KNOW YOUR BOUNDARIES

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Case Review: Douglas v Channon [2026] EWHC 2475

***"27…….The costs of the litigation were already very substantial. As the Judge said, and I entirely agree**:*

"this is a wholly unfortunate dispute which, from any objective viewpoint, should plainly have not got to this point, but given that it has, clearly it has caused a significant amount of stress and upset, let alone cost""

These words are striking aren't they? Not because they are unusual but because they are not. We practitioners hear them in some way shape or form from a Judge at the end of almost every trial of a boundary dispute. I include them at the start of this article in ponderance as to whether clients armed with this knowledge at the start of a boundary dispute might….just might, more readily follow our advice about the pitfalls of litigation and the benefits of ADR particularly where boundary disputes are involved.

The facts of the case

This is not, on the face of it, an extraordinary case, that is to say, the facts and applicable legal principles do not lend themselves to novelty and nor are any new or enlightening principles revealed from it.

Nonetheless, the case is important, it was important to the people involved in it and the outcome and effect on those people should be important to anyone thinking about litigating a boundary dispute because the outcomes in this case are the potential outcomes they are signing up to. Someone wins, someone loses and more times than not, the loser must pay the winner's costs.

In broad outline, the reported facts of this case are;

i. Ms Douglas has owned the freehold of 43 Mead Road, Torquay since 2017.

ii. Mr Channon has owned the freehold of 41 Mead Road, Torquay since 2021.

iii. No.43 sits to the north of No.41.

iv. The parties fell into dispute over the exact location of the boundary between the two properties.

v. Ms Douglas sought a declaration that the boundary was demarcated by a line identified by her boundary surveyor and on the basis of where he said the line was, she alleged trespass against Mr Channon and his predecessor in title through works done which included removal of some hedging in 2018 and the construction of a fence in 2022, which, Ms Douglas said, were on her land.

vi. It was also alleged by Ms Douglas that the works done by the previous owner had destabilised her land. The allegations made by Ms Douglas included nuisance, breach of the measured care of duty and harassment by Mr Channon in the course of the dispute.

vii. In his Defence and Counterclaim, Mr Channon denied the claims brought and counterclaimed for a declaration that the boundary was demarcated by a line on a drawing appended to his statement of case and damages for various other matters including nuisance, trespass and wrongful interference with property albeit not all pleaded claims were pursued at trial.

First Instance Decision

The trial took place at Plymouth County Court between 18 and 26 August 2025 before His Honour Judge Mitchell.

Two orders were made by the Judge which were essentially;

i. The boundary line was declared between No.41 and No.43 as the line A-H-B on a plan attached to the Order, save for that, the claim and counterclaim were dismissed; and

ii. Ms Douglas was required to pay 70% of Mr Channon's costs of the proceedings, to be subject to detailed assessment on the standard basis if not agreed. The Order also required Ms Douglas to pay Mr Channon £108,402 on account of costs by 8 October 2025.

Boundary line

In reaching his decision as to the boundary line, the Judge noted that his task was to "*construe the earliest Conveyance that creates the boundary between the respective Properties. To the extent that is unclear, topographical features on the ground can be considered to illuminate the position as at the date of that Conveyance*." The Judge also cited passages from *French v. Hannah [2025] UKUT 190 (LC)*, *Chadwick v. Abbotswood Properties Limited [2004] EWHC 1058 (Ch)* and *Cameron v. Boggiano [2012] EWCA Civ 157*.

Whilst outside the scope of this article, those cases are always worth a read for those of us practising in boundary disputes.

HHJ Mitchell also referred to *Collis v Amphlett [1920] AC 271* (as followed in *Avon Estates Limited v Evans [2013] EWHC 1635)* and, applying it, held that the boundary line should be taken to be a line drawn along the growers of the hedge, rather than a line drawn by reference to the extent of the outer foliage. In particular on this he said;

"85. So it seems to me….that this line of authority supports the proposition that, where the boundary separating two properties is demarcated by a hedge which belongs within the curtilage of one of the properties, the boundary will run along the outer edge of the growers or trunks or stems. That avoids the problems already identified. The boundary is then more or less a fixed point, and the owner of No. 41 can cut back the hedge on the No. 41 side, providing he or she goes no further than the outer edge of the growers in order, for example, to abate a trespass.

86. My conclusion, therefore, first is that I accept Mr Ward's submission that a plain reading of the conveyancing documentation alone shows that ownership of the hedge passed with the title of No. 43, but, second, the practical effect of that on the ground is that the boundary line between H and B is the outer line (in other words, the No. 41 facing side) of the growers of the hedge.

87. Mr Barber has drawn a line simply through the middle of the hedge, in effect. That I accept is not precisely the same as a line along the outer face of the growers. However, looking at the photographs that were taken when Mr Hodgson undertook the hedge removal, one can easily surmise that the growers were not the width of a tree trunk or anything of that sort. They were relatively thin stems. Mr Barber's line, H-B, will therefore be marginally out by the width, or perhaps half the width, of the growers, but the difference is a matter of mere millimetres or de minimis. I therefore conclude that the boundary line is A-HB, as shown on the experts' Joint Plan 3 at E1061; in other words, the line plotted by Mr Barber."

The Appeal

Lambert J gave permission on the papers to appeal on two of the appellant's four grounds of appeal (1 and 4) which are (abbreviated);

Ground 1 – *that the Court was wrong to determine the boundary as it did as a matter of fact*

Ground 4 – *that the Court was wrong to order Ms Douglas to pay any of Mr Channon's costs.*

(for the complete Grounds 1 and 4 and sub – paragraphs please refer to paragraphs 19 and 30 of the Judgment)

The Decision on appeal

Both grounds of appeal failed.

Ground 1

The Court had been invited **(inter alia)** to consider argument that HHJ Mitchell did not take into account and/or did not place sufficient weight on the fact that the difference was not *de minimis*.

The Court rejected Ground 1 entirely and referred to the full maxim "de minimis non curat lex" which means that "the law does not concern itself with trifling matters."

It was observed that HHJ Mitchell's view was in effect that the difference between the line plotted by Mr Channon's expert and the line suggested by Collis and Evans was so minor that it could be disregarded and that question was one of fact for the Judge and his finding was based on the evidence. On this the Court said;

"25…..He read, saw and heard all of the evidence and, indeed, undertook a site visit, and his finding was plainly open to him. Indeed it is wholly unsurprising for the reasons which he gave…..

"27…..given that the difference between the line plotted by Mr Barber and the line indicated by Collis and Evans was de minimis it was entirely open to the Judge to adopt Mr Barber's line. The difference between the two lines was, the Judge permissibly found, immaterial…..

Ground 4

The Court's decision on the appeal as to costs is worth reading in full*;*

"34. As is well known, costs are in the discretion of the court. CPR Rule 44.2(2) provides that:

"(2) If the court decides to make an order about costs—

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but

(b) the court may make a different order."

35. Rule 44.2(4) provides that in deciding what order, if any, to make about costs the court will have regard to all of the circumstances including the conduct of all the parties, and "(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;".

36. Rule 44.2(5) provides guidance as to what the conduct of the parties includes, as follows, so far as material:

"(a) conduct before, as well as during, the proceedings…;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue;

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim; and

(e) …."

37. I have set out the approach to appeals against a judge's exercise of discretion at [17(ii)], above. In this case it is also important to note that the Judge had conducted the trial and was therefore in a far better position than this court to assess which was the successful party, which were the more important/costly aspects of the litigation, issues of litigation conduct etc. The Judge also received detailed written submissions from the parties which relied on wider considerations in support of their positions on costs than are raised in this appeal. Moreover, perhaps recognising that the function of this court on appeal is to review the Judge's decision, Mr Ward did not begin to engage in the sort of detailed analysis which would enable me to go

behind the views of the Judge as to what were the key issues, where the bulk of the costs were incurred etc. All of these considerations mean, in my view, that I should be slow to interfere with the Judge's findings and the exercise of his discretion on the basis of what were essentially assertions by Mr Ward about some aspects of the overall case which was before the Judge.

38. In my view, the Judge was fully entitled to find that Mr Channon was the successful party in this case given that he had won on the issue which the Judge found to be the "stand out issue in the case". It is worth noting that there is no dispute that Mr Channon won on the first two issues in relation to the Boundary which the Judge identified. Mr Ward's argument that, in effect, Mr Channon had not won on this issue because the line suggested by Collis and Evans was different to the line plotted by Mr Barber only goes to the third issue or section of the Boundary. As I have said, in my view that argument is in any event wrong. The Judge permissibly found that the difference between the two lines was not material, whereas the difference with Mr Rackham's proposed line was. As Mr Channon's case was not materially different from the case which the Judge accepted, he was the successful party on the most important issue to be determined.

39. Secondly, as for Mr Ward's argument that Mr Barber's position had evolved over the course of the case to the one which the Judge accepted, obviously this did not mean that Mr Channon was not the successful party on the Boundary issue. Insofar as the evolution of Mr Barber's position was relevant to the conduct of the proceedings for the purposes of assessing costs, the answer to Mr Ward's complaint is that, as noted above, the Judge expressly took this factor into account in exercising his discretion. He was best placed to assess the significance of the changes in Mr Channon's case and to decide what weight should be given to this consideration.

40. Thirdly, in terms of which was the successful party, the Judge also relied on Ms Douglas' claim for compensation in respect of the stabilisation work. He found that this claim and the Boundary issue had been her primary reasons for bringing the claim. He also found that the bulk of the costs fell under the claim, which incorporated these two issues. The claim failed in its entirety. Again, as the trial Judge he was fully entitled to make these findings. Mr Ward did not subject them to a sufficiently detailed analysis to put me in anything approaching a position to go behind them and, in any event, they are unsurprising given, for example, that there was also expert evidence from structural engineers on both sides in relation to the stabilisation claim.

41. As far as Mr Ward's other arguments are concerned, the Judge expressly took into account the fact that Mr Channon's counterclaim had failed save insofar as it mirrored his defence on the Boundary issue. He also took into account that the counterclaim "caused not insubstantial costs" and he was obviously aware of the purported value of the counterclaim. The weight to be given to these factors was a matter for the Judge and it is important to note that he gave them significant weight in making a deduction of 30% from the costs which Ms Douglas was liable to pay.

42. It is also important to note that the Judge then considered whether any further adjustments should be made bearing in mind the terms of Rule 44.2(4) and concluded that they should not be. In relation to Mr Ward's argument that the counterclaim had been pursued aggressively, it is clear that both sides pursued their respective positions robustly. The Judge also expressly took into account that there had been " intransigence on both sides".

43. For all of these reasons, then, I consider that the Judge's exercise of his discretion in relation to costs was entirely open to him and I dismiss Ground 4."

There are many things that can be taken from this analysis but perhaps the key takeaway is that judges have a wide discretion on costs and the exercise of that discretion may result in an outcome that neither party is particularly happy with….

Conclusion

The essence of all of this, in the writer's humble view might be distilled into a helpful reminder of a few basic principles;

i. that the Court will not readily interfere with a first instance Judge's findings and exercise of discretion; and

ii. a win is a win; and

iii. costs will usually follow the event.

Parties to boundary disputes should heed warning from these. Ultimately once a boundary dispute is in front of a Judge, the parties have no control over the outcome, they may end up with a boundary line being somewhere other than where they wanted it and a costs order against them that could cause them real financial distress.

Boundary disputes whilst seemingly simple in principle are often fraught with emotion and can easily expand beyond all sensible proportion to the original issue, over time and with expenditure, making positions more entrenched and settlement increasingly more difficult.

I was recently told about a case where a homeowner had fought and lost a boundary dispute resulting in the costs order made against her being so high it ultimately led to an order for sale of the very home she was trying to protect.

Can there be any worse cautionary tale?

Unless there is an urgent need to resort to Court (if, for example, an interim injunction is necessary), parties to a boundary dispute would do well to remember that they are very likely to spend more than the dispute is worth, even if they win they are very unlikely to get everything they have spent back and they certainly won't ever get any of the time they spent on it back nor will they easily heal from the stress and trauma of the dispute.

ADR is often mentioned but all too infrequently deployed to its full potential in boundary disputes, yet it offers many things that litigation simply cannot, an opportunity for people to be heard in a way they cannot be in Court, to agree, to repair relationships, to save time and money, to remove risk and reduce stress and that is to name just a few. What lay client would not prefer this?

At 3PB we have a fantastic team of property specialists who are not only able to give advice at the early stage of a boundary dispute and naturally, provide robust representation at Court as needed but we also provide a full range of ADR services including mediation with accredited mediators and early neutral evaluation.

Mediation is for me, the gold standard for ADR in a boundary dispute, parties have control of the outcome, you can do it on site or off with a site visit, each party can have a surveyor with them on the ground (so to speak) if desired and they can walk away with a binding agreement on the same day. If the referral is made early, it can save tens if not hundreds of thousands of pounds in costs and years of stress, hostility and uncertainty.

It is understandable that lay clients may not be initially receptive to the idea of mediation but they might just change their mind if they hear HHJ Mitchell's words at the start of this article repeated to them, after all, those words may someday be directed at them in the absence of resolution.

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