Brown & Clark As Applied to Kentucky Boundaries

Presented by:
Jonathan Lee Payne, PLS

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Welcome

fallibility noun

Save Word

fal·li·bil·i·ty | \ ˌfa-lə-ˈbi-lə-tē \

Definition of *fallibility*

: liability to err

Did You Know?

Example Sentences

Learn More about *fallibility*

Did You Know?

You'll find this word showing up in discussions of eyewitness testimony at crime scenes, of lie detectors, and of critical airplane parts. Some of us are most familiar with the fallibility of memory, especially when we remember something clearly that turns out never to have happened. Being *fallible* is part of being human, and sometimes the biggest errors are made by those who are thought of as the most brilliant of all.

Merriam-Webster. (n.d.). Fallibility. In *Merriam-Webster.com dictionary*. Retrieved July 4, 2020, from https://www.merriam-webster.com/dictionary/fallibility

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Purpose of Seminar

3

Purpose of Seminar

Idea Exchange

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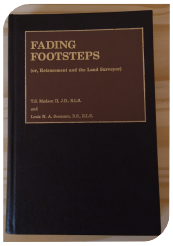
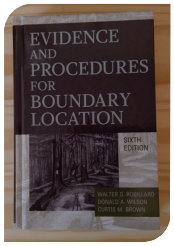
Main Texts Used for This Presentation

5

Additional Source Materials





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Argument Against Brown Text

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What is Actually in the Text

https://www.flickr.com/photos/gleonhard/9835231244

https://www.flickr.com/photos/gleonhard/9835231244

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Thoughts on these terms:

9

Thoughts on these terms:

"fence line surveyor"

10

Thoughts on these terms:

"deed-staker"

11

Is There Always One Solution to Rule Them All?

12

How the rest of the seminar is laid out.

13

General Rules of Construction

Kentucky Case Law

Ambiguous description, intent generally controls

Hensley v. Lewis, 128 S.W.2d 917, 278 Ky.510, 123 A.L.R. 537

Uncertain survey, construction most against that party w/ uncertain deed should be adopted

Staley v. Richmond, 32 S.W.2d 546, 236 Ky. 11

Brown

Principle 7. Excepting senior rights of others and a valid unwritten right of possession, the intentions of the parties to a deed, as expressed by the writings, are the paramount consideration in determining the order of importance of conflicting title elements.

Clark

When it can be determined, the intent of the parties to the conveyance will control even over guides and standards.

The intent …is expressed in the specific language of the grant.

…intent may ultimately be decided by testimony under oath at trial…

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Hensley v Lewis

The north and south lines of the two lots were located by fences built shortly after the conveyance of the lots to Wooton, thus establishing the frontage of both lots on .the county road. The northern fence of lot No. 2, called by the parties herein the "lower fence," begins at a point slightly north of the store building and runs up the hill in a northeasterly direction. This fence was built shortly after the second lot was conveyed to Wooton and definitely establishes that line regardless of the correct theoretical location of corner No. 2 in the description of the second lot. By the building of this fence and acquiescence therein by the parties for a long period of time, this was definitely established as the line. As said in Bain v. Tye, 160 Ky. 408, 169 S. W. 843, the rule for determining what property has been conveyed by a deed, where the description is ambiguous, is that the intention of the parties should generally control, and where the parties have by their acts given a practical construction thereto, the construction so put upon the deed by them may be resorted to to aid in ascertaining their intention. As confirming the correctness of this construction, H. C

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Staley v Richmond

certain ridges and fences. One of the lines given was this: ' ' Thence running up the ridge with the top of the same, binding on James Prater's line to opposite the cross fence; thence down the point to the cross fence; thence with the cross fence to the creek."

Cooley under a general description. The line next to the above tract is thus given: ' ' Thence with the top of the ridge down Brush creek, keeping the top of the ridge and running down the middle of the point below the school-house, binding on the Mike.Staley line; and thence running- around with said Staley fence down the Creek.

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Staley v Richmond

The parties agree upon the places of beginning and ending of the boundary line. The first corner is fixed by a rock with a cross-mark on top of a ridge in the Prater line, and the second or ending monument is near the end of a certain cross-fence. Appellant insists that the line is a straight and direct one running from the rock S. 53.40 W. 1,972 feet; thence down a ridge or point 200 or 300 feet to the end of the fence. Appellees contend that it follows the meanderings of the crest of a ridge or point approximately 8. 28 W. about 1,000 feet; and thence along the center of a point or spur leading off westwardly toward the school-house to the end of a cross-fence. The line between the properties has never been marked in any way. The shape of the parcel of land involved is triangular and not unlike that shown on the plat published in the opinion of Carter v. Elk Coal Co., 173 Ky. 378, 191 8. W. 294, and that described in Yarney v. Orinoco Mining Co., 201 Ky. 571, 257 S. W. 1016.

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Particular Words or Terms

Kentucky Case Law

Phrase "more or less" indicates potential for deviation from exactness implies waiver of warranty

Goodloe v Wallace, 269 S.W.2d 718

Salyer v Poulos, 122 S.W.2d 996, 276 Ky.143

Brown

"Area is the least controlling of all the elements. …It is difficult to convince a person …, they get all of the area that is contained within the lines of the description. Area depends …on other calculations…there is no absolute area ascertainment."

Clark

"The use of area, as a controlling factor in a description, ranks as one of the lowest elements, yet it may be a major consideration in determining boundaries of a parcel."

18

Goodloe v Wallace

We omit reference to testimony of the parties concerning the wall between the two buildings and their dimensions because it is not definite. Photographs show the situation and connections of the two buildings very clearly. A civil engineer and building contractor took exact measurements and made a close examination of the structures. They testified that the front line of the apartment building up to the protruding wall of the one-story building is 113 feet 8½ inches. This excludes the south wall. The west line at the rear of the building to that wall is 115 feet 3 inches. Adding the thickness of the wall, 9 inches, makes these lines 114 feet 5½ inches in front and 116 feet 1 inch in the rear. It is readily apparent, therefore, that the figure in the deed, "115 feet more or less", is substantially accurate. To reform the deed to show that it conveyed only 113 feet would be to adjudge that the plaintiff sold the house with only three walls for the upper floor and an easement in the wall for the lower floor.

The phrase "more or less" in a deed relieves the quantity or line in connection with which it is used of exactness and indicates the parties risk a slight deviation. Eastland v. Robinson, 233 Ky. 403, 25 S.W.2d 1028, 70 A.L.R. 365.

The trial court found no grounds to reform the deed. He rendered what we regard as a fair and equitable judgment. It adjudges the foundation and wall described up to the top of the one-story building to be a common or party wall of the two buildings, but the wall above that was included in the conveyance, and is a part of the apartment house and belongs exclusively to the defendant grantee without any right of the plaintiffs to build against or attach any building or construction to that upper portion of the wall.

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Salyer v Poulos

We see therefore, that there was some basis for uncertainty as to the boundary line between the Combs lot and the middle lot on Main Street taken by Wooton and his associates when the remainder of the Duff lot was divided in 1911; all of which could have accounted for the use of the phrase "more or less" in the deed describing the middle lot. The use of the phrase "more or less" in describing a boundary line relieves a stated distance of exactness, thereby meaning that the parties are to risk the quantity of land conveyed. The use of such a phrase also implies a waiver of the warranty as to a specified quantity. See Eastland v. Robinson, 233 Ky. 403, 25 S. W. (2d) 1028, 70 A. L. R. 365.

Subsequently, deeds conveying the lot now owned by Salyer referred to its Main Street frontage as 25% feet. It is not explained how this lot increased in size from 23% feet in 1911 to 25% feet in 1919, except that, as urged by appellants, the deed called for 23% feet-more or less frontage in 1911. But there is no satisfactory explanation of why the lot nearer the court house, and therefore probably of greater value, was made 2 feet wider than the other lot. If the southern boundary of

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Relative Importance of Conflicting Elements

Kentucky Case Law	Brown	Clark
Generally, in determining boundaries natural and permanent monuments are the most satisfactory evidence and control all other means of description, artificial marks, courses, distances, and area follow in order named, area being the weakest of all means of description.	The order of importance must have flexibility to fit solutions most nearly deemed to be correct by the court. …can vary from state to state…applies to resolution of ambiguities	If original corners are disturbed or lost, conflicts in notes become critical …not all evidence has equal weight or dignity "Lists are but guidelines to be used or as needed… they may shift in dignity as the facts and jurisdiction change."

Metropolitan Life Ins. Co. v Hoskins, 117 S.W.2d 180, 273 Ky. 563

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Brown's Order of Importance of Conflicting Element

A. Right of possession (unwritten conveyance)
B. B. Senior right (in the event of an overlap)
C. Written intentions of the parties
   1. Call for a survey or an actual survey on which the conveyance is based
   2. Call for monuments
      a. Natural
      b. Artificial
   3. Adjoiners
   4. Direction and distance
   5. Direction or distance
   6. Area (quantity)

Clark's Order of Importance of Conflicting Element

1. Lines actually run in the field
2. Monuments (natural and artificial)
3. Adjoiners
4. Courses
5. Distances
6. Quantity or area

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Metropolitan Life Ins. Co. v. Hoskins

August, 1923, when he executed a mortgage on that tract to appellant's assignor. In determining boundaries, the general rule is that natural and permanent monuments are the most satisfactory evidence and control all other means of description. Artificial marks, courses, distances, and area follow in the order named, area being the weakest of all the means of description. Jennings v. Monks' Ex'r, 4 Metc. 103; Kendrick v. Burchett, 89 S.W. 239, 240, 28 Ky. Law Rep. 342; Alexander v. Hill, 108 S.W. 225, 32 Ky. Law Rep. 1147; Brashears v. Joseph, 108 S.W. 307, 32 Ky. Law Rep. 1139; Finley v. Meadows, 134 Ky. 70, 119 S.W. 216; Rock Creek Property Company v. Hill, 162 Ky. 324, 172 S.W. 671. Appellees concede this to be the general rule, but insist that the

pending in the Clark circuit court, and to the descriptions and plats of the land filed therein. The commissioner's deeds passed the legal title to the land particularly described by metes and bounds, and the proceedings in the settlement suit did not constitute notice to subsequent purchasers or mortgagees that the 33.247-acre tract here in controversy, or any other particular portion of the tract conveyed to Stevens, belonged to Hoskins, the purchaser of the adjoining tract.

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Control of Elements Consistent with Intention

Kentucky Case Law	Brown	Clark
In locating patent, court should adopt location parties intended at time of survey. Kentucky Union Co. v. Beatty, 61 S.W.2d 45, 249 Ky. 544	Excepting senior rights of others and a valid unwritten right of possession, the intentions of the parties to a deed, as expressed by the writings, are the paramount considerations in determining the order of importance of conflicting elements.	The court will consider all of the parts of the description without any one part controlling. Effect is given to the intent of the parties as indicated in the words of the entire instrument. Original parties knew intent

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Kentucky Union Co. v Beatty

"The supreme task of the court in locating a patent is to ascertain the intention of the parties at the time of making the survey, and to adopt the location which the parties intended to make upon the ground at the time. For the performance of this task numerous rules have been adopted largely, if not entirely analogous to the rules for the construction of other contracts and writings. * * * Everything else being equal, courses and distances surrender to natural objects, and when there are no natural objects called for, considerable weight should be given to courses and distances, but in running a line along a given course to a designated point that point should be reached at the expense of the given distance."

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Control of Natural Objects and Monuments Over Other Elements in General

Kentucky Case Law	Brown	Clark
In determining location of boundary, courses and distances must yield to natural objects, such as a stone and tree. Gover v Queen, 189 S.W.2d 672, 300 Ky. 704 Rule that courses & distances yield to natural object doesn't apply when evident mistaken belief as to location Givens v U.S. Trust Co., 86 S.W.2d 986, 260 Ky. 762	Naturally occurring monuments…are usually considered controlling over artificial monuments…but if the writings clearly indicate a contrary intent, …the control might be reversed.	…often cited by surveyors, attorneys, and the courts … natural monuments always control or have a higher priority over artificial monuments, the actual difference between the two is one of degree. It should be considered that all monuments are equal w/ priority just under lines actually run.

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Gover et ux. v Queen

But this error, if it is an error, is not prejudicial, because courses and distances must yield to natural objects—in this case, the stone in Highway 25 and the fallen pine on the north bank of Laurel River. Martt v. McBrayer et al., 292 Ky. 479, 166 S. W. 2d 823.

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Givens v United States Trust Co.

The calls for the lines in dispute beginning with the seventh corner are:

"Thence S. 30 W. 30 poles to a stake at a line of survey made in the name of David Turner; thence S. 20 E. 80 poles to a stake at a line of the same; thence S. 30 E. 90 poles to a stake at a line of survey made in the name of John Cole."

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Givens v United States Trust Co.

"The foregoing rules, however, have for their prime purpose the ascertainment of the true boundaries of lands, and are not designed to be used for the purpose of imposing boundaries other than the real ones, and the rule that courses and distances must yield to natural objects and established boundary lines, in fixing the boundaries of lands, does not apply, when it is evident that the call for a natural object, or an established boundary line was made, under the mistaken belief that it existed at the point where the surveyor reported it to be, when in fact the natural object and boundary line was not at that point. ' '

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Control of Water Courses, Highways, and Fences Over Other Elements

Kentucky Case Law	Brown	Clark
Where the boundary given in a deed calls to run with the meanderings of a stream, courses and distances which conflict therewith must yield thereto. Kentucky River Coal Corp. v Maynard, 120 S.W.2d 401, 274 Ky. 760	The preceding principles have force in the event that monuments are called for. A specified artificial monument in conflict with an uncalled for natural monument would be controlled by the artificial monument unless intent is clearly indicated by other written words.	In the case of streams, both navigable and nonnavigable, …where the riparian owners hold title to the bed of navigable streams forming a boundary between to tracts of land, the boundary line is the center of the main current or, as it is sometimes called, the "thread" or "thalweg" of the stream.

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Kentucky River Coal Corporation v Maynard et ux.

Appellees acquired their land in 1934. The third call in their deed calls to run to a rock in the center of First creek and then with the meanderings of the creek a number of courses and distances to where the boundary leaves the creek to run to the point of beginning. A surveyor who testified for appellees and who made a plat found in the record testified that the boundary as given in appellees' deed would include the ditch dug by appellees and the land in controversy. The ditch is only

Some witnesses **for** appellees testified that many years ago the creek **ran** practically with the course of the ditch.

A greater number of witnesses who have lived in the community for many years and were acquainted with the land and the course of the creek and were equally if not better qualified to speak concerning the matter testified that the channel of the creek was the same as it had been since they had known it. There is

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Kentucky River Coal Corporation v Maynard et ux.

It is a firmly established rule in this as in many other jurisdictions that where the boundary given in a deed calls to run with the meanderings of a stream the courses and distances, if there be a conflict, must yield. Hunter v. Witt, 50 S. W. 985, 21 Ky. Law Rep. 35; Vaughn v. Foster, 47 S. W. 333, 20 Ky. Law Rep. 682; Stonestreet et al. v. Jacobs, 118 Ky. 745, 82 S. W. 363, 26 Ky. Law Rep. 628, rehearing denied 118 Ky. 745, 82 S. W. 1012, 26 Ky. Law Rep. 1015. See, also, City of Hazard v. Eversole, 237 Ky. 242, 35 S. W. (2d) 313; City of Covington v. State Tax Commission, 231 Ky. 606, 21 S. W. (2d) 1010.

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Quick Look at Road and Fence Case

Where deeds of adjoining lands from a common grantor both mentioned a line established by a fence built by first grantee as being the boundary of both parcels and both deeds contained conflicting calls as to distances, the line established by the fence was required to be taken as the boundary of respective parcels of land.

Cox v Spainhower, 249 S.W.2d 719

Where meandering roadway was marked on plat of subdivision but neither width of road nor calls for it were shown, and deed to lots in subdivision referred to roadway as a boundary, courses and distances describing lots in deed were required to yield to roadway as a known and clearly defined physical object, if such roadway actually existed.

Schultz v. Maxey, 210 S.W.2d 950, 307 Ky. 325

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CASE LAW BURN OUT

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Control of Metes and Bounds or Courses and Distances Over Other Elements

Kentucky Case Law

In determining a boundary, distances generally yield to courses and, in absence of circumstances pointing to a contrary conclusion, the courses should be first pursued, contracting or extending the distances as may be required to make survey close

C.W. Hoskins' Adm'x v Louisville Cooperage Co. 297 S.W.2d 49

Brown

... distance and direction are both subordinate to monuments or adjoiner, when choosing whether direction or distance is the controlling consideration, variable and conflicting court opinions exist....

...surveyors must know the state statutes and when/how/why courts have reacted to different situations

Clark

An Ohio court attempted to indicate the responsibility of the retracing: "Only if the monuments placed by the original surveyor cannot be ascertained may the second [retracing] surveyor turn to courses, distances, and still-existent monuments to determine boundaries"

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C.W. Hoskins' Adm'x. v Louisville Cooperage Co.

Appellee's surveyor upon arriving at the eighth corner, ran his line on the course called for in the patent toward corner No. 9, allowing for his magnetic declination. It became apparent to him the survey would not close. He then returned to corner No. 1 and reversed the course of his survey and reached corner No. 10, whereupon he ran *51 from No. 10, in

reverse according to the course in the patent until he intersected the line he had run from corner No. 8 toward corner No. 9, and he marked the intersection of these two lines as corner No. 9. The learned trial judge correctly decided this was the proper method to follow in locating the "lost" corner. Combs v. Valentine, 144 Ky. 184, 137 S.W. 1080.

Appellant argues this "intersection" rule applies only to a situation where one projects the lines from "marked" corners and since appellees' surveyor here projected lines from "stake" corners, the rule should not apply. We feel that since appellant's surveyor substantially agrees with appellees' surveyor on the location of corners Nos. 8 and 10, these two corners, for the practical purpose of deciding this case, are known corners.

Appellant's surveyor projected the reverse call between corners Nos. 10 and 9 as shown on his map for the 100 poles called for in the patent, and then arbitrarily drew a line from corner No. 8 to No. 9 in order to close the survey. In thus closing his survey, he deviated materially from the course given in the patent from corner No. 8 to corner No. 9. While he preserved the distance between corners Nos. 9 and 10, appellant's surveyor sacrificed the courses as regards the angles formed at corners Nos. 8 and 9. His theory which sacrifices courses in two instances to preserve distance in one cannot be upheld. The well-known rule is that generally distances yield to courses and, in the absence of circumstances pointing to a contrary conclusion, the courses shall be first pursued, contracting or extending the distances as the case may require, to make the survey close. Combs v. Valentine, 144 Ky. 184, 137 S.W. 1080.

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Control of Lines Marked or Surveyed Over Other Elements

Kentucky Case Law

Where deed called for stake on quarter section line, deed conveyed no land beyond that line notwithstanding that parties may have placed stake at some other point.
Lawrence v Wheeler, 147 S.W.2d 698, 285 Ky. 288

When it is shown in boundary dispute that surveyor marked line, and old marks made by him are located, they control line.
Fordson Coal Co. v Osborn, 53 S.W.2d 937, 245 Ky. 539

Brown

Where lines are actually located and marked on the ground as a consideration of the transaction and called for by the deed, the lines so marked show most clearly the intentions of the parties and are presumed paramount to other written considerations, senior rights and clearly expressed contrary intentions being excepted.

Clark

…it is the responsibility of the surveyor to trace the steps of the person who conducted the original survey…

The term "following the footsteps" is best described as one of evidence, evidence created and evidence recovered, and not of methodology.

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To be able to follow in the original surveyor's footsteps, the retracing surveyor needs to step into his shoes and perceive the world as he did. True empathy with that predecessor must somehow be achieved before the process of retracement can begin. The retracing surveyor must see things, in the mind's eye, as the original surveyor did and understand his instructions and objectives.

Fading Footsteps – T.S. Madson II, J.D., R.L.S.
And
Louis N.A. Seemann, B.S., R.L.S.

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Lawrence v Wheeler

land in 1910. Appellant is a remote vendee of B. C. Henley, and the question presented is whether the location of a stake placed by A. D. Wheeler and B. C. Henley, or the quarter section (township) line designated in the Andrus deed is the correct line between the lands of appellant and appellee.

section line. The Andrus deed calls for a stake *on the quarter section line,* therefore, the deed conveyed no land west of that line, although Wheeler and Henley may have placed a stake at some other point. However,

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Lawrence v Wheeler

"In an endeavor to get all the information I could relative to this controversy, I went upon the ground myself, starting at the Orr corner and sighting and following the quarter section line as best I could, I saw the two rocks mentioned in the evidence, also the hacked trees. From the evidence and personal observation, I am forced to conclude that the rocks and the hacked trees truthfully indicate and represent the location of the *Quarter Section Line,* which seemed to have been observed as the line between these tracts by all the deeds and conveyances made in the different transfers where the quarter section line was involved.

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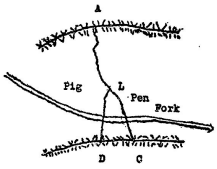
Fordson Coal Co. v Osborn



the point. So, when it is shown that the surveyor marked a line, and the old marks made by him are located, they control the line. Here the testimony of Baker and Woods is positive that they marked the line A, L, D, and their testimony is confirmed by the testimony of W. L. Jones, Mahala Jones, and Boyd Jones, who held under Sizemore, and by the fact that for nearly thirty years line A, L, D was recognized by the parties as the true line, and the dispute as to the line is of recent origin.

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Control of Calls for Adjoiners Over Other Elements

Kentucky Case Law

Under patent describing property in part as "Beginning at a black oak Sam Lewis corner thence with Alpine Coal Co. line S 41 E 68 poles to Jacksboro road", course and distance in patent was required to yield to boundary line of Coal Company, if such could be established
Souleyrette v York, 211 S.W.2d 423, 307 Ky. 556

Brown

An adjoining parcel may be considered as a natural boundary in the light that natural or artificial monuments are neither called for nor unascertainable. If the adjoining line is senior in time, well defined and called for as an established line, the surveyor may accept the calls for the adjoining line.

Clark

The call for a line of a named parcel is similar to a call for a natural monument or boundary. When a deed makes reference to a named boundary, that boundary must be identified on the ground before the deeded land can be located with certainty.

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Souleyrette v York

As a legal proposition the course and distance set out in plaintiff's patent must yield to the boundary line of the Alpine Coal Company, if such can be established. Rock Creek Property Co. v. Hill, 162 Ky. 324, 172 S. W. 671; Fidelity Realty Co., a Corporation v. Flahaven Land Co., a Corporation, 193 Ky. 355, 236 S. W. 260; Gilbert v. Tribble et al., 205 Ky. 223, 265 S. W. 621.

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Control of Maps, Plats, and Field Notes Over Other Elements

Kentucky Case Law

In absence of difference or discrepancy between calls in patent and in surveyor's certificate, plat of surveyor is equal to his other certified work, but not superior.

Combs v Combs, 38 S.W.2d 243, 238 Ky. 362

Brown

…the court stated that a map, referred to in a grant for the purpose of identifying the land, is to be regarded as a part of the grant itself…

The importance of a plat is dependent on whether the parties acted with reference to the map and also on the data given on the plat.

Clark

When the verbal description of a parcel is incomplete, its dimensions and location may be determined by reference to a plat or map that is referred to in the deed.

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Combs v Combs

make it close. The calls of the patent and of the certificate of survey coincide. The only discrepancy is the slight difference shown by the surveyor's plat. There are instances where the plat may be resorted to to correct an error in the patent calls, but, before this can be done, it must first appear that the mistake is in the patent as issued. If nothing else appears in a "call patent"—that is, one whose corners are all stakes, or all but one, or whose lines were not run out and marked at the time—except a discrepancy between the figure made by platting the patent calls, and the surveyor's plat, it is not proof of mistake in the patent. It is just as apt to be a mistake in the surveyor's plat. There being no difference between the calls in the patent and the calls in the surveyor's certificate, the surveyor's plat is of equal dignity with his other certified work but not superior. In such

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Control of Quantity Over Other Elements

Kentucky Case Law

Under circumstances attending various conveyances disclosing clear intention to convey …entire 50-acre survey, a deed …dividing line as certain ridge and which also included provision "embracing all of the fifty-acre survey" such call prevailed over "dividing ridge" call…

Letcher County Coal & Imp. Co. v Marlowe, 398 S.W.2d 870

Brown

Occasionally, area is the deciding factor where alternate lines can be drawn from the written instructions, and area computations fit one of the alternate lines …

Clark

Even though quantity is the least reliable of the elements, in determining boundaries of a parcel conveyed, at times, it may be considered as supporting of other evidence.

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Letcher Co. Coal & Imp. Co. v Marlowe

"thence with the top of the dividing ridge between said Sandlick and Colly Creeks to two chestnut oaks on top of the knob between said Sandlick, Little Colly and Smoot Creeks; *thence along with the top of the dividing ridge between said Sandlick and Smoot Creeks to the top of the knob between said Sandlick, Smoot and Dry Fork Creeks; thence still a south course along with the top of the dividing ridge between said Sandlick and Dry Fork Creeks to the top of the spur at a corner of the said dividing line* between said Nickels and said John Dixon Caudill and down along the top of said spur and down the hill an east course or southeast course to the beginning, *embracing* all of a 50 acre survey made in the name of David Tyree, *all of a 50 acre survey made in the name of G. B. Thomas;* all of two 100 acre surveys made in the name of John A. Caudill; all of a 50 acre and part of another 50 acre survey made in the name of John A. Caudill; *all of a 50 acre survey made in the name of Green B. Thomas*; all of a 50 acre survey made in the name of Andres Sexton." (Emphasis ours).

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Letcher Co. Coal & Imp. Co. v Marlowe

"It is generally recognized that where a deed contains both a general and a particular description and contains no language indicating which description shall prevail, the general must yield to the particular. Hatcher v. Virginia Mining Co. et al., 214 Ky. 193, 282 S.W. 1102. On the other hand, where it is manifest from the entire instrument that the general description, in view of the facts and circumstances surrounding the transaction, most clearly reflects the intention of the grantor, the construction will be adopted which gives it full effect. McKinney et al. v. Raydure, 181 Ky. 163, 203 S.W. 1084."

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Natural and Permanent Objects

Kentucky Case Law

Where proof shows two or more natural objects which might fill the description in a deed, the one will be taken which appears to carry out the intention of the parties to the deed and which most nearly conforms to the courses and distances as well as the quantity of land to be conveyed.

Staton v Lyons, 133 S.W.2d 707, 280 Ky. 531

Brown

Naturally occurring monuments such as… are permanent objects found on the land as they were placed by nature and are usually considered controlling over artificial monuments…but if the writings clearly indicate a contrary intent, especially where the lines of a survey are called for, the control might be reversed.

Madson

Natural boundaries and monuments, because of their greater permanence, take precedence over artificial monuments.

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Staton v Lyons

Staton's claim to the land in dispute is by virtue of a deed executed to him by Nick McCarty in 1917. This deed called for 100 acres of land and gave the description of the land by calls and distances, as well as by natural objects. The survey does not close when the calls and distances are followed. It is appellant's contention that the white oak corner on the north side of Wolfe Pen Branch called for in his deed is at the point where two of the lines of the boundary will meet if extended. For the sake of convenience we will refer to these lines as Line No. 1 and Line No. 2. Line No. 1 runs from a white oak stump in Piersall's line S. 71 E. 160 poles. Line No. 2 runs from a stone in Caney Road S. 28¾ E. 227 poles. The appellant contends that Line No. 1 should be extended 88 poles and Line No. 2 60 poles.

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Staton v Lyons

Numerous cases have been cited by the appellant in support of his contention that courses and distances must give way to natural objects. This rule was first laid down in the case of Beckley v. Bryan, 2 Ky. (Sneed) 91. Shortly after that case was decided the Court had before it in the case of Preston's Heirs v. Bowmar, 2 Bibb 493, a situation in which it was held that course should yield to a distance. There is a discussion of the general rule laid down in the Beckley case and some of the exceptions thereto, including that discussed in the Preston's Heirs case, in the case of Cornett v. Kentucky River Coal Company, 175 Ky. 718, 195 S. W. 149. In the Cornett case the survey was closed by changing a course rather than a distance called for, as was done in the Preston's Heirs case.

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Artificial Monuments and Marks

Kentucky Case Law

If iron pin …in boundary dispute mark{ed} east corner of lot as originally laid out, was substituted for temporary stake…originally set when the lots were laid off and was put in the same place and had not been removed…there was no logical reason it should not have been accorded …the same significance as if it had been the original stake.

Powell v Reid, 519 S.W.2d 388

Brown

Monuments that are not called for are uncertain; to be controlling they must be proved. If … found in the proper position for angle and distance, they may automatically become the correct corner markers. If … not in the measured position, they cannot be accepted without substantial evidence showing .. they are in the position of the original stakes or .. have been accepted by common report.

Clark

The entire premise of the existence of an original or an obliterated corner can depend on the "testimony of knowledgeable people" concerning corners, lines, and boundaries. Because of the ancient boundary exception, …it is clear that the surveyor may receive testimony from individuals who may have had personal knowledge of where an original boundary was located.

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Powell v Reid

The two lots face the east side of Watterson Trail in Jefferson County. They are part of a larger tract which was subdivided and sold off by lots in 1949. It is undisputed that when the lots were laid out the engineer who did the work set stakes at the corners, including the one here in controversy. The witness Martin, one of the owners at that time, testified without contradiction that before any of the lots were sold these stakes were replaced by iron pins driven into the same holes.

The Powell lot is south of the Reid lot. The respective deeds call for the same stake as the southeast corner of Reid and northeast corner of Powell. An iron pin supposedly marking this corner is in place but is covered over by several inches of dirt. Nevertheless, at some time after this dispute arose it was located and pointed out to Reid by the witness Martin, one of the original subdividers, as the corner pin. There was no evidence tending to suggest that it does not mark the spot where the original corner stake had been placed in 1949.

As usual in the instance of boundary disputes, the plats prepared for the respective parties do not coincide. The Powell surveyor found iron pins at three of his four corners and conformed his courses and distances accordingly. The Reid surveyor began with a monument theretofore located during a previous survey of another lot to the north of Reid, extended a line southward along Watterson Trail, and then plotted the remaining courses and distances from that line according to the deed description without reference to or discovery of existing iron pins (if there were any) along the back or east line.

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Powell v Reid

Beyond that, moreover, the iron pin mentioned in this case was in fact present, existing and visible. Certainly it was not invisible in the sense of being lost and gone. If it was substituted for a temporary stake or monument originally set when the lots were laid off, was put in the same place, and had not been removed (all of which was a matter of proof), then there is no logical reason why it should not have been accorded for all practical purposes the same significance as if it had been the original stake itself.

The principal instruction was prejudicially erroneous in directing a verdict for Reid unless the jury believed that the iron pin at the disputed corner was a "visible and recognized iron pin or stake" at the time of the conveyance to Reid. It is conceded that monuments ordinarily are controlling over courses and distances. We do not construe Oliver v. Muncy, 262 Ky. 164, 89 S.W.2d 617, 618 (1936), as standing for the proposition that within the context of that principle a monument must be literally "visible."

Although the court from time to time over the years may have been somewhat loose in its use of the words "visible" and "recognized," it is clear that a mark or boundary that was visible and recognized when first mentioned in a document does not lose its legal force merely by physical disappearance, so long as its original site can be definitely established. As stated in Cissel v. Rapier, 11 Ky.Op. 553, 555, 3 K. L.R. 690 (1882), "It is well settled that visible or actual boundaries, whether artificial or natural, are to be taken, as the abuttals of a survey, *so long as they can be found or proved*." (Emphasis added.) "In locating land, natural objects called for in the patent must govern; but if they are

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Courses and Distances

Kentucky Case Law

A straight line measurement will not be employed for determining the size of a lot where language of the deed or other circumstances or local customs indicate a different intent.

Justice v McCoy, 332 S.W.2d 846, 80 A.L.R.2d 1206

Brown

Glossary

Distance between points. Distance between points is always assumed to be the shortest possible horizontal distance unless otherwise specified.

Clark

With no standard of survey relative to methodology, equipment, and monuments, surveyors were left to local customs, personal preferences…

To retrace a metes and bounds survey, the surveyor must understand the history of the local area and then learn the local customs employed by the land surveyor who conducted the original survey.

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Justice v McCoy

The question in this case is whether, in measuring the depth of a residential town lot which lies on a sharply sloping hillside, under a deed which calls for a depth of 60 feet "up the hill," a horizontal measurement or a surface measurement should be used. The circuit court, in an action between the owner of the lot and the owners of two adjoining lots lying above on the hillside, held that the surface measurement should be employed.

The land in question lies between High Street and Kentucky Avenue in the City of Pikeville. The two streets are about 100 feet apart, by surface measurement, but the level of High Street is around 40 feet above that of Kentucky Avenue.

The lot of the appellants faces Kentucky Avenue. The lots of the appellees face *847 High Street. Each of the two lots facing High Street has a house on it, which houses were built at a time when all three lots were owned by one family. The lower lot was sold by this family to the appellants' predecessors in title in 1939 and the upper two lots were sold to the appellees in 1941 and 1944, respectively.

By reason of the sharp slope of the land, a horizontal measurement of 60 feet would produce a surface depth of around 70 feet for the appellants' lot. This would mean that the back several feet of the appellees' houses would be on the appellants' land.

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Justice v McCoy

The appellant maintains that it is not a question of intent, but that there is an absolute rule calling for the use of horizontal measurement. We find authority, however, for the proposition that a surface measurement is proper where it is a custom of the locality or where it is dictated by the circumstances of the case. 11 C.J.S. Boundaries § 9, p. 551. Also, it has been held that straight line measurement will not be employed where language of the deed (such as "along the road") or other circumstances, or local customs, indicate a different intent. Hite v. Graham, 5 Ky. 141; McKee v. Bodley, 5 Ky. 481; Whitaker v. Hall, 4 Ky. 72.

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CASE LAW BURN OUT

CASELAW ACCESS PROJECT
HARVARD LAW SCHOOL

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Location of Corners

Kentucky Case Law

A lost or unmarked corner of land between two known corners is properly located at intersection of lines run from known corners according to courses and distances called for in descriptions of land.

Queen v. Gover, 215 S.W.2d 107, 308 Ky. 649

Gover v. Queen, 300 Ky. 704

Brown

Lost Corner. A point of a survey whose position cannot be determined beyond reasonable doubt, either from traces of the original marks or from acceptable evidence or testimony that bears on the original position **and** whose location can be restored by reference to one or more interdependent corners.

Madson

Obliterated Corner. A point with no remaining traces of the monument or its accessories, but whole location had been perpetuated, or the point…may be recovered beyond reasonable doubt by the acts and testimony of the interested landowners, competent surveyors, other qualified local authorities, or witnesses, or by some acceptable record evidence

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Gover v Queen

By mesne conveyances, both parties claim title from a common grantor. The line in dispute is described in appellants' deed as, "Beginning at corner of 1, corner to Greorge Queen parcel and in east right of way line of U. S. Highway No. 25, a fence post in said right of way; thence with said Queen parcel S. 49° 30' E. 15.14 chains along fence line to corner 2 common to said Queen parcel' 12 inch pine with 6 old survey hacks, on north bank of Laurel River. * * *"

The description of the line in appellee's deed commences at "Albert Ohler's line (on Laurel River), thence with said Ohler's line to Dixie Highway." The evidence shows conclusively that the line commences at a stone or post in the Dixie Highway, and ends at a fallen pine on the banks of Laurel River. Both objects are now in existence, and are recognized to be the correct corners by both parties and all of the witnesses. The Chancellor fixed the division to be a straight line between these objects, in the following language: "Beginning at a stone or post on Dixie Highway, and running S. 48 E. 60-⅝ poles to a pine now down on the north bank of Big Laurel River, and running in a straight line between these two points ;***."

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Queen v Gover

In preparing this record the Clerk of the Laurel Circuit Court did not comply with our rule 1.100 which says typewritten records "* * * must be written with a black record ribbon which is not worn or faded * * V' The record before us was made with such a worn or faded ribbon that it is so dim it can only be read with difficulty and it is trying on the eyes. For the infraction of this rule there will be deducted $10 from the fee of the clerk for preparing the transcript and the chancellor will enter an order directing that sum to be credited on the cost due the clerk by the appellant. We call attention to appellants' attorney that it was incumbent upon him to have inspected the clerk's records and not let it come here in its present condition.

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Location of Lines

Kentucky Case Law	Brown	Clark
A boundary line described in instrument will be interpreted as being straight across from one designated point to another, in absence of apparent contrary intent of parties, as where intermediate monuments along a diversion are mentioned or there is apparent purpose to follow course of stream or ridge. Edwards v. Williamson, 211 S.W.2d 862, 307 Ky. 584	A line in a description is assumed to be the shortest horizontal distance between the points called for unless the contrary is indicated by the writings. A bearing quoted for a line defines it as a straight line. If a line is defined by monuments, w/o bearing or distance, the words "in a straight line" or "in a direct line" are sometimes added to emphasize the presumed fact that the line is straight.	It is a presumption of law that lines, recited by bearing and distance between angle points in a deed, are straight lines. This is a rebuttable presumption, in that qualifying words may be placed in the deed that will control over course.

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Edwards v Williamson

Hiram, and the remainder to two-grandsons, John B. and Boland T. Williamson, "to be divided between them by a line beginning at mouth of the present lane at Pond Creek, thence up to the mouth of the spring branch; *thence running through the orchard near the house to the Spring in the orchard;* thence a straight line to the top of a small point between the branch running in by the house and the one running in at the upper end of the bottom; thence with the center of that point to the top of the first knob on the fork point between the aforesaid branches; thence with the top of the said point running back to the top of the main ridge at the head of said branches, John B. to-have the lower tract and Boland the upper end."[1] The life tenant died and

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Edwards v Williamson

The judgment is affirmed.

1 This provision appears elsewhere in the record as: "to be divided between them by a line beginning at moutb of the present lane of Pond Creek,. thence up to the mouth of the Spring Branch thence running through the orchard near the house to the Spring in the orchard thence a line to the top of a small point between the branch running in by the house and the one running in at the upper end of the Bottom, thence with the center between the aforesaid branches thence with the top of the said corner trees. John B. to have the lower tract and Roland T. the upper end." Carelessness In copying one or the other is apparent.

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Designation, Quantity, and Location of Land

Kentucky Case Law	Brown	Clark
A deed containing an indefinite description was so applied, by the use of surveyor's measurements of the disputed distances for clarification, as to embrace the acreage indicated in the deed. Snyder v Rhinehart, 118 S.W.2d 543, 274 Ky. 274	All too often, ambiguous statements or phrases in deeds are difficult to interpret and require field information. ...can be solved only by physical evidence on the ground or parol evidence of witnesses.	Where latent or patent ambiguities exist, the responsibility of the surveyor is limited. Suggestions can only be made as to possible alternate solutions that are supported by the evidence. There should be no determination as to the legality of the solutions of the instrument affected.

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Snyder v Rhinehart

fraud, etc A sharply defined and a bitterly contested issue was developed as to what was the property included in this first deed. That description is somewhat indefinite and confusing and after careful study of it and the evidence contained in this record we have found what we are sure is the property conveyed by "Deed A". We shall now give our conclusion and later shall state why we came to that conclusion.

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Snyder v Rhinehart

passes under the highway. Mr. Whitehead, an engineer of six years' experience, measured this distance along a straight line between these two points and he showed on his map and testified in court it was 288 feet. Other witnesses who were along with him testify to this distance but it is perfectly apparent they were merely repeating what they had learned from Whitehead when he was doing this surveying.

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Snyder v Rhinehart

Another engineer, Mr. T. Y. Beard, who has been engaged in surveying for 25 years, testified and made and filed a map showing the distance from Sally's Branch to this first drain under the highway to be S. 30, W. 118 feet and S. 41, W. 219 feet. Then adding these two measurements 118 and 219 we have a total distance of 337 feet which is just 49 feet more than the 288 feet testified to by Whitehead. Both those statements cannot be true. The idea of two different men measuring between the same points, one reporting the distance to be 337 feet and the other that it is only 288 feet is preposterous. We are sure this error of 49 feet

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Maps, Plats, and Field Notes

Kentucky Case Law	Brown	Clark
Mistake in calls of patent may be corrected by reference to original plat.	Principle 5. Where a property description calls for a plat or map and the parties acted with reference to the map, the plat or map becomes a part of the description as much as if it were recited expressly in the deed itself.	When a survey and a map are referred to, both are as much a part of the deed as if they were copied into the instrument. Where [deed and plat] are not inconsistent therewith, the description by plat will control.

Combs v Jones, 51 S.W.2d 672, 244 Ky. 512

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Combs v Jones

in dispute is a part. A mistake in the calls of a patent may be corrected by reference to the original plat, and, in ascertaining boundaries, attention should be given to the figure of the survey in the absence of any other controlling influence. Howes v. Wells, 110 S. W. 245, 33 Ky. Law Rep. 212; Brashears v. Joseph, 108 S. W. 307, 32 Ky. Law Rep. 1139; Combs v. Virginia Iron, Coal & Coke Co., 106 S. W. 815, 32 Ky. Law Rep. 601; Hogg v. Lusk, 120 Ky. 419, 86 S. W. 1128, 27 Ky. Law Rep. 840.

In the instant case, if the calls are reversed, starting at the beginning point, it is also clear that the description in the Duff patent does not conflict with the description in the Nicholas Combs patent. Where there is a known error, the calls may be reversed in order to correct the error and close the survey. Simpkins' Admr. v. Wells, 26 S. W. 587, 16 Ky. Law Rep. 113; Combs v. Valentine, 144 Ky. 184, 137 S. W. 1080.

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Adjoining or Adjacent Lands

Kentucky Case Law	Brown	Clark
Where description of land in mortgage called for boundary of named adjoining owner as monument, lines of adjoining tract fixed boundary of mortgaged land and controlled calls and distances.	An adjoining parcel may be considered as a natural boundary...If the adjoining line is senior in time, well defined and called for as an established line, the surveyor may accept the calls for the adjoining line...To be absolute in location, the line must be marked to a degree of certainty that there can be no mistake as to its validity.	The call for a line of a named parcel is similar to a call for a natural monument or boundary. When a deed makes reference to a named boundary, that boundary must be identified on the ground before the deeded land can be located with certainty.

Bolton v Sears, 78 S.W.2d 914, 257 Ky. 676

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Combs v Jones

We need not give any further description of this 248-acre tract other than to say that the second call terminates at a hickory, white oak, and black oak in the Timothy Ruark line, thence it runs with Ruark's line N. 12% W. 20 poles to (sic) small hickories Ruark corner, thence with Ruark line N. 88 W. 154 poles to a stone in Seminary line. From this it will be seen that the calls of this 248 acres from the time they touch until they leave the Ruark land are calling t for the Ruark land and the Ruark line as a monument, hence it follows the lines of the Ruark patent control and fix the boundary of the 248 acres, and the calls and distances of the 248 acres must yield to those of the Ruark land. See Gilbert v. Tribble, 205 Ky. 223, 265 S. W. 621; Fidelity Realty Co. v. Flahaven Land Co., 193 Ky. 335, 236 S. W. 260; Ewell v. Hauser, 140 Ky. 459, 131 S. W. 186, and other cases cited in those opinions. Bolton introduced evi-

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Justice Thomas Cooley, MI Supreme Court

Link to Cooley Paper

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Link to Folder with Cases Explored in this Presentation.

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THANK YOU FOR ATTENDING

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