “island rule” in which a boundary once established on one side of the island by a river channel remains at its original position even though the main channel shifts to the other side of the island. Ultimately, the court concluded the Bouie River changed its position relative to the disputed land by an act of avulsion. Therefore, title to the disputed land remained with Cox and the court remanded the case for an adjudication of Prestress’ claim of adverse possession.

Vanessa L. Condra

NEBRASKA

Hagan v. Upper Republican Nat’l Res. Dist., 622 N.W.2d 627 (Neb. 2001) (holding landowners and irrigators had standing to challenge settlement agreement between defendant hog farmer and the Upper Republican Natural Resources District because the agreement gave defendant access to water from the same aquifer underlying plaintiffs’ lands).

During the time period relevant to this action, the Upper Republican Natural Resources District (“District”) adopted a moratorium on new well construction. The plaintiff irrigators and landowners (collectively, the “Irrigators”) applied for a variance to use underground water for crop irrigation. The defendant hog farmer applied for a variance to use underground water to operate its “hog confinement facilities.” Both variance applications requested underground water from the same aquifer. The District denied the Irrigators’ variance, but agreed to a settlement that gave the hog farmer use of underground water as applied for originally.

Irrigators filed a petition for declaratory relief asking that the settlement agreement between the District and the hog farmer be declared *ultra vires*. The district court denied the petition, and found the Irrigators had no standing to bring the claim because they could allege no injury different than that shared by the general public. The appeals court reversed, and the hog farmer appealed to the Nebraska Supreme Court.

The court acknowledged that while the public owns groundwater,