

Pennsylvania Fence Law

Interpretation of Pennsylvania's Law Governing Division Fences *

**There where it is we do not need the wall:
He is all pine and I am apple orchard.
My apple trees will never get across
And eat the cones under his pines, I tell him.
He only says, 'Good fences make good neighbours.'**

Robert Frost, "*Mending Wall*"

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Do good fences really make good neighbors? In Pennsylvania perhaps only if the adjacent landowners both own livestock. Until the Pennsylvania's Superior Court decision in *Fogle v. Malvern Courts, Inc.*, 701 A.2d 265 (1997), courts and lawyers having read Pennsylvania's Fence Law, title 29, Purdon's Statutes, section 41, concluded that the cost of erecting and maintaining a line or division fence between two owners of improved and occupied land adjacent to one another was shared equally between the adjoining landowners. A person could be relieved of liability for his share of maintaining the fence, but only by the consent of the adjoining owner (29 P.S. § 41). However, *Fogle* addressed the question whether this shared obligation could be imposed on a property owner who had no reason to build the line or division fence as the owner did not keep livestock on his property. Was the statute's terms to be given their plain meaning, or did its legislative intent support a different conclusion?

The parties in *Fogle v. Malvern Courts* lived in a non-agricultural, residential neighborhood on land adjacent to each others. Plaintiffs erected a division fence on the boundary line between their property and the defendants' property where no fence previously existed. Plaintiffs brought suit under Pennsylvania's Fence Law, title 29, Purdon's Statutes, and asked the court to enter an order to require the defendants to pay an equal share of the cost of erecting the fence. The parties filed cross-motions for

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summary judgment. Plaintiffs' motion for summary judgment was granted and the defendants appealed.

The appellate court's standard of review of the grant of summary judgment is to view the record in the light most favorable to the non-moving party. The trial court's judgment will not be disturbed unless the reviewing court determines that there was a genuine issue of material fact or clear error of law *Philco Ins. Co. v. Presbyterian Med. Serv.*, 444 Pa. Super. 221, 663 A.2d 753 (1995). The parties in *Fogle* agree on the facts. Therefore, the task of the appellate court is to determine whether the trial court applied Pennsylvania's Fence Law correctly by its interpretation of the statute.

In interpreting the statute, the appellate Court first considered the plain meaning of the statute. Plaintiffs argued as the fence was built on the property line and the defendant owned adjoining property, the obligation to share in the cost of erecting and maintaining the fence was settled. The Court was not satisfied and addressed the issue of whether the statute, when viewed in its entirety, would require a shared obligation when there is no reason for the defendant property owners to build such a fence in the first instance.

The Court addressed the remaining language of title 29, Purdon's Statutes, section 41 and noted if an adjoining property owner fails to erect or maintain his portion of the division fence, the aggrieved party must notify the county surveyor to examine the fence and make a determination whether it is sufficient. If the result is that the fence is not sufficient, the surveyor then determines if a new fence is required, or the fence can be repaired. This determination of sufficiency led the Court to conclude that the division fence is to be constructed and maintained for a particular purpose which can only be gathered from its legislative history and earlier case interpretations.

The Court noted from earlier versions of the law that the purpose of the Fence Law was to resolve disputes involving trespassing livestock. In *Barber v. Mensch*, 157 Pa. 390, 27 A. 708 (1893), a case which interpreted an earlier version of this requirement, the Court held to be "sufficient" a division fence must prevent livestock from entering the adjoining owner's land and triggering the owner's common law liability for damage caused by his trespassing livestock. Finding that there is no other discernible purpose for the Fence Law but to protect property from trespassing livestock, the Court concluded that the obligation to share in the cost of erecting and maintaining the fence would not apply to an adjoining property owner who does not keep livestock on his property. This conclusion, the Court noted, avoids the unreasonable result of requiring every owner of improved and occupied property to pay a portion of the cost of a division fence which he or she neither wants nor needs. As supported by decisions in other states, this result would be unreasonable.

Statute

**PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES
ANNOTATED**
PURDON'S PENNSYLVANIA STATUTES ANNOTATED

TITLE 29. FENCES
CHAPTER 2. ERECTION OF FENCES
ERECTION OF DIVISION FENCES

§ 31. Road fences of wire with or without barbs

It shall and is hereby declared to be lawful for any land owner within this Commonwealth to construct, build and maintain, along any of the highways of this Commonwealth, fences made in whole or in part of wire, with or without barbs, subject at all times to such restrictions and prohibitions as may be imposed by the municipal authorities relative thereto.

1899, May 2, P.L. 163, § 1. Amended 1976, April 7, P.L. 71, No. 31, § 1, imd. effective.

§ 32. Wire fences, with or without barbs, declared legal

A fence, in whole or in part of wire, with or without barbs, is hereby declared to be a legal and lawful fence, within the meaning and provisions of any act of the Legislature of this State relative to the building, constructing and maintaining of line fences, provided that such wire fence shall be of the height required by such act or acts. All statutes and parts of statutes inconsistent herewith be and the same are hereby repealed.

1899, May 2, P.L. 163, § 2. Amended 1976, April 7, P.L. 71, No. 31, § 1, imd. effective.

§ 41. Division fences; proceedings to compel erection or part payment

From and after the passage of this act, owners of improved and occupied land shall erect and maintain an equal part of all line or division fences between them, nor shall any such owner be relieved from liability under the provisions of this act except by the consent of the adjoining owner. And if any owner of such improved and occupied land shall fail or neglect to erect or maintain his, her, or their share of such line or division fence the party aggrieved shall notify the county surveyor or, if there is no county surveyor in the county, then a county surveyor of any adjoining county, or, if the county surveyor in any adjoining county refuses to act, a surveyor appointed by a judge of the court of common pleas, who shall act as a fence viewer and whose duty it shall be to examine such line or division fence, so complained of; and if he finds said fence sufficient, the complainant shall pay the cost of his service; but if he finds such fence insufficient, he shall so report to a justice of the peace or alderman, residing in the county where such fence is located, designating points and distances of such fence, whether a new fence is required or whether the old one can be repaired, and the probable costs of a new, or the repair of the old, fence; and said justice or alderman shall notify the delinquent owner of such improved and occupied land of the surveyor's report, and that his part of said fence, as found by the surveyor, be erected or repaired within forty days from the date of such notice; and if such notice be not complied with, the aggrieved party may cause said line or division fence to be erected or repaired, and the costs thereof collected, including the charge of the surveyor, from the delinquent owner of such improved and occupied land,

as other debts are collected by law. The surveyor shall be entitled to such payment for acting as a fence viewer as he may fix, not, however, exceeding twenty-five dollars. Where the surveyor reports that he finds the fence complained of sufficient, the amount payable to the surveyor shall be paid by the complainant, but where he reports the fence insufficient, the amount payable to him shall be paid by the delinquent owner of such improved or occupied land: Provided, That no owner of improved land shall be compelled to build or repair fence during the months of December, January, February, and March: And provided further, That nothing herein contained shall be construed to apply to railroad companies.

1905, April 14, P.L. 162, § 1. Amended 1925, May 2, P.L. 490, No. 265, § 1; 1949, April 6, P.L. 393, § 1; 1956, April 3, P.L.(1955) 1371, § 1, imd. effective.

§ 42. Where owner improves up to division fence

Where an owner has improved up to and erected upon the line a division fence, and an adjoining owner subsequently improves and occupies up to said line, he shall become liable to the former for such part of the cost of said fence as is just and reasonable, taking into consideration the quantity of the fence, the length of time it had been erected, and its condition. And in case the parties fail to agree on the amount to be paid, the owner who erected said fence may complain to the surveyor aforesaid, who shall assess the amount which, in his opinion, the other party should pay; which amount, together with payment to the surveyor, as in section one¹ provided, may be recovered as provided in section one of this act.

1905, April 14, P.L. 162, § 2. Amended 1925, May 2, P.L. 490, No. 265, § 2; 1949, April 6, P.L. 393, § 1; 1956, April 3, P.L.(1955) 1371, § 1, imd. effective.

1. 29 P.S. § 41.