



Summer 1979

Sternloff v. Hughes: Vagueness as Affecting the Admissibility of Extrinsic Evidence in Deed Descriptions

David N. Hernandez

Recommended Citation

David N. Hernandez, *Sternloff v. Hughes: Vagueness as Affecting the Admissibility of Extrinsic Evidence in Deed Descriptions*, 9 N.M. L. Rev. 383 (1979).

Available at: <https://digitalrepository.unm.edu/nmlr/vol9/iss2/11>

STERNLOFF v. HUGHES: VAGUENESS AS AFFECTING THE ADMISSIBILITY OF EXTRINSIC EVIDENCE IN DEED DESCRIPTIONS

The purpose of this note is to briefly examine the case law in New Mexico regarding the admissibility of extrinsic evidence when a description in a deed is challenged as void for vagueness. The discussion will attempt to discern some standard as to when a vague description in a deed may be clarified by extrinsic evidence. The basis for this discussion is the case of *Sternloff v. Hughes*,¹ a case which involved a quiet title action wherein plaintiff's deed was challenged as void for vagueness. The issue in *Sternloff* and the focus of this discussion is the determination of when a property description in a deed is so vague as to fail to supply a basis for the admission of extrinsic evidence.

BACKGROUND

Early authority held that extrinsic evidence was inadmissible in the case of a patent ambiguity and admissible in the case of a latent ambiguity in the description of property in a deed.² The distinction between patent and latent ambiguity³ is gradually disappearing and

1. 91 N.M. 604, 577 P.2d 1250 (1978).

2. *Detroit, Y.H. & M.R. Co. v. Howland*, 246 Mich. 318, 224 N.W. 366 (1929).

3. Latent and Patent ambiguity have been defined as follows:

There be two sorts of ambiguities of words; the one is "ambiguitas patens" and the other is "ambiguitas latens." "Patens" is that which appears to be ambiguous upon the deed or instrument; "latens" is that which seemeth certain and without ambiguity for anything that appeareth upon the deed or instrument, but there is some collateral matter out of the deed that breedeth the ambiguity. "Ambiguitas patens" is never holpen by averment, and the reason is, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averment, which is of inferior account in law; for that were to make all deeds hollow and subject to averments, and so, in effect, that to pass without deed, which the law appointeth shall not pass but by deed. Therefore if a man give land to "I. D. et I. S. hoeredibus," and do not limit to whether of their heirs, it shall not be supplied by averment to whether of them the intention was the inheritance should be limited. . . . But if it be "ambiguitas latens," then otherwise it is. As I grant my manor of S. to I. F. and his heirs, here appeareth no ambiguity at all upon the deed; but if the truth be that I have the manors both of South S. and North S., this ambiguity is matter in fact; and therefore it shall be holpen by averment, whether of them it was that the parties intended should pass. . . . Another sort of "ambiguitas latens" is correlative unto this: for this ambiguity spoken of before is, when one name and appellation doth denominate divers things; and

the modern tendency is to allow a liberal interpretation of the description to arrive at the intention of the parties.⁴ Some courts have gone so far as to state that extrinsic evidence is admissible to explain *all* ambiguities in a deed, whether latent or patent.⁵ The authority examined in *Sternloff*⁶ seems to take a middle approach. The goal of the court under this approach is to determine whether the "intention of the parties can be ascertained and effectuated"⁷ from an examination of the extrinsic evidence available.

The New Mexico Supreme Court held in *Armijo v. New Mexico Town Co.*⁸ that parol evidence is admissible if it does not tend to vary, modify or contradict the deed but is used simply to apply the deed to its subject matter and to identify the lands intended to be conveyed.⁹ *Armijo* involved an action for breach of covenants in deeds of conveyance and resort to parol was necessary to connect the deed with the premises being identified. In *State ex rel Highway Dept. v. Davis*,¹⁰ a factually different case yet still involving the admissibility of extrinsic evidence in interpreting a deed, the New Mexico Supreme Court held that if extrinsic evidence is used to identify the land to be conveyed, the deed itself must point to the source from which the evidence is to be sought.¹¹ The case involved a deed from the Atrisco land grant to the grantee's predecessor in interest. There were uncertainties in the description contained in the original deed and the court allowed the testimony of the secretary of the board of trustees of the land grant to establish which land was intended to be conveyed, because the deed made reference to lands

the second is, when the same thing is called by divers names. As, if I give lands to Christ Church in Oxford, and the name of the corporation is "Ecclesia Christi in Universitate Oxford," this shall be holpen by averment, because there appears no ambiguity in the words: for the variance is matter in fact. But the averment shall not be of the intention, because it does not stand with the words. For in the case of equivocation of the general intent includes both the special, and therefore stands with the words: but so it is not in variance; and therefore the averment must be a matter that doth induce a certainty, and not of intention; as to say that the precinct of "Oxford" and of "the University of Oxford" is one and the same, and not to say that the intention of the parties was that the grant should be to Christ Church in the University of Oxford.

Circa, 1597, Sir Francis Bacon, Maxims, rule XXV (Works, Spedding's ed., 1861, vol. XIV, p. 273) (as quoted in 9 Wigmore § 2472).

4. *Detroit, Y.H. & M.R. Co. v. Howland*, 246 Mich. 318, 224 N.W. 366 (1929).
5. *Shore v. Miller*, 80 Ga. 93, 4 S.E. 561 (1887).
6. 91 N.M. 604, 577 P.2d 1250 (1978).
7. *Marquez v. Padilla*, 77 N.M. 620, 626, 426 P.2d 593, 597 (1967).
8. 3 N.M. 427, 5 P. 709 (1855).
9. *Id.* at 435, 5 P. at 712.
10. 85 N.M. 759, 517 P.2d 743 (1973).
11. *Id.* at 763, 517 P.2d at 747, quoting from *Komadina v. Edmondson*, 81 N.M. 467, 469, 468 P.2d 632, 634 (1970).

belonging to the land grant.¹² It also appeared that the board member who testified had staked the corners of the property along with the predecessor in interest and had also assisted the surveyor by pointing out such corners.¹³ While it is not clear from the opinion, it appears that the only reason the board member was allowed to testify is because the deed made reference to lands of the Atrisco land grant.¹⁴

Having established that a deed must point to the source from which the evidence is to be sought, it has been further stated by the New Mexico Supreme Court that the deed will not be deemed void "because the instrument referred to is incomplete, not official, unacknowledged, unrecorded, unattached or misdescribed in some particular."¹⁵ This decision arose out of a quiet title suit wherein the plaintiff's deed from which title was asserted made reference in its description to a survey map which had never been certified nor recorded with the county clerk.¹⁶ A factor apparently contributing to the admissibility of the map was that the map was commonly used by assessors, abstractors and others in Santa Fe County.

Problems have arisen concerning deeds whose description of the land intended to be conveyed are difficult if not impossible to apply, absent the introduction of extrinsic evidence. In *Garcia v. Garcia*,¹⁷ wherein the court allowed the use of evidence gained by subsequent acts of the parties, the court held that the intention of the grantor must be derived from the language of the instrument, and this intention cannot be impeached except upon equitable grounds to prevent injustice by reason of accident, mistake or fraud.¹⁸ In the *Garcia* case the parties went upon the land and generally pointed out the boundaries to the surveyor. This activity was significant because otherwise the deed by which the plaintiffs claimed title would have failed for lack of means by which to identify the lands. The *Garcia* case must be read in light of *Weeks v. Padilla*,¹⁹ wherein the court held that where extrinsic evidence is allowed to aid the description in a deed, if the description in the deed is inconsistent to a large degree with that established by extrinsic evidence, then the deed will not

12. 85 N.M. 759, 763, 517 P.2d 743, 747 (1973).

13. *Id.* at 760, 517 P.2d at 744.

14. *Id.* at 763, 517 P.2d at 747.

15. *Hughes v. Meem*, 70 N.M. 122, 125, 371 P.2d 235, 238 (1962) quoting 26 C.J.S. *Deeds* § 30(f) at 652-55 (1956).

16. 70 N.M. at 126, 371 P.2d at 238.

17. 86 N.M. 503, 525 P.2d 863 (1974).

18. *Id.* at 505, 525 P.2d at 865.

19. 35 N.M. 180, 291 P. 922 (1930).

serve to pass title.²⁰ This is perhaps the only constraint on the extent to which extrinsic evidence will be permitted.

One other case precedent to *Sternloff* which merits mention is the case of *Richardson v. Duggar*,²¹ in which the court held that if stipulated to, extrinsic evidence need not be mentioned in the deed.²² The *Richardson* case involved a quiet title action in which a surveyors plat was introduced by stipulation of the parties to clarify the ambiguities in the deed. The facts of that case are largely analogous to *Sternloff*.

STATEMENT OF THE CASE

In *Sternloff* the admissibility of extrinsic evidence was again qualified. The case involved a quiet title suit brought in Santa Fe County. Defendants claimed title to the tract in dispute by adverse possession. They further averred that the 1912 deed by which the plaintiff claimed title was too vague and indefinite to transfer title and was, therefore, void. The trial court found for the plaintiff and quieted title in his favor. The main point at issue was whether the property description in the 1912 deed was so vague as to prevent the admission of extrinsic evidence. The trial court held that it was not.

The New Mexico Supreme Court affirmed, holding *inter alia* that an uncertain description in a deed may be clarified by subsequent acts of the parties and other extrinsic evidence. The court said:

In the instant case, with the exception of a U.S. Department of Interior Geological Survey Map, the extrinsic evidence relied upon by the Plaintiff related to information in the deed, acts of his predecessor in title and his own actions. The U.S. Geological Survey Map was introduced by stipulation. Use of the map is proper, as well as evidence of the acts of the parties and predecessor in title.²³

The court in *Sternloff* established that a deed should refer to extrinsic information from which the land might be located. In the absence of such reference, however, subsequent acts of the parties such as the going upon the land and generally pointing out the boundaries to the surveyor or the stipulation to the introduction of a U.S. Geological Survey Map, or other survey map or plat will be admissible to clarify the description in the deed.²⁴

20. *Id.* at 184, 291 P. at 923-24.

21. 86 N.M. 494, 525 P.2d 854 (1974).

22. *Id.* at 497, 525 P.2d at 857.

23. 91 N.M. 604, 607, 577 P.2d 1250, 1253 (1978) (citations omitted).

24. *Id.*

DISCUSSION

On appeal the court had to decide three issues: whether the property description in the 1912 deed was too vague to permit the admission of extrinsic evidence; whether the surveyor and court, aided by such extrinsic evidence, found certain facts lacking in evidentiary support; and whether the plaintiff was guilty of laches.

In addressing the issue of whether the property description was too vague to permit the admission of extrinsic evidence, the court relied on the general rule set out in *Garcia v. Garcia*.²⁵ In that case the court held that an indefinite description in a deed may be clarified by subsequent acts of the parties and other extrinsic evidence.²⁶ As in *Garcia*, the facts of *Sternloff* involved a survey introduced through the aid of extrinsic evidence. In *Garcia* the parties to the lawsuit aided the surveyor by pointing out the boundaries of the property. In *Sternloff*, an adjoining landowner at the request of the plaintiff, aided the surveyor by pointing out the boundaries. In both cases the survey was introduced as extrinsic evidence. The extent to which such evidence may be used appears to be limitless.²⁷

The court cited six other New Mexico cases where property descriptions naming adjoining property owners or physical land characteristics have been sustained through the aid of extrinsic evidence.²⁸ In *Romero v. Garcia*²⁹ the court held that a deed is not void for want of a proper description, if, with the aid of the deed and the extrinsic evidence, a surveyor on the ground can ascertain the boundaries.³⁰ In *Romero* the court stated that the subsequent acts of the plaintiff in erecting a house and pointing to the land were sufficient to ascertain the boundaries.³¹ In *Marquez v. Padilla*,³² the portion of the opinion dealing with the sufficiency of the deed is largely dicta. Despite this fact, the court in *Marquez* quoted at length from *First Savings Bank and Trust Co., Albuquerque v. Elgin*,³³ stating that the test in every case is whether or not the intention of the grantor and grantee can be discovered and effectuated.³⁴ Unless the rights of third parties intervene, a deed will be valid.³⁵ If a deed

25. 86 N.M. 503, 525 P.2d 863 (1974).

26. *Id.* at 505, 525 P.2d at 865.

27. 91 N.M. 604, 607, 577 P.2d 1250, 1253 (1978).

28. *Id.* at 606, 577 P.2d at 1252.

29. 89 N.M. 1, 546 P.2d 66 (1976).

30. *Id.* at 3, 546 P.2d at 68 quoting 16 Am. Jur. *Deeds* §262 (1938).

31. 89 N.M. at 4, 546 P.2d at 69.

32. 77 N.M. 620, 426 P.2d 593 (1967).

33. 29 N.M. 595, 225 P. 582 (1924).

34. 77 N.M. 593, 625-26, 426 P.2d 593, 597 (1967).

35. *Id.* at 625-26, 426 P.2d at 597.

contains an uncertain or indefinite description, the parties may by agreement go upon the land intended to be conveyed and mark out the boundaries, either before or after the execution of the deed. This action gives effect to the deed.³⁶

The court in *Garcia v. Piñeda*³⁷ stated that if a description in a conveyance affords sufficient means of identifying the land, then parol evidence will be admissible to specifically identify the property. It is not apparent what made the description in that case sufficiently definite to permit the admission of extrinsic evidence. The deed description in *Garcia* read as follows:

A small sod house composed of two small rooms and a small hallway, which have erected upon the locality which corresponds with property of Antonio Silva, and which house I have sold together with the little courtyard [chorreras] as specified in this present document. First, on the south side a courtyard of ten varas; on the east seven and a half varas; on the north three varas; on the west to the line which is the old public wagon road.³⁸

There is no reference to any source from which extrinsic evidence might be derived. The court seemingly ignored the fact that there might be more than one Antonio Silva or that Mr. Silva may own property in more than one locality and permitted extrinsic evidence to identify the land.

The holding in *Garcia* might be applied to *Sternloff* by comparing the descriptions in each case. The deed description in *Sternloff* read as follows:

The following tract of land situated and being in Precinct No. 3 in the County of Santa Fe and State of New Mexico, to-wit:

Twenty four acres of land from a portion of land~~ed~~ dedeed to the said party of the first part by a certain United States Patent issued to the said party of the first part for the N.W.Q. of S. 9 in T. 16 N.R. 10 E.N.M.M. in New Mexico, containing one hundred and sixty acres. The twenty four acres dedeed to the said party of the second part by the said party of the first part as bounded and described as follows, to-wit: On the east by an arroyo of El Carnerito, on the south by lands of Antonio Ortiz y Rodajas, on the west by government lands, and on the north by lands of the party of the first part. With free entrances and exits which shall not be disturbed. (Underlined portion contained in original deed.)³⁹

By comparison to *Garcia*, the *Sternloff* description would more than

36. *Id.*

37. 33 N.M. 651, 275 P. 370 (1929).

38. *Id.* at 652, 275 P. at 370.

39. 91 N.M. 604, 605, 577 P.2d 1250, 1251 (1978).

suffice for the admission of extrinsic evidence because the description specifically identifies the locality, the amount of acreage to be conveyed and a metes and bounds description of the section from which the property is being deeded.⁴⁰

The court in *State v. Board of Trustees of Town of Las Vegas*⁴¹ upheld a deed description as nebulous as the description in *Garcia*. The description in *Board of Trustees* read as follows:

Description: Bounded on the north, Sapello River; south, Antonio Ortiz grant; east, Aquaji Llyegua; west, Pecos forest. The remaining part being hilly and rough cannot be used for agriculture; dry grazing lands. * * * 35,000 acres, at \$4.50, class E land, \$157,500.00.⁴²

The case involved an action by the state against the Board of Trustees of the Las Vegas grant for taxes assessed upon the foregoing real estate. In upholding the description, the court stated that a description will be good if it would be sufficient in a deed to identify the property so that title would pass, as opposed to the previous standard of being sufficient in and of itself to identify the property.⁴³ The court failed to articulate what type of description would be sufficient to pass title other than a fleeting allusion to *Armijo v. New Mexico Town Co.*⁴⁴ However, the court issued a disclaimer of sorts by quoting Mr. Justice Parker in *Manby v. Voorhees*.⁴⁵

In so holding, we desire to be rather cautious in laying down any hard and fast rule on the subject of necessary description of property for taxation. We appreciate the difficulty in this state in properly describing real estate, because of the fact that a large proportion of the property is held by metes and bounds rather than by government legal subdivisions, growing out of the fact of the large areas covered by Spanish and Mexican land grants.⁴⁶

This is perhaps the only occasion in which the court articulated the reality that the adequacy of deed descriptions admit of no hard and fast rules. Such a statement is, in effect, an admission that adequacy of descriptions in a deed is largely, if not entirely, a factual matter.

The case of *Armijo v. New Mexico Town Co.*⁴⁷ involved an action for breach of covenants which were a component part of the deeds of conveyance. In *Armijo* the court upheld the general rule that if

40. *Id.* at 607, 577 P.2d at 1253; *Richardson v. Duggar*, 86 N.M. 494, 525 P.2d 854 (1974); *Garcia v. Garcia*, 86 N.M. 503, 525 P.2d 863 (1974).

41. 32 N.M. 182, 253 P. 22 (1927).

42. *Id.* at 186, 253 P. at 23.

43. *Id.* at 187, 253 P. at 23.

44. 3 N.M. 427, 5 P. 709 (1885).

45. 27 N.M. 511, 203 P. 543 (1921).

46. 32 N.M. 182, 187, 253 P. 22, 23 (1927).

47. 3 N.M. 427, 5 P. 709 (1885).

the description of the premises given in a deed affords sufficient means of ascertaining and identifying the land intended to be conveyed, it is sufficient to sustain the conveyance.⁴⁸ The court also stated that it is not essential that the conveyance itself contain such a description that would enable identification to be made without the aid of extrinsic evidence.⁴⁹ While the *Armijo* rule may be criticized as overbroad and contradictory to the entire notion of clarity and specificity of description, it is, nonetheless, one of the earliest edicts of the New Mexico Supreme Court in regard to adequacy of description. If anything, *Armijo* should be viewed as a starting point for interpretation of all subsequent opinions. The court in *Armijo* imposed one limiting constraint on the admissibility of parol evidence. The court said that parol evidence is only admissible if it does *not* tend to vary, modify, or contradict the deed but is used simply to apply the deed to its subject matter and to identify the lands intended to be conveyed.⁵⁰

While these cases hardly admit of any uniform or yardstick measure, they do give a basis for the consideration of the court in determining what is a sufficient description. The question of adequacy of deed descriptions can also be addressed by examining what the court deems to be an insufficient description. In *Komadina v. Edmondson*,⁵¹ the court held that the following description failed to refer to extrinsic evidence from which the land could be located:

A certain tract of land situated in School district No. 28, Bernalillo County, New Mexico, Bounded on the North by a Road and on the East by land of Doloritas Chavez and on the South by a Road and on the West by the Atrisco Land Grant. Being one of several tracts of land allotted from the Atrisco Land Grant and more particularly described as follows:

Measure on the North 210 feet;

Measure on the East 1037 feet;

Measure on the South 210 feet;

Measure on the West 1037 feet.

Contains five acres of land more or less. *Tract No. 331*.⁵²

The extrinsic evidence offered concerned the unnamed roads in the description and a piece of wrapping paper given the surveyor by a member of the Board of the Town of Atrisco. No roads were in existence at the time of the execution of the deed and the area had

48. *Id.* at 435, 5 P. at 712.

49. *Id.* at 435, 5 P. at 712, quoting from *Stanley v. Green*, 12 Cal. 148, 166 (1859).

50. *Id.* at 436, 5 P. at 712.

51. 81 N.M. 467, 468 P.2d 632 (1970).

52. *Id.* at 468, 468 P.2d at 633.

not been platted except by a drawing on the wrapping paper.⁵³ The court in *Sternloff* distinguished *Komadina* on the grounds that in *Sternloff* the U.S. Geological Map was introduced by stipulation, whereas in *Komadina* there was no basis for the introduction of the drawing on a piece of wrapping paper, nor was there any basis for the introduction of evidence in regard to the unnamed roads.

SUMMARY

The conclusions to be drawn from *Sternloff* and the cases that preceded it are that the deed must refer to extrinsic information from which the land might be located.⁵⁴ In the absence of such reference, extrinsic material may also be introduced by stipulation of the parties.⁵⁵ In addition, whenever land is described by a particular name or designation, it is uniformly held that parol evidence is admissible to show what land is being designated and thus identifying the tract intended to be conveyed.⁵⁶ Prior to *Sternloff*, the applicable rule was that:

it is not necessary that the description of the land be contained in the body of the deed. It is sufficient if it refers for identification to some other instrument or document, but the description must be contained in the instrument or its reference, express or implied, with such certainty that the locality of the land can be ascertained, * * * the rule has also been held to apply to maps and plats, including surveys, and to an assessor's plan. The deed is not void because the instrument referred to is incomplete, not official, or unattached, or is misdescribed in some particular, or even invalid.⁵⁷

Sternloff modified the general rule by stating that in the case of a vague description in a deed, if extrinsic evidence is to be allowed, specific reference must be made to such evidence.⁵⁸ Unexpressed or implied reference is not sufficient. Furthermore, in the absence of such references, extrinsic evidence may only be introduced by stipulation.⁵⁹

While this may appear to be a liberal, overly flexible rule, the

53. *Id.* at 469, 468 P.2d at 634.

54. State *ex rel* State Highway Dept. v. Davis, 85 N.M. 759, 763, 517 P.2d 743, 747 (1973).

55. Richardson v. Duggar, 86 N.M. 494, 525 P.2d 854 (1974).

56. Adams v. Cox, 52 N.M. 56, 61, 191 P.2d 352, 356 (1948); Hetherington v. Clark, 30 Pa. 393 (1858); Hinton v. Moore, 139 N.C. 44, 51 S.E. 787 (1905).

57. Hughes v. Meem, 70 N.M. 122, 125, 371 P.2d 235, 237-38 (1962) quoting 26 C.J.S. *Deeds* §30(f) 652-55 (1956). The description in *Hughes*, read as follows: "Tract 87, Zimmerman's Map, 1904."

58. 91 N.M. 604, 607, 577 P.2d 1250, 1253 (1978).

59. Richardson v. Duggar, 86 N.M. 494, 525 P.2d 854 (1974).

history of the state mandates such a policy. In the past, professional surveyors were uncommon. Deed descriptions of property made by reference to adjoining property, neighbors, land grants and roads were extremely prevalent, if not the rule.⁶⁰ Out of necessity, the courts of this state developed liberal standards. Present surveying techniques, however, afford sufficient basis for adequate, clear deed descriptions. Thus, it would appear reasonable for the courts to apply a stricter standard to deed descriptions executed in more recent times in order to avoid encouraging ambiguous deed descriptions.

DAVID N. HERNÁNDEZ

60. *Manby v. Voorhees*, 27 N.M. 511, 524, 203 P. 543, 548 (1921).