Boundary Disputes, Adverse Possession, Prescriptive Easements, Section Lines, Mechanic's Liens And Other Miscellaneous South Dakota Statutes And Cases

Trent A. Swanson

SDCL 43-18 : Land Surveys

- **SDCL 43-18-5. Restoration, relocation, or referencing of survey corner.**
- Any registered land surveyor may restore, relocate, or reference a survey corner if same is recorded as provided by statute.

- **SDCL 43-18-6. Resurvey and subdivision of lands--Law governing.**
- The resurvey and subdivision of lands by all surveyors shall be in all respects according to the laws of the United States and the instructions issued by the officers thereof in charge of the public land surveys; and in the subdivision of fractional sections, bounded on any side by a meandered lake or river, or the boundary of any reservation or irregular survey, the subdivision lines running toward and closing upon the same shall be run at courses in all points intermediate and equidistant, as near as may be, between like section lines established by the original survey.

- **SDCL 43-18-7. Original boundaries and monuments--Use in resurveys.**
- In retracing lines or making the survey the surveyor shall take care to observe and follow the boundaries and monuments as run and marked by the original survey, but shall not give undue weight to partial and doubtful evidence or appearances of monuments, the recognition of which shall require the presumption of marked errors in the original survey, and he shall note an exact description of such apparent monuments.

Lammers v. State of South Dakota, by and through the Department of Game, Fish and Parks, 932 N.W.2d 129 (SD 2019)

- GFP survey revealed fence bordering game production area was well into GPF ground
- Landowner brought suit when State contractor entered upon land to install fence on correct property line

South Dakota Supreme Court Decision:

1. “An original government survey conducted under the laws of the federal government by its official agency creates boundaries which are unchangeable and control boundary disputes.” 932 N.W.2d 129 , [131], citing Titus v. Chapman , 2004 S.D. 106, ¶¶17-18, 687 N.W.2d 918, 924. The court pointed out that subsequent surveys by private individuals are "retracings" or "resurveys." Id.

2. “Taken together, all the surveys, as well as [the Plaintiff’s surveyor’s] expert opinions, show that while the fence line was historically recognized as the north-south quarter line by those owning property in Section 16, it, in fact, did not mark the controlling surveyed boundaries established by the United States in 1872. The evidence is undisputed that the fence line intersects with quarter corners on the north and south, but drifts from the true north-south quarter line in the center of the section and encroaches on the Department's land.” Id. ¶19

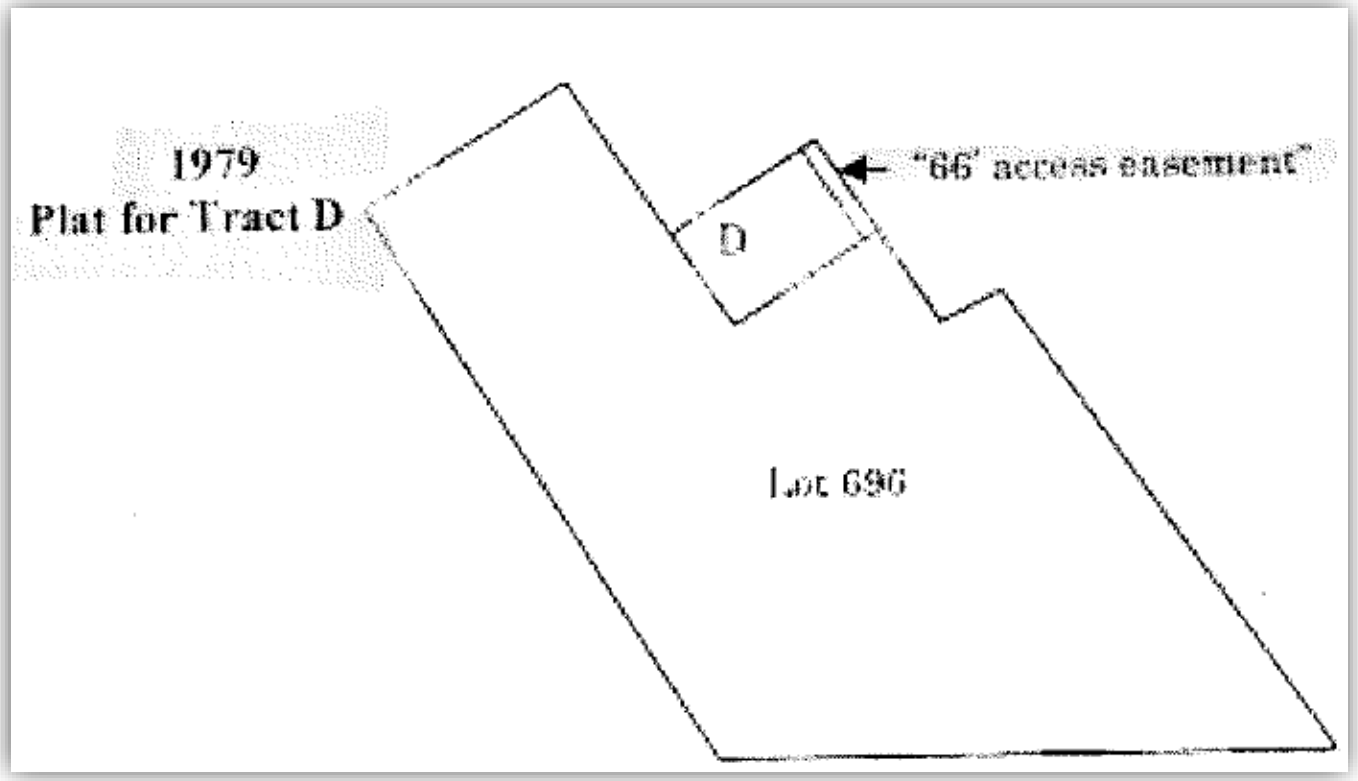
(continued)
Lammers v. State of South Dakota, by and through the Department of Game, Fish and Parks, 932 N.W.2d 129 (SD 2019)

3. Because the court properly found the State owned the lands, the Court affirmed the court's decision that the Plaintiff could not prevail on an adverse possession claim, noting that Article VIII of the South Dakota Constitution prohibits a trespasser from making a claim to public lands, and that, "a citizen may not take land from the State through adverse possession." Id. ¶20, citing Doe v. Nelson , 2004 S.D. 62, ii 9, 680 N.W.2d 302, 305.

4. The Court also reiterated "that individuals may not obtain prescriptive easements-the non-possessory equivalent of adverse possession- against government property." Id. ¶20, citing Steiner v. City. of Marshall, 1997 S.D. 109, ii 23, 568 N.W.2d 627, 632

Johnson v. Radle, 747 N.W.2d 644, 2008 SD 23 (S.D. 2008)

- Property in Lawrence County began being subdivided in 1979.
- Tract D, property subject to case, was first subdivided and showed 66’ wide access easement on northeastern portion of the property.



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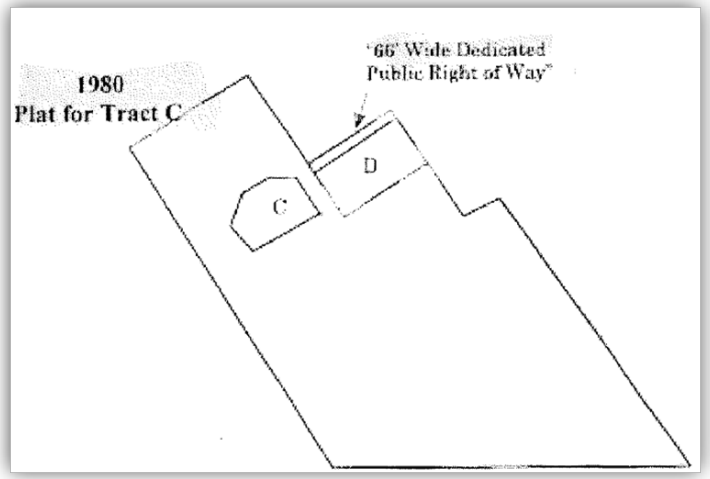
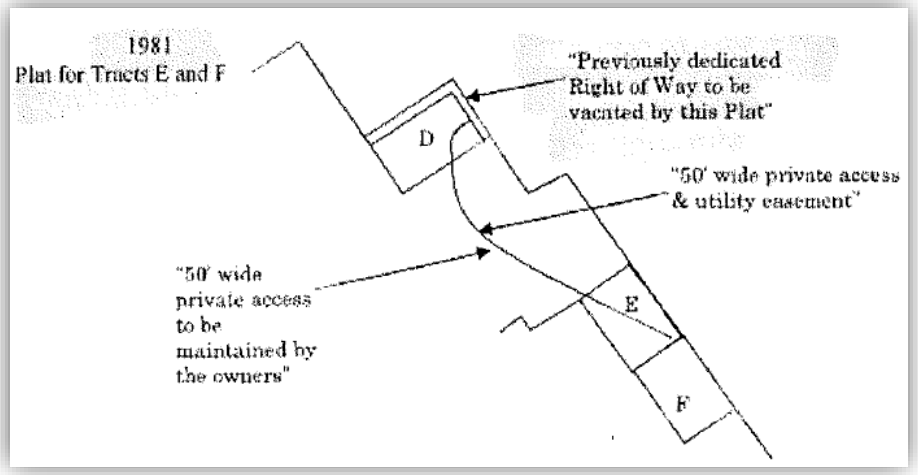
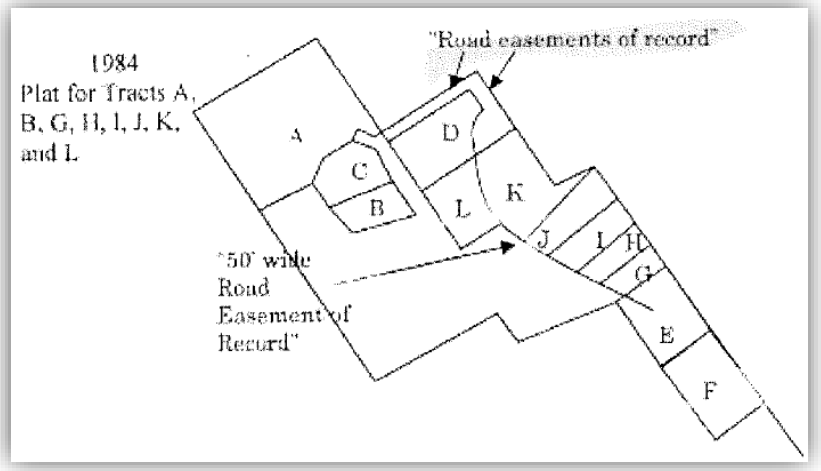
Johnson v. Radle, 747 N.W.2d 644, 2008 SD 23 (S.D. 2008)

- Subsequent plats of adjacent properties reflected additional easements, but plat of Tract D was never vacated or amended.
- Johnson bought Tract D in 2001. Title work evidenced recorded easement agreement for benefit of Tract C, but did not reference an additional diagonal easement for access to defendant's property.







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Johnson v. Radle, 747 N.W.2d 644, 2008 SD 23 (S.D. 2008)

South Dakota Supreme Court Decision:

1. The plats filed after 1979, when Tract D was created, did not properly vacate or amend the plat of Tract D.
2. Subsequent easement agreements that were filed against Tract D pertaining to the owner of Tract C having access was sufficient to put the Plaintiff on notice of the Northwest Easement.
3. The reference in an access easement for the benefit of Tract C that the owners of Tracts A & B may need access across Tract D, particularly when Tracts A & B would not have used the Diagonal Easement for access to the respective lots, was not sufficient to put the Plaintiff on notice of the Diagonal Easement.
4. The Court did not consider the issue of the Diagonal Easement being a valid prescriptive easement because the issue was not considered by the circuit court.

Titus v. Chapman, 2004 SD 106, 687 NW2d 918 (SD 2004)

- Parties agreed on the proper legal boundary line, but differed as to its location based on competing surveys.
- The two lots have a common property line both parties agreed is the 1/16th section line of Section 12. Surveys of the area indicated the Chapman lot's western edge terminated at the 1/16th section line, while the Tituses lot's eastern edge terminated at the 1/16th section line.
- Competing surveys indicated two different locations for the 1/16th section line, which resulted in a 34 foot strip of land being in dispute, upon which Chapman had located a mobile home, cistern and portions of an old fence that never substantially enclosed the property.
- The U.S. Forest Service originally surveyed the area in question in April of 1879 and August of 1886.
- In 1946, Stein Bangs surveyed for the purpose of subdividing and platted Lot A of the Northwest Quarter of Southeast Quarter of Section 12 with an eastern boundary collinear with the 1/16th line of Section 12. The eastern boundary of Lot A was not monumented by Bangs. However, the Bangs survey indicated an artificial monument, an iron pin, on the southern portion of the 1/16th line of Section 12 at the southern quarter corner between the Southwest Quarter of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter. The record is unclear if Bangs set the iron pin, or merely located it when conducting his survey. 2004 SD 106, ¶6

(continued 2/4)
Titus v. Chapman, 2004 SD 106, 687 NW2d 918 (SD 2004)

- Stuart Ferguson surveyed in 1970 for the purpose of further subdividing the Northeast Quarter of the Southeast Quarter of Section 12 into Tracts A, B, and C. The Chapman lot was not platted at the time, but was eventually to be further subdivided in 1983 from Tract B. The western boundary of Tract B was intended to terminate at the 1/16th section line according to the Ferguson survey. Id., ¶7.

- Following their purchase of Lot A in 2001, Tituses commissioned a survey of their property prior to beginning construction of a new home. The survey, conducted by Dean Scott, retraced the original footsteps of the U.S. Forest Service survey and called upon the three remaining original corner stones placed around the perimeter of Section 12 by the U.S. Forest Service in 1879 and 1886, which monumented the southeast, southwest and northwest corners of Section 12. Instead of using the iron pin of unknown origin as the location of the 1/16th section line as had Ferguson and Landguth before him, Scott attempted to locate the missing northeast corner stone in order to properly divide Section 12 in its entirety by aliquot portions to arrive at the original location of the 1/16th section line as required by the Manual of Instructions for the Survey of Public Lands of the United States. Id., ¶10.

- Because he was unable to ascertain the exact location of the northeast corner, Scott extended survey one mile north to a replacement monument found in the northeast corer of the adjoining Section 1. Once the complete exterior boundary of Section 12 was determined, Scott properly computed the aliquot divisions to arrive at the original location of the 16th section line as intended by the U.S. Forest Survey. Id., ¶11.

(continued 3/4)
Titus v. Chapman, 2004 SD 106, 687 NW2d 918 (SD 2004)

South Dakota Supreme Court Decision:

1. Government surveys, not surveys conducted by private individuals, create, rather than merely identify, boundaries. Cox v. Hart, 260 U.S. 427, 436, 43 S.Ct. 154, 157, 67 L.Ed. 332, 337 (1922). The term "original survey" refers to the official government survey performed under the laws of the federal government by its official agency. Id., ¶17 (additional citations omitted).

2. “The Ferguson survey failed to "walk in the footsteps" of the original surveyor in order to obtain clear and convincing evidence of the identity of the iron pipe as the 1/16th line based on its location in relation to the true section corners established by the original government survey. Instead, Ferguson conducted some retracing of the original corners of Section 12 in the field, but the majority of the measurements were calculated on paper and based on the location of the iron pin or pipe which Ferguson assumed denoted the location of the 1/16th section line. The subsequent surveys relied upon by Chapman and her predecessors in interest all relied on the same erroneous assumption utilized by Ferguson in 1970.” Id., ¶21

3. “Chapman contends Tituses were required to use the Ferguson survey in order to determine the boundary line. Their argument relies on the term "original survey" in SDCL 43-18-7 as indicating the first survey to plat the tracts from which Chapman's Lot 2 was subdivided. Reliance on the 1970 Ferguson retracing is fatal to Chapman's claim. The "original survey" in SDCL 43-18-7 refers to the original U.S. Forest Service survey conducted in the 1800s, not the first private survey to plat the subdivision of the tracts in question.” Id., ¶23

4. Because the Court found Dean Scott properly retraced the original survey, as required by SDCL 43-18-7, it found the Tituses were entitled to judgment as a matter of law.

(continued 4/4)
Titus v. Chapman, 2004 SD 106, 687 NW2d 918 (SD 2004)

5. The Court also considered whether the Chapmans would be entitled to adverse possession because the monument establishing the incorrect boundary had been there for more than 20 years.

6. “To establish title by adverse possession, the claimant must be in actual, open, visible, notorious, continuous and hostile occupation for the statutory period. Lewis v. Moorhead, 522 N.W.2d 1, 3 (S.D. 1994).” Id., ¶27

7. “Despite indicating the location of the 1/16th section line by the iron pin found by Ferguson, there were no other markings to denote actual, open, visible, notorious, continuous and hostile occupation as required by SDCL 15-3-12 until 1989 when Chapman located her mobile home on the property.” Id., ¶31

8. “We agree the iron rebar markers were insufficient to constitute an enclosure within the meaning of SDCL 15-3-13. An enclosure need not be absolutely secure to satisfy the "substantial enclosure" statutory requirement. Schultz, 1997 SD 72, ¶ 13, 564 N.W.2d at 323. While we have held a fence or natural barrier such as a tree line is sufficient, we have never held something as meager as two 5/8th inch iron rebar denoting lot corners as sufficient to satisfy the enclosure requirement under a claim of adverse possession. See Schultz, 1997 SD 72, ¶ 13, 564 N.W.2d at 323 (holding a tree line along a driveway was sufficient to constitute an enclosure within the meaning of the statute). We decline the invitation to do so today”. Id., ¶32

SDCL 15-3 : Adverse Possession And Limitation Of Actions To Recover Real Estate

SDCL 15-3-7. Possession of real property presumed from legal title-Occupation by another presumed subordinate to legal title

In every action for the recovery of real property or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for twenty years before the commencement of such action.

SDCL 15-3-12. Actual occupation required for adverse possession under claim other than written instrument or judgment

Where it shall appear that there has been an actual continued occupation of premises under a claim of title exclusive of any other right, but not founded upon a written instrument, or a judgment, or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

15-3-13. Acts constituting adverse possession under claim other than written instrument or judgment

For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, or judgment, or decree, land shall be deemed to have been possessed and occupied in the following cases only:

(1) Where it has been protected by a substantial inclosure; or

(2) Where it has been usually cultivated or improved.

Underhill v. Mattson, 886 N.W.2d 348 (S.D. 2016)

- Underhill acquired property in Deadwood upon which sat an old garage that was originally built in 1935 by the owner of Lot 8A. Lot 8A is located across the street and two lots down from Lot 59 (59A is now the description of the parcel that was in dispute).
- In 1995, Mattson realized the garage was on Guth's property. City Attorney notified Guth in 1997. Guth was neither aware of the garage's existence, or the fact that that it had been used for decades by the owners of the neighboring property. Mattson attempted to buy the property from Guth but no agreement was reached.

(continued 2/3)
Underhill v. Mattson, 886 N.W.2d 348 (S.D. 2016)

- After acquiring the lot, Underhill brought a quiet title action in 2013 and claimed damages for conversion. Trial court ruled Walton (Mattson's daughter who was occupying the property) acquired the garage property by adverse possession through her predecessors in interest. Because trial court found adverse possession, it dismissed claim for damages for conversion.

South Dakota Supreme Court decision:

1. Recited requirements the defendant must prove to establish adverse possession:

    a. (1) an occupation that is (2) open and notorious, (3) continuous for the statutory period, and (4) under a claim of title exclusive of any other right. 348 SD 2016, ¶11 (citing SDCL 15-3-12).

2. "Because Defendants' claim is "not founded upon a written instrument, or judgment, or decree," the Property will only be deemed adversely possessed if it has been (1) "protected by a substantial [enclosure]" or (2) "usually cultivated or improved."" Id., ¶12 (citing SDCL 15–3–13) (emphasis added).

(continued 3/3)
Underhill v. Mattson, 886 N.W.2d 348 (S.D. 2016)

3. Court noted other cases where "usually cultivated or improved" has been met through

    a. Regular mowing;

    b. Landscaping; or

    c. Adding gravel to driveway,

    Id., ¶12 (citations omitted) and found that the trial court was correct in determining the Mattson's work on the garage and stabilization of the adjacent hillside, mowing the grass, and performing general improvements and repairs to the garage were sufficient to show that they and their predecessors in title improved the property withing the meaning of SDCL 15-3-12(2). Id., ¶13

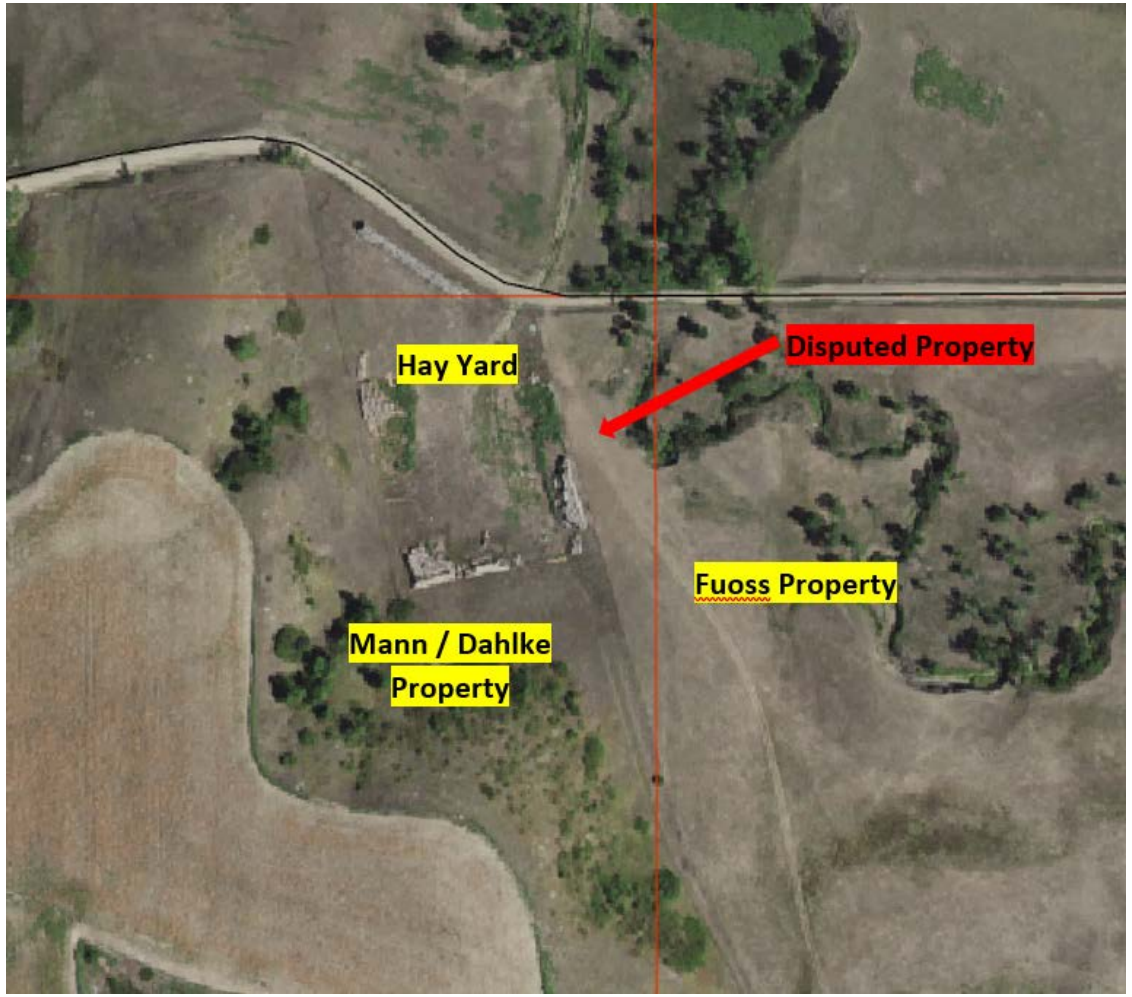
4. The Court also rejected the plaintiff's argument that defendant's possession could not be "open and notorious" because the former owner, Guth, was unaware of the possession. The Court noted, "[a]lthough Guth was apparently unaware of the presence of the garage or its use by the owners of Lot 8A, his lack of awareness is attributable solely to his absence from the Property and not to any concealment of the occupation by Defendants and their predecessors. Therefore, Defendants' occupation of the Property was open and notorious." Id., ¶15

5. The Court went on to note that the party claiming title by adverse possession does not need to show a wrongful intent when it has been occupying the property:

    "Possession of property is adverse to the true owner ... even though such occupancy ... was due to mistake and without an intention to claim the land of another." Id., ¶17, citing Estate of Billings, 506 N.W.2d at 141.

Fuoss v. Dahlke Family Ltd. Partnership, 2023 S.D. 3 (S.D. 2023)

- Decision came down first week of January, 2023. Dispute concerning approximately 1.5 acres of land that plaintiff's predecessors had fenced off with the neighbor's consent. Ranchland in Jones County that had a creek located on or near the quarter line. Argued April 2021.



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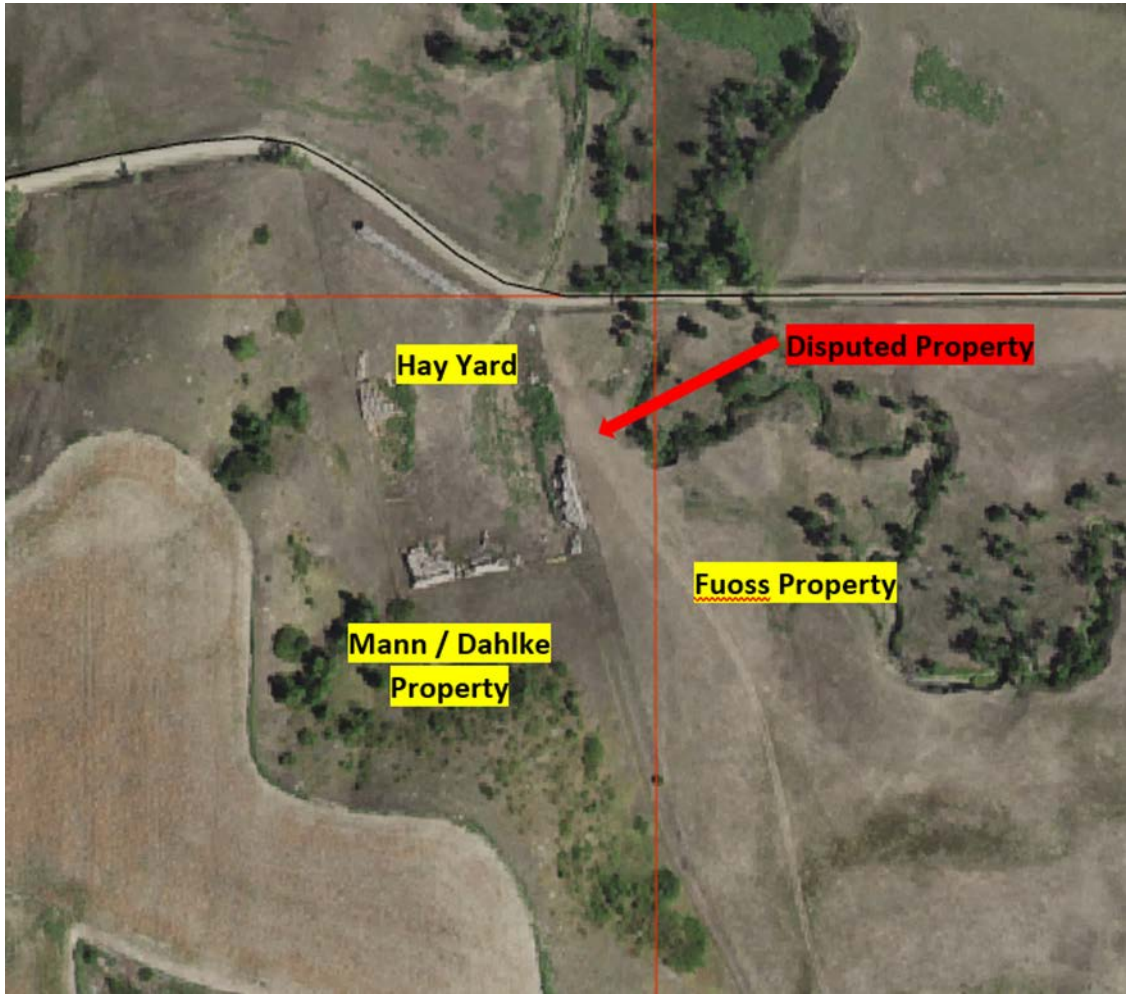
Fuoss v. Dahlke Family Ltd. Partnership, 2023 S.D. 3 (S.D. 2023)

- Fact specific but the South Dakota Supreme Court found that the circuit court was clearly erroneous in finding that the facts and evidence supported a claim of hostility. "[W]here a party possesses another's land with permission and holds no pretense of ownership, there can be no claim of adverse possession. Regarding a permissive use in this way allows property owners the ability to grant permission for the use of their land for indefinite periods of time, should they choose to do so, without the fear that they will be judicially divested of their property." 2023 SD 3 ¶28.
- Plaintiff also argued a prescriptive easement or implied easement for prior use. Plaintiff presented a 1948 aerial photo showing a trail had existed west of the creek that allowed predecessors access across Defendant's property in order to reach Plaintiff's property south and west of creek. Majority (3-2 decision) rejected the argument but the dissent would have deferred to the circuit court on the implied easement.



(continued 3/3)
Fuoss v. Dahlke Family Ltd. Partnership, 2023 S.D. 3 (S.D. 2023)

To obtain an easement implied from prior use, a claimant must establish four elements:

(1) the relevant parcels of land had been in unitary ownership;

(2) the use giving rise to the easement was in existence at the time of the conveyance dividing ownership of the property;

(3) the use had been so long continued and so obvious as to show that it was meant to be permanent; and

(4) at the time of the severance, the easement was necessary for the proper and reasonable enjoyment of the dominant tract.

Id. at ¶56, citing Heumiller v. Hansen, 2020 S.D. 56, ¶ 16, 950 N.W.2d 426, 430 (quoting Springer v. Cahoy, 2012 S.D. 32, ¶ 7, 814 N.W.2d 131, 133). "A party seeking an implied easement has the burden of proving the existence of the easement by clear and convincing evidence." Springer, 2012 S.D. 32, ¶ 7, 814 N.W.2d at 134 (citation omitted). Id. at ¶56

Public or Private Easement / Right-of-way

Wildwood Assn v. Harley Taylor, Inc., 668 N.W.2d 296, 2003 SD 98 (S.D. 2003)

- Rapid City project (Red Rock Development).
- Wildwood Association (Wildwood) brought an action seeking declaratory judgment and injunctive relief against City of Rapid City (City), Harley F. Taylor, Inc. (Taylor), Red Rock Development Co., LLC (Red Rock), Leo Hamm Ranch, LLC (Hamm), and Slovek, Weisgram and Parker, daughters of Leo Hamm (daughters)(collectively Defendants). Wildwood petitioned the court to determine if the section line had been vacated, if the access easement was public and if the easement was appurtenant.
- The plat of Wildwood was approved in 1978 and depicted a section line and the north thirty-three feet of the section line right-of-way between section 21 and section 28. The section line right-of-way between section 21 and section 28 was unimproved. The 1978 plat did not include any property south of the section line. The section line is the southern boundary to Wildwood lots 19, 20, 21, 22, and 23. The 1978 plat also indicates an access easement which runs across lot 23, which is owned by Daniel and Melinda Finn. The access easement and the section line highway are known as Shooting Star Trail. 2003 SD 98 ¶ 2
- On May 21, 1979, Wildwood was re-platted. Lots 18, 19, 20, and 21 along with other additions to Wildwood were platted and approved by the Common Council of the City of Rapid City. Although Wildwood was not annexed into the City at this time, it was within the City's three-mile extra-territorial jurisdiction. On the 1979 plat, neither the north nor the south section line right-of-way was shown. When the City annexed the Wildwood subdivision in 1984, the annexation map indicated the entire area to be annexed but did not show the section line. ¶ 3

(continued)
Wildwood Assn v. Harley Taylor, Inc., 668 N.W.2d 296, 2003 SD 98 (S.D. 2003)

South Dakota Supreme Court decision:

1. In order for a previously recorded plat to be vacated by filing a new plat, compliance with the statutory requirements set forth in SDCL Ch 11-3 is necessary. SDCL 11-3-20.2 provides:

   > The new plat shall specifically describe all previous plats sought to be vacated including the book and page or document number of all existing plats in the register of deeds office. The new plat shall specifically state that all previous plats so listed are to be vacated in whole or in part. The new plat shall comply with the public highway provisions of § 11-3-17. Id ¶ 10

2. In order to vacate the section line at annexation, the City would have needed to take affirmative action to do so.

Nelson v. Garber, 960 N.W.2d 340 (S.D. 2021)

- The disputed road is an alleged private road called Caster's Road located in the Bayview East Addition (Bayview). The road's history begins in 1966 when the Roberts County Board of County Commissioners (Commission) approved the plat for Caster's Subdivision on Big Stone Lake. Caster's Subdivision established Caster's Road. Its plat map identified Caster's Road as "ROAD," but the proprietor's certificate for Caster's Subdivision stated that "all Road Rights of Way shown are hereby dedicated to Private Use. " (Emphasis added.) The document originally said, "to Public Use," but the Commission struck the word "public" and typed in "private." 960 N.W.2d 340 ¶3
- Plaintiffs brought an action claiming the road was private and they had the right to exclude others. Defendants sought to bring evidence from the former County representatives to demonstrate the County’s intent in striking, “public” and replacing with, “private” in reference to the road was only for purposes of disclaiming County responsibility to maintain the road.

(continued)
Nelson v. Garber, 960 N.W.2d 340 (S.D. 2021)

South Dakota Supreme Court Decision:

1. It was proper to allow parol evidence.

> “We cannot ascertain the road's status from the Bayview plat map alone. To determine if individuals dedicated the road to public use, we must examine the road from its inception and its treatment by the public; to do so requires parol evidence. This is a unique situation because three separate plats utilize the road.” Id., ¶21

2. “The dedication of a road may be express or implied. Bergin v. Bistodeau , 2002 S.D. 53, ¶ 17, 645 N.W.2d 252, 256. "A dedication is express when the [dedicator's] intent is manifested by oral or written words, and is implied when the intent must be gathered from the acts of the dedicator." Id. (citation omitted). SDCL 11-3-12 sets forth the requirements and effects of dedicating land to the public through a plat:

> When the plat or map shall have been made out ... every donation or grant to the public ... marked or noted as such on such plat or map, shall be deemed a sufficient conveyance to vest the fee simple title of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes a general warranty against the donor, his heirs, and representatives, to the donee or grantee, his heirs or representatives, for the uses and purposes therein expressed and intended, and no other use and purpose whatever. The land intended to be used for the streets ... shall be held in trust to and for the uses and purposes expressed or intended. No governing body shall be required to open, improve, or maintain any such dedicated streets, alleys, ways, commons, or other public ground solely by virtue of having approved a plat or having partially accepted any such dedication, donation or grant.

Here, neither Bayview's plat map nor its proprietor's certificate included express language of dedication.Id., ¶21

3. After determining the plat was unclear, the court looked at the offered testimony and found that the original intent of the owners was that the road be public.

SDCL 15-3-20. Partition fence agreement (2018 statute)

SDCL 15-3-20. Partition fence agreement (2018 statute)

Adjacent landowners in an unincorporated area of the state may agree to waive the provisions of this chapter. The agreement may, but need not, be in the following form:

This document prepared by:

Name: _____

Address: _____

_____

Telephone: _____

PARTITION FENCE AGREEMENT

This Agreement is made this _____ day of _____, 20 _____.

WHEREAS, _____, and _____

is/are the owner(s) of certain real property described as follows:

_____

designated hereafter as "Tract A"; and

WHEREAS, _____, and _____

is/are the owner(s) of real property adjoining the above-described property and described as follows:

_____

designated hereafter as "Tract B"; and

WHEREAS, there is a partition fence separating the property described above.

NOW, THEREFORE, it is hereby agreed as follows:

The partition fence separating Tract A and Tract B is for the mutual convenience of the owners. The partition fence does not necessarily reflect the actual or true boundary line separating Tract A and Tract B. The partition fence is placed and constructed to accommodate surface terrain rather than identify the actual legal property lines. To the extent that the partition fence deviates from the legal property line, the owners agree that neither holds the possession adversely to the other as contemplated in South Dakota Codified Laws chapter 15-3. Due to the cost of replacing and repositioning the partition fence, neither the owner of Tract A or the owner of Tract B at this time desires to do so.

Nothing in this agreement restricts the right of the owner of either tract in the future, to exercise the right to have the partition fence repaired or repositioned upon the legal property line. Ownership and right of possession of the real property and the real estate tax attendant to the real property are governed by the records in the Register of Deeds for _____ County.

Dated this _____ day of _____, 20 _____.

_____ _____

Owner, Tract A Owner, Tract A

County of _____

State of _____

On this _____ day of _____, 20 _____, before me, the undersigned officer, personally appeared _____ and _____, Owners of Tract A above described, known to me or satisfactorily proven to be the person(s) whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____

Notary Public, South Dakota

My commission expires: _____

Notary Printed Name: _____

Dated this _____ day of _____, 20 _____.

_____ _____

Owner, Tract B Owner, Tract B

County of _____

State of _____

On this _____ day of _____, 20 _____, before me, the undersigned officer, personally appeared _____ and _____, Owners of Tract B above described, known to me or satisfactorily proven to be the person(s) whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____

Notary Public, South Dakota

My commission expires: _____

Notary Printed Name: _____

SDCL 43-23 : Partition Fences

SDCL 43-23-1. Erection and maintenance of partition fence--Liability of owners of adjoining land.

Unless adjoining landowners otherwise agree, every owner of land shall be liable for one-half of the expense of erecting and maintaining a partition fence between his own and adjoining lands. However, no owner of land is liable for such expense if neither keeps livestock on the affected tract of land and neither derives any other substantial benefit from the fence for a period of five years from the date of erection or repair of the fence.

SDCL 43-23-2. Duty of adjoining owner of land to build half of partition fence.

Unless otherwise agreed upon, if adjoining landowners are liable for one-half of the expense of erecting and maintaining a partition fence pursuant to § 43-23-1, each owner of adjoining lands shall build that half of the fence which shall be upon his right hand when he stands upon his own land and faces the line upon which the proposed fence is to be built.

SDCL 43-23-5. Neglect or refusal to erect and maintain half of legal fence--Enforcement by adjoining landowner--Service of notice and demand.

If any owner of any land who is liable for one-half of the expense of erecting and maintaining a partition fence pursuant to § 43-23-1 neglects or refuses to so erect and maintain one-half of a legal fence on the lines separating his land from adjoining land, the owner of the adjoining land may serve upon the delinquent owner a notice in writing demanding that the delinquent owner shall erect or repair, as the case may be, a legal fence along one-half of such line, describing it, within thirty days from the date of the service of the notice and demand upon him.

SDCL 43-23-8. Judgment for construction or repair of partition fence is lien upon land of delinquent owner.

The judgment entered for construction or repair of a partition fence shall be a lien upon the land of the delinquent owner for which it was constructed, superior to all other liens thereon except taxes.

SDCL 43-23 : Partition Fences - Cases

Jensen Ranch v. Marsden, 440 NW2d 762 (SD 1989)

- South Dakota Supreme Court found that party suing to enforce obligation to pay for share of fence had the right to proceed even though parents transferred the land to children after dispute arose, but continued to operate and manage the farming operations.

Catron Land Co. v. Kane, 304 N.W.2d 123 (S.D. 1981)

- Cattle operator brought suite to require State to erect and maintain fences separating public school grounds. Trial court ruled against the State. South Dakota Supreme Court ruled the State is exempt from SDCL 43-23.

SDCL 31-18 : Section-Line Highways

SDCL 31-25 : Fences, Cattle Ways and Livestock Guards

SDCL 31-18-1. Existence of section-line highways by operation of law

There is along every section line in this state a public highway located by operation of law, except where some portion of the highway along such section line has been heretofore vacated or relocated by the lawful action of some authorized public officer, board, or tribunal.

SDCL 31-25-1. Fences across highways-Petition by adjacent landowners-Notice and hearing-Gates or grates required

The board of county commissioners of any county having within its boundaries, any county, township, or section-line highway not included in §31-25-1.1 extending or running through or across grazing land, may, upon petition, signed by a majority of the adjacent landowners along the portion of such highway involved, and after a hearing is had, on notice mailed by the county auditor to all of said landowners, not less than ten days before such hearing, authorize such landowners to erect and maintain fences across such highway. However, the board of county commissioners shall require the erection of gates or grates, or both, in such fences at points designated by the board, so that the public may have access to the highway.

SDCL 31-25-1.1. Fences erected across unimproved section-line highways-Gates-Access to highways protected-Violation as misdemeanor

A landowner may erect a fence across an unimproved county, township, or section-line highway. For the purposes of this section an unimproved county, township, or section-line highway is any county, township, or section line not commonly used as a public right-of-way and never altered from its natural state in any way for the purpose of facilitating vehicular passage. At any point where a fence crosses such highway, the landowner shall erect and maintain an unlocked gate which may be opened easily or provide other suitable access to the highway. If the gate or other access is not large enough or if the gate does not open easily enough to satisfy the needs of those using the highway, the landowner shall erect a larger gate or a gate that can be more easily opened or provide other suitable access to the highway. The landowner shall erect the larger gate or the gate which opens easily or provide the other suitable access upon a request filed with the sheriff of the county in which the land is located by an adversely affected person. If a request is filed, the sheriff shall notify the landowner. The landowner shall comply with the provisions of this section within seven days of notice. A landowner who violates any of the provisions of this section is guilty of a Class 2 misdemeanor.

Patterson v. Plowboy, LLC, 959 N.W.2d 55 (S.D. 2021)

- Plowboy erected two gates across a section-line highway. Patterson sought to remove the gates claiming them to be unlawful obstructions across a section-line highway. He moved for partial summary judgment on the issue, which the circuit court granted in his favor. Id., at ¶1
- In July 2019, Paul Patterson (Patterson) filed a complaint in Jones County seeking an injunction and a restraining order against Plowboy, LLC (Plowboy) requiring Plowboy to remove two gates placed across a section-line highway. Patterson also sought a declaratory ruling that, under SDCL 31-25-1.1, Plowboy failed to establish that the section line was an unimproved road, and therefore, Plowboy was not authorized to erect a gate across the section line…. Patterson claimed the section line is both commonly used and altered from its natural state to facilitate vehicular passage. Id., at ¶2
- Plowboy countered that the section line is unimproved. He also claimed that the disputed gates do not constitute impermissible obstructions because he leaves the gates unlocked and primarily open. Id., at ¶3
- The parties' dispute began in March 2019. Plowboy notified Patterson that it intended to fence the section line adjacent to their properties and erect gates at each end of the section line. Patterson objected to Plowboy's plan but Plowboy erected the gates and fence. Plowboy kept the gates unlocked, and Patterson unhooked the gates to access his farmland. Id., at ¶4
- To support his claim that Plowboy failed to establish that the road was unimproved, and as a result, he claimed the gates must be removed, Patterson provided multiple pictures of the gates and the section line, and provided an affidavit stating that he used the section line to access his farmland, and hunters used it as a right-of-way. He also provided township meeting notes in which the township authorized him to install a culvert across the section line. Additionally, he asserted that the section-line highway had been graded to facilitate drainage and traffic and attached photographs to show the grading. He also asserted that Plowboy improved a portion of the disputed section line by adding gravel. Id., at ¶5

(continued 2/4)
Patterson v. Plowboy, LLC, 959 N.W.2d 55 (S.D. 2021)

- Plowboy opposed Patterson's motion arguing that Patterson holds the burden to establish that the section-line highway is improved and that an unlawful obstruction exists, and advanced that disputed material facts exist as to whether unlocked twenty-foot swing gates are unlawful obstructions. Id., at ¶6

- Plowboy attached to its response the affidavit of its majority member. He stated that raising livestock is a part of his farming operation, which necessitates the fence and gates. He maintained that he installed wider gates at Patterson's request. He also noted that he has never locked the gates. He admitted that Patterson placed a culvert in the section line. He also acknowledged that he "had placed a limited amount of gravel in an isolated area" of the section line during a construction project. However, he contended that the township does not maintain or treat the section-line highway as improved. He further admitted that Patterson used the section-line highway but claimed that Patterson used it only a couple of times a year. He also admitted that hunters used the section line but asserted that they were trespassers. Id., at ¶7

- The circuit court concluded that the road was not an unimproved section-line highway after finding no disputed material issues of fact. It granted Patterson's motion for partial summary judgment and ordered Plowboy to remove the gates. Id., at ¶8

South Dakota Supreme Court decision:

i. Whether the gates are obstructions.

"[T]his [C]ourt has liberally construed statutes defining public highways in favor of the right of the public to have access to, and use of, section lines." Reis v. Miller , 1996 S.D. 75, ¶ 20, 550 N.W.2d 78, 83. The Legislature has allowed "[t]he fencing of a public highway ... in limited circumstances. " 2018 S.D. Op. Att'y Gen. 01 (emphasis added). SDCL 31-25-1.1 and SDCL 31-25-1 provide these limited permissible circumstances. If a party does not meet either statute's requirements, the erected gate extending across a section-line highway is an unlawful obstruction warranting removal. Id., at ¶14

(continued 3/4)
Patterson v. Plowboy, LLC, 959 N.W.2d 55 (S.D. 2021)

ii. Whether Plowboy met the requirements of SDCL 31-25-1.1, which permits an individual to erect a gate across an unimproved section line.

SDCL 31-18-1 provides, "There is along every section line in this state a public highway located by operation of law[.]" "[T]hese section line rights-of-way cannot be lawfully obstructed by private citizens absent legal authority [to] do so." Douville v. Christensen , 2002 S.D. 33, ¶ 11, 641 N.W.2d 651, 654. SDCL chapter 31-25 provides landowners two legal avenues for fencing across a section-line highway. First, the county commissioners can authorize a fence across an improved section-line highway when presented with a petition signed by a majority of the adjacent landowners and after completion of a hearing process. See SDCL 31-25-1 (governing section-line highways not included in SDCL 31-25-1.1). Second, SDCL 31-25-1.1 authorizes a landowner to fence an unimproved section-line highway, including erecting and maintaining an unlocked gate across an unimproved highway. That statute defines an unimproved section-line highway as one "not commonly used as a public right-of-way and never altered from its natural state in any way for the purpose of facilitating vehicular passage." SDCL 31-25-1.1. A party seeking to fence a section-line highway must prove both factors. See Black Hills Novelty Co., Inc. v. S.D. Comm'n on Gaming , 520 N.W.2d 70, 74 (S.D. 1994) (all elements in conjunctive phrase must be met). Said another way, if the party cannot establish either factor, the section line cannot be fenced under that statute. Id., at ¶15

The parties agreed that Plowboy did not receive permission to erect the gates from the county commission under SDCL 31-25-1. Because SDCL 31-25-1 does not apply, Plowboy argues that the gates are statutorily permissible under SDCL 31-25-1.1. Plowboy, as the nonmoving party seeking to avoid summary judgment, was required to present specific evidence showing that genuine material issues of fact were in dispute as to whether the section line was (1) "not commonly used as a public right-of-way" and (2) "never altered from its natural state in any way for the purpose of facilitating vehicular passage." SDCL 31-25-1.1. Id., at ¶16.

(continued 4/4)
Patterson v. Plowboy, LLC, 959 N.W.2d 55 (S.D. 2021)

iii. Whether individuals altered the section line from its natural state in any way for the purpose of facilitating vehicular travel.

Plowboy contends that the circuit court erroneously determined that individuals altered the section-line highway from its natural state. It claims the court failed to analyze the highway's alterations under this Court's definition of an unimproved section line found in State v. Tracy , 539 N.W.2d 327 (S.D. 1995). Plowboy claims the section-line highway was merely a farm trail consisting of worn tire tracks, mud holes, and a malfunctioning culvert. Id., at ¶17.

The section-line highway in this case involves much more than mere machinery tracks as in Peters . Nor is it blocked by a body of water as in Tracy . Although Plowboy characterizes the section line as a mud-filled set of worn tire tracks, the undisputed facts establish that this section-line highway has been intentionally enhanced for vehicular travel by the installation of a culvert and the addition of gravel. These are precisely the type of enhancements listed in Tracy which could constitute improvements. Id. at 330. Id., at ¶20.

Conclusion:

“The circuit court correctly applied the law and held that individuals altered the section line from its natural state to facilitate vehicular travel. The party seeking to fence across a section line must show that it is not commonly used and has not been altered from its natural state for the purpose of facilitating vehicular travel. Because the circuit court correctly concluded that the section line had been altered, we need not address whether it is commonly used. The circuit court did not err by granting Patterson's motion for partial summary judgment.” Id., at ¶21.

Drainage Permits – Township Road

McLaen v. White Twp., 2022 S.D. 26 (S.D. 2022)

- Plaintiffs obtained a drainage permit from the Marshall County Drainage Board. Thereafter, they sought approval of their project from the White Township Board of Supervisors because their drainage project could impact roads or rights-of-way in the Township. Ultimately, the Township denied the McLaens' request, and the McLaens filed an administrative appeal and a separate declaratory action, both of which challenged the Township's authority to regulate their drainage project and the merits of the Township's decision.

- In 2014, the McLaens received a drainage permit from the Marshall County Drainage Board for a drainage project. The project would drain into a portion of the right-of-way along 103rd Street, a Township road, and would require the installation of culverts under the Township's roads. The County granted the permit "contingent on the applicant acquiring signed approval from the township for the drainage to run through a township ditch." ¶2

- Conversations between the township board representatives and plaintiffs ensued and plaintiffs claim the board practice was to have a conversation and secure verbal approval for any work anticipated. Plaintiffs claim verbal permission was received. Work commenced in 2015 and continued until 2019, at which time the County told the plaintiffs the township had concern with the project.

- Eventually the plaintiffs went back, formally, in front of the township board and asked for approval to work in the right of way. Township took under consideration, but eventually denied. Issues were raised concerning the lack of notice of the board meeting, historical practices of the board in making decisions, but the South Dakota Supreme Court found that the denial by the Township Board would not be overturned:

(continued)
McLaen v. White Twp., 2022 S.D. 26 (S.D. 2022)

South Dakota Supreme Court findings:

1. Although only counties have the right to regulate drainage in SD, because townships are responsible to maintain township roads, the Court found the township did have the authority to regulate the project to the extent it would impact the township roads and rights of way. ¶33

2. Even though the township practices may have been to do things less formal, the 2014 County Drainage Permit required the plaintiffs to secure written approval from the township for the work and that was never secured.

Mechanic's Liens

SDCL 44-9-1 : Persons Entitled To Lien--Property Affected—Extent of Lien--Exceptions.

- Whoever shall, at the request of the owner or the duly authorized agent or representative of the owner, or of any contractor or subcontractor, furnish skill, labor, services, including light, power, or water, equipment, or materials for the improvement, development, or operation of property as hereinafter specified, shall have a first lien thereon and the appurtenances thereto, prior and superior to all other liens except those of the state or of the United States, and except existing liens, mortgages, or other encumbrances then of record or of which the lien claimant has actual notice, for the price or value of the same, so furnished, subject to the further provisions of this chapter, as follows:

  (1) For the erection, alteration, repair, or removal of any building, fixture, bridge, fence, or other structure or for grading, filling in, or excavating the same, or for digging or repairing any ditch, drain, well, cistern, reservoir, or vault thereon or for laying, altering, or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same or in or upon the adjoining half of any highway, street, or alley upon which the property abuts, a lien upon the said improvement and the land on which it is situated, or to which it may be removed;

  (2) For the construction, alteration, or repair of any line of railway or of any telegraph, telephone, electric light, or power line, or of any line of pipe, conduit, or subway or any structure, appliance, or fixture upon or appertaining to any of them, a lien upon the public utility so constructed, altered, or repaired and upon the line, plants, and property thereof and upon all the rights, franchises, and privileges of the owner appertaining thereto;

  (3) Upon any mine or mining claim, oil or gas well or spring, a lien upon the same and any rights, privileges, franchises, easements, and tangible property and other property or appliances appurtenant thereto, for any of the items hereinbefore specified or referred to as giving right to a lien.

Does the claimant need to establish property was physically improved into order to file a claim?

Wefel v. Harold J. Westin and Associates, Inc., 329 N.W.2d 624 (S.D. 1983)

- Engineer brought action to foreclose a mechanic's lien. Court needed to determine whether services provided by an engineer are the type of services contemplated by SDCL 44-9-1. If the services are lienable, the Court then needed to determine whether the engineer timely filed its lien.

When does the lien commence?

SDCL 44-9-7. Attachment and taking effect of lien--Preference over other encumbrances.

Such lien as against the owner of the property shall attach and take effect from the time the first item of material or labor is furnished upon the premises by the lien claimant, and shall be preferred to any mortgage or other encumbrance not then of record, unless the lien holder had actual notice thereof.

SDCL 44-9-10. Materials or services furnished to contractor--Lien account and notice of claim furnished to owner--Withholding of payments from contractor to protect lien claimants.

Any person furnishing any of the items for which a lien may be claimed under the provisions of § 44-9-1 under a contract, either express or implied between the owner of the property or his duly authorized agent or representative, and any contractor working upon or about such property may serve upon the owner, or his duly authorized agent or representative at any time, a sworn account and notice of his claim showing the items and amounts and the dates that the same were furnished, and thereupon the owner shall withhold from his contractor so much of the contract price as may be necessary to meet the claims of persons who have served such accounts and notices.

SDCL 44-9-11. Lien account and notice of claim--Service on owner of property--Copy furnished to contractor--Assent of contractor to claim--Payment by owner--Deduction from amount due contractor.

Whenever any such account and notice is served upon the owner of the property or his duly authorized agent or representative, he shall furnish his contractor with a copy of the same, and if such contractor shall not within fifteen days after the receipt of such account and notice give the owner, his agent, or representative, written notice that he intends to dispute the claim, he shall be considered as assenting thereto and such owner may pay the same to the claimant when it becomes due and deduct the amount out of any moneys due such contractor, who may in like manner deduct such amount from any moneys due from him to his subcontractor or the claimant.

(continued 2/3)
When does the lien commence?

SDCL 44-9-13. Misappropriation of funds by contractor, subcontractor, or supplier--Theft.

Any contractor, subcontractor, or supplier on any improvement of real estate, mines, or public utilities within the purview of this chapter who knowingly uses more than five hundred dollars of the proceeds of any payment made to him on account of such improvement by the owner of such real estate or person having the improvement made, for any other purpose than the payment for labor, skill, materials, and machinery contributed to such improvement while any account for such labor, skill, material, or machinery furnished for such improvement up to the time of such payment remains unpaid and due and owing under the credit terms arranged, is guilty of theft of the proceeds of such payment. It is not a violation of this section to withhold funds from a contractor, subcontractor, or supplier pending the completion and final approval of his work or product.

SDCL 44-9-15. Lien ceases without filing of required lien statement--Place of filing of statement.

The lien shall cease at the end of one hundred twenty days after doing the last of such work, or furnishing the last item of such skill, services, material, or machinery, unless within such period a statement of the claim therefor be filed with the register of deeds of the county in which the improved premises are situated, or of the county to which such county is attached for judicial purposes, or if the claim be under the provisions of subdivision 44-9-1(2), with the secretary of state.

(continued 3/3)
When does the lien commence?

SDCL 44-9-16. Lien statement by lien claimant--Verification--Contents.

Such statement shall be made by or at the instance of the lien claimant, shall be verified by the oath of some person shown by such verification to have knowledge of the facts stated, and shall set forth:

(1) A notice of intention to claim and hold a lien, and the amount thereof;

(2) That such amount is due and owing to the claimant for labor performed, or for skill, services, material, or machinery furnished, and for what improvement the same was done or supplied;

(3) The names and post office addresses of the claimant, and of the person for or to whom performed or furnished;

(4) The dates when the first and last items of the claimant's contribution were made;

(5) A description of the property to be charged, identifying the same with reasonable certainty;

(6) The name and address of the owner thereof at the time of making such statement, according to the best information then had; and

(7) An itemized statement of the account upon which the lien is claimed.

Dakota Craft, Inc. v. Severson, 769 N.W.2d 434, 2009 SD 56 (S.D. 2009) (interpreting SDCL 44-9-16(7)

- Issue was whether a proposal and generic descriptions sufficient to satisfy itemization. Circuit Court ruled the two proposals, customer account inquiry and two “Additional Work Authorization” documents were not sufficient to be considered an itemized statement.

J. Clancy, Inc. v. Khan Comfort, LLC, 955 N.W.2d 382 (S.D. 2021)

- While J. Clancy failed to fully itemize the labor and material charges set forth in the lien statement, we conclude that it satisfied the requirements of Ringgenberg because, in part, "[i]t set[ ] forth the cost and description of an entire project, and there was no separate agreement for either material or labor for the project." Dakota Craft, Inc. , 2009 S.D. 56, ¶ 13, 769 N.W.2d at 439.
- Here, the parties bargained for labor costs as a lump sum which would achieve a certain result. This aligns with our application of Ringgenberg in Dakota Craft. See id. (holding that a proposal for $84,275 with the description: "Apply PVC/TPO ultra guard roofing system to 180’ x 36’ building and [parapet] all adhesive fasteners and flashings as per print ... all materials, labor, adhesives and taxes" satisfied Ringgenberg).
- Additionally, the change orders and matching invoices attached to the lien statement substantially complied with the requirement in Dakota Craft, Inc. , such that an "ordinarily intelligent and careful person" could understand their amount and purpose. Id. ¶ 8, 769 N.W.2d at 437.

SDCL 44-9: Mechanics’ and Materialmen's Liens

SDCL 44-9-17. Lien statement by lien claimant--Mailing of copy to property owner condition precedent to filing--Post office receipt attached to statement.

Before filing such lien statement, the person claiming the lien shall mail to the property owner at his last known post office address, by registered or certified mail, a copy of such lien statement and the post office receipt for such mailing shall be attached to the lien statement and filed in the office of register of deeds.

SDCL 44-9-24. Six-year limitation to enforce lien--Cancellation of expired lien.

No lien may be enforced in any case unless the holder of the lien asserts the lien, either by complaint or answer, within six years after the date of the last item of the lien holder's claim as set forth in the filed and entered lien statement. No person is bound by the judgment in the action unless the person is made a party to the action within the six-year period.

If no action or suit has been commenced to enforce the lien during the six-year period, the owner of the property, the owner's agent, or contractor may file an affidavit with the register of deeds stating that the lien holder has not commenced suit to enforce the lien within the six-year period and requesting that the lien be cancelled. The register of deeds shall cancel the lien of record within thirty days of the filing of the affidavit.

SDCL 44-9: Mechanics’ and Materialmen's Liens

SDCL 44-9-26. Forfeiture of lien for failure to commence suit upon demand--Cancellation by register of deeds.

Upon written demand by the owner, the owner's agent, or contractor, served on any person holding a lien, requiring the person to commence suit to enforce the lien, the person shall commence suit within thirty days after such service or the lien is forfeited. The register of deeds shall cancel the lien of record, if the owner, the owner's agent, or contractor files no sooner than the fortieth day following service of the written demand:

(1) An affidavit stating that the person holding the lien has not commenced suit to enforce the lien within thirty days after the service of the written demand;

(2) A copy of the written demand that was served on the person holding the lien; and

(3) Proof of service on the person holding the lien.

SDCL 44-9-50. Notice of project commencement--Time of filing--Fees--Register of deeds to maintain index.

Any owner or any person entering into a direct agreement with the owner, or the duly authorized agent or representative of the owner, may file with the register of deeds of the county in which the improved premises are situated a notice of project commencement. The notice of project commencement shall contain the following information:

(1) The name and address of the person filing the notice of project commencement;

(2) The name and address of the owner or developer;

(3) A general description of the improvement; and

(4) The location of the project, including the legal description of the property.

The notice shall be filed within thirty days of the commencement of work and shall be accompanied by a filing fee as provided in subdivision 7-9-15(3). The register of deeds in each county shall maintain an index of all notices of project commencements.

SDCL 44-9: Mechanics’ and Materialmen's Liens

44-9-51. Contractor's name and address and location notice to be posted-Contents of location notice

Any person filing a notice of project commencement shall post the name and address of the contractor and location notice at the job site. The location notice shall contain the following statement: The contractor on this project has filed a notice of project commencement at the county courthouse. Any sub-subcontractor and any supplier to a subcontractor shall comply with the notice provisions of §44-9-53 before filing liens in connection with this project.

SDCL 44-9: Mechanics’ and Materialmen's Liens

44-9-53. Notice of furnishing labor or materials required before lien extended-Notice recipients-Time for filing-Contents of notice-Exemption

If the provisions of §§44-9-50 and 44-9-51 are first invoked, no sub-subcontractor or supplier to subcontractors is entitled to extend, pursuant to §44-9-15, a lien created pursuant to subdivision 44-9-1(1), unless the sub-subcontractor or supplier has first provided notice of furnishing labor or materials by certified or registered mail to the contractor identified in the notice of project commencement and has provided a copy of the notice to the owner of record. Notice pursuant to this section shall be made not later than sixty days after doing the last of such work, or furnishing the last item of such skill, services, material, or machinery, and the post office receipt for mailing such notice shall be attached to the lien and filed in the office of register of deeds. Such notice of furnishing labor or materials shall include:

(1) The name of the sub-subcontractor or supplier who claims payment;

(2) The name of the person with whom the claimant contracted or by whom the claimant was employed;

(3) A description of the labor, services, or materials furnished and the contract price or value thereof. Materials specifically fabricated by a person other than the one giving notice and contract price or value thereof shall be separately stated in the notice;

(4) A description of the project, sufficient for identification;

(5) The date when the first and last item of labor or materials was actually furnished or scheduled to be furnished; and

(6) The amount claimed to be due, if any.

Any person who gives notice in accordance with this section may extend a lien as provided in §44-9-15.

This section does not apply to claims of individual laborers when the amount of their lien is less than two thousand dollars.

Pre-Lien Notification Requirement

- Note that other states, such as **Minnesota**, may have a pre-lien notification requirement.
- Although cannot rely on for precedence, **Landform Professional Services, LLC v. Lefebvre (Minn.App.2022)** is a 2022 case in Minnesota were the Minnesota Court of Appeals affirmed the district court's decision and found that the lien filed by Landform, a surveying and civil engineering firm, was invalid because the buyer, who Landform entered into a contract with, did not have an equitable interest in the property until after Landform commenced the work.
- Landform's contract with the buyer was signed days before the buyer and seller entered into the purchase agreement. As a result Landform could not foreclose its $356,524.26 mechanic's lien against the property:
- "Based on the complaint, mechanic's lien statement, and Lazan's first declaration, lienable work began on December 18, 2018. At that time, WH Diversified did not have any ownership interest in the property. Thus, the owner exception to the prelien-notice statute does not apply. Minn. Stat. § 514.011, subds. 1-2. Landform was therefore required to provide prelien notice to the Lefebvres because they were the only owners of the property on December 18. Id. Because Landform failed to provide that prelien notice, its mechanic's lien is invalid and summary judgment is appropriate. Wong, 701 N.W.2d at 302-03." (Minn.App. A22-0274 Unpublished)

Lien Notice

This Instrument Prepared By:

STATEMENT OF CLAIM FOR MECHANIC'S, MINER'S, LABORER'S, OR MATERIALMAN'S LIEN ON REAL PROPERTY

Notice is hereby given that _____. intends to claim and hold a lien in the amount of _____ /100 Dollars ($_____), with interest from and after the date hereof at the rate of ten percent (10%) per annum. That such amount is due and owing to the claimant for the following: _____

The name and post office address of the claimant is _____, _____ _____;

The name and post office address for whom the work was performed or materials furnished is _____, _____.

The date when the first item of claimant's contribution was made was in _____ _____, and the last item of the claimant's contribution was made on _____.

The following is the description of the property to be charged with the lien, to-wit:

_____

commonly known as _____.

The name and address of the owner thereof at the time of making such statement according to the best information that claimant has is _____, of _____.

Following is an itemized statement of the account based upon materials and labor which the lien is claimed:

[Attached hereto as **Exhibit A** and incorporated herein by this reference is the itemization of materials and labor provided by the lien claimant.]

Dated this __ day of _____, 202__.

[name of claimant (if entity)]

_____

By: [Name]
Its: [Title]

VERIFICATION

STATE OF _____)
: ss
COUNTY OF _____)

_____, being first duly sworn upon her/his oath, says that (s)he is the [title] of the lien claimant mentioned in the foregoing statement; that (s)he has read said statement and knows the contents thereof; that (s)he has knowledge of all the facts therein stated; and that said statement is in all respects true.

_____

Subscribed and sworn to before me this ___ day of _____

(SEAL)

_____
Notary Public * _____ (STATE)
My commission expires:_____

Exhibit A

[detailed description of materials and labor (both itemized) of work done, or insert documentation to establish the itemization]

Official State Interest Rates

SDCL 54-3 : Official State Interest Rates

54-3-5. Interest on moneys after they become due-Exception for express contracts or interest rate on bill, statement, or invoice-Limitation on interest rate

Unless there is an express contract in writing fixing a different rate or the interest rate clearly appears on the bill, statement, or invoice, interest is payable on all moneys at the Category F rate of interest as established in §54-3-16 after they become due on any instrument of writing, and on moneys lent, or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from that other. Any interest rate appearing on a bill, statement, or invoice may not exceed eighteen percent.

54-3-16. Official state interest rates

The official state interest rates, as referenced throughout the South Dakota Codified Laws, are as follows:

(1) Category A rate of interest is four and one-half percent per year;

(2) Category B rate of interest is ten percent per year;

(3) Category C rate of interest is twelve percent per year;

(4) Category D rate of interest is one percent per month or fraction thereof;

(5) Category E rate of interest is four percent per year;

(6) Category F rate of interest is fifteen percent per year; and

(7) Category G rate of interest is five-sixth percent per month or fraction thereof.

Contact Information

- Trent A. Swanson
- Cutler Law Firm, LLP
- 140 North Phillips Ave., 4th Floor
- Sioux Falls SD 57104
- (605)335-4950
- trents@cutlerlawfirm.com