

Morgan v. Russrand Triangle Assoc.

Virginia Supreme Court

June 9, 2005

This is another in the series of cases interpreting the 21 day final order rule.

Russrand, a landowner, sued complaining that Morgan was encroaching on his land. Morgan defended by claiming adverse possession. A commissioner in chancery was appointed and ruled for Morgan except for one area. Morgan filed an exception to the finding in that area and in a letter opinion dated February 6, 2003, the trial court issued a letter opinion sustaining Morgan's exceptions, and requested that Morgan draft an order. Russrand moved to reconsider, and the reconsideration argument was held a year later, February 4, 2004. Before the hearing started Morgan presented to the trial judge the final order that he had been instructed to draft and the trial judge and both counsel signed it, and the clerk docketed it that day. After the hearing the trial judge granted orally the motion for reconsideration and on March 18, 2004, more than 21 days after February 4, 2004, the trial judge issued a letter opinion sustaining Russrand's position and asked the Russrand draft an order. When the 21 day rule problem was pointed out by Morgan the trial judge vacated the February 4, 2004 order nunc pro tunc relying on the clerical error statute. Morgan appeals.

The Virginia Supreme Court reversed. Basically they said that the clerical error statute is to be narrowly construed. In this case there was no clerical error, the trial judge and the two attorneys knew exactly what they were doing when they signed the final order on February 4, 2004. They also reaffirmed the position the Court has adopted before that only a WRITTEN order vacating or modifying a final order within the 21 days counts, an oral statement does not.