

1986

Mack Halladay v. Madge Cluff : Brief of Appellant

Utah Supreme Court

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UTAH COURT OF APPEALS
BRIEF

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IN THE SUPREME COURT OF THE

.A.
DOCKET NO. 860079 STATE OF UTAH

_____)
MACK HALLADAY and MERLE)
HALLADAY,)
)
Plaintiffs/Respondents,)
)
vs.)
)
MADGE CLUFF, PERRY K. BIGELOW)
and NORMA G. BIGELOW,)
)
Defendants/Appellant.)
_____)

860079-CA
Case No. 20,318

BRIEF OF APPELLANT, CLUFF

APPEAL FROM THE JUDGMENT OF THE FOURTH JUDICIAL
DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF
UTAH, HONORABLE GEORGE E. BALLIF, PRESIDING

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(Not Participating)

FILED
MAR 4 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE
STATE OF UTAH

MACK HALLADAY and MERLE HALLADAY,)	
)	
Plaintiffs/Respondents,)	
)	
vs.)	Case No. 20,318
)	
MADGE CLUFF, PERRY K. BIGELOW and NORMA G. BIGELOW,)	
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Defendants/Appellant.)	

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BRIEF OF APPELLANT CLUFF

PARTIES TO THE PROCEEDING

The parties to this proceeding are those contained in the caption of the case. However, Perry K. Bigelow and Norma G. Bigelow are not party to this appeal.

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Cluff and Bigelow, for in excess of 30 years. Mrs. Cluff counterclaimed, claiming ownership on the doctrine of boundary by acquiescence to a portion of the property to which the Halladays' were seeking to quiet title. Mrs. Cluff pleaded in her Counterclaim alternatively that if boundary by acquiescence did not apply, Mrs. Cluff should be entitled to property lying to the west of her fence line and within her title line, but to which the Halladays had possession for a number of years.

The trial court ruled that boundary by acquiescence had been established and quieted title to property shown on Appendix "A" crosshatched in orange and noted by the designations "MNOP" to Cluff and Bigelow and awarded the greenhatched strip of property designated as "WXYZ" to Halladay. Both rulings were consistent with the holdings in Fuoco v. Williams, 15 Utah 2d 156, 389 P.2d 998 (1964) and Hales v. Frakes, Utah, 600 P.2d 156, 389 P.2d 143 (1979).

Halladays appealed and this Court reversed the trial court, in Halladay v. Cluff, et al, 685 P.Rptr.2d 500 (1984). The case was "remanded to the district court for the entry of a new decree in conformity with" the opinion rendered in the matter.

In reversing, this Court held that a fifth element for boundary by acquiescence was not present to sustain the lower court's decision, that being the element of a dispute or uncertainty over the questioned area.

Upon remand, counsel for defendant, Cluff, requested a hearing before the trial court, presented Mrs. Cluff's contention that the same rule of law should apply to the green-hatched area on Appendix "A" and marked with point designations "WXYZ" as applied to the crosshatched area in orange and marked with the point designations MNOP. The trial court declined granting Mrs. Cluff's request to quiet title to the area within her title line, i.e. green shaded area on Appendix "A", marked WXYZ, but beyond the fence line.

From the trial court's ruling upon said remand hearing, Mrs. Cluff has filed this appeal.

Because this is the second appeal of this matter, the transcript of the trial contains three numbering series at the bottom right hand corner of the transcript. The typed number beginning with page 1 was the assigned number the court reporter gave to the transcript at the time that the transcript was typed. The stamped on number on the same page in the file transcript commencing with the number 102 was the number given in the record filed with the Supreme Court on the first appeal of this matter. The stamped on number on the same page in the file transcript commencing with the number 40 is the number system applied by the County Clerk on this second appeal. The most recent stamping will be the numbers referred to in this brief.

STATEMENT OF FACTS

At the time of the commencement of this case, the defendant, Cluff, had occupied property within an old established fence line for over 30 years. (R. 153:18-26; 155:12-21). The testimony of the plaintiffs' witness, Elmo Halladay, testified that the fence line had been placed in prior to 1930 and that the fence line was a continuous unbroken fence line in U shape, going from the front of the 1st South Street back some 231 feet, then across the back the width of the Cluff and Bigelow properties, then returning South to the street. (R. 99:3-24). The plaintiffs had occupied the portion of the property lying within the defendant, Cluff's title line, but lying west of the old fence, a strip approximately 10 feet wide by the length of her property. (R. 100:28-30; 101:1-9). Mrs. Cluff had occupied the area cross-hatched in orange in the Appendix "A" attached hereto for the same period of time (Elmo Halladay, R. 106:6-13; 118:11-17).

At the time of the commencement of the suit, the defendant, Cluff, filed a Counterclaim alleging that the property crosshatched in orange had become her property and that of Bigelow by boundary by acquiescence and acknowledging on the same factual basis the property shown in green was the property of the plaintiffs by boundary by acquiescence. (R. _____). The defendant, Cluff, however, pleaded in the alternative that if the trial court determined that there

was not a boundary by acquiescence and that the title lines were to govern that the trial court should award to Cluff the property west of her fence but within her title line shown in green on Appendix "A" and that the property crosshatched in orange should be awarded to Halladay based upon title lines. (R. _____).

One distinguishing factual circumstance was that the title line of Halladays did not connect to the title line of Cluff, but that there was a no man's land between the title line of Halladays and the title line of Cluff demonstrated by plaintiffs witness, the engineer Clyde Naylor. (R. 75:27-30; 76:1).

In the opening statements to the court in the trial of this matter which was tried without a jury, Cluff's counsel emphasised that pursuant to the Counterclaim, if the court should conclude that the crosshatched area marked in orange was to be awarded to Cluff applying the doctrine of boundary by acquiescence, then the green shaded area should go to Halladays on the same doctrine. But if the court should rule that title lines governed, then the green area should go to Cluff and the orange area should go to Halladays (R. 52:21-30, 53:1-14; 56:1-20).

At the time the Halladays moved into the area in approximately 1930, the fence line shown on Appendix "A" and marked by points Y to X to M, running north and south, thence

easterly to point N, then south to point O and back to 100 South Street was in place. The title line of the Cluff property as testified to by Clyde Naylor, Halladays' engineer witness encompassed the green shaded area, points WXYZ. There was a gap which is shown on Appendix "A" as shaded blue lying just to the west of the Cluff title line. (R. 75:27-30; 76:1). The testimony of Elmo Halladay, Mack Halladay and Madge Cluff all indicate that the area to the west of the old fence and lying within the Cluff title line had been occupied by the Halladays for many years. Likewise, the area encompassed in orange crosshatch, that portion of MNOP lying to the north of the Cluff property, has been occupied by the Cluffs for the same period of years. (R. 106:6-13; 118:11-17).

SUMMARY OF ARGUMENT

In this action the litigants came to the litigation with a history wherein Halladays had occupied for a number of years a parcel of property within the title line of Cluff and shaded in green on Appendix "A". Thus Halladay was occupying property beyond his titled description. Madge Cluff was occupying property within the old fence line, but which reached beyond her title line.

The conditions for application of the doctrine of boundary by acquiescence applied to both parcels as then understood by the litigants with the exception that there was

a no man's land between the title line of the west side of Cluff's property and the east side of Halladay's property. When this Court ruled on the first appeal of this matter that the doctrine of boundary by acquiescence required an uncertainty or dispute as to the boundary line as an additional element, this Court narrowed the circumstances under which the doctrine could be applied.

It is Madge Cluff's contention that the ruling requiring this fifth element of a boundary by acquiescence requires the application of that doctrine equally and fairly to both parcels previously occupied by the litigants Halladay and Cluff. Madge Cluff argues that the trial court erred in failing to apply the doctrine appropriately to the two parcels.

On remand, the trial court reasoned that since Madge Cluff had not filed an appeal from the Court's earlier ruling giving Halladays the green shaded area by boundary by acquiescence, that the only matter before the trial court on remand was to deal with the specific parcel crosshatched in orange for which Halladays had filed the appeal. Madge Cluff further argues that to expect her to anticipate that the Court might reverse the trial court on appeal and thus file a cross appeal as to that principle and doctrine upon which she had been successful in the trial court is unreasonable. It is ludicrous to expect a party who has won a lawsuit to file a cross appeal from that winning ruling and thus clutter the Supreme

Court with the additional volume of work created by the cross appeal.

Madge Cluff further argues that the order presented to Judge Ballif for signing does not comport with the ruling Judge Ballif gave at the time of rehearing and includes an additional paragraph pertaining to res judicata which was not before the Court by pleadings or encompassed within his ruling to the parties.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN NOT AWARDING MRS. CLUFF THE GREEN SHADED AREA MARKED BY POINTS WXYZ ON APPENDIX "A"

In Madge Cluff's Counterclaim, she first alleged and claimed to have acquired that portion of the property lying to the north of her legal title, but lying within the old fenced area under the doctrine of boundary by acquiescence.

Pleading in the alternative in her Counterclaim, Madge Cluff alleged that the property shaded green and marked by points WXYZ on Appendix "A" was within the description of her legal title but outside the old fence line. Madge Cluff alleged that if the court ruled that boundary by acquiescence was not applicable to Madge Cluff's acquisition of the orange crosshatched area, the area shaded green and marked by points WXYZ was beyond the old fence line, but within Madge Cluff's

title line and asserted that the same doctrine should be applied to parcel MNOP as is applied to WXYZ.

In counsel's opening statement to the court (R. 52) wherein Madge Cluff's counsel stated to the court:

We think that the rule of law and the factual circumstances are identical on the green slashed area as on the orange slashed area except to the party who is in possession. (R. 52:21-24).

In the evidence presented to the court, it was shown that Halladays had been in possession of the green slashed area for a number of years and Mrs. Cluff had been in possession of that portion of the orange slashed area contiguous to her title line for the same period of time. This writer went on to inform the court of that possession (R. 56) wherein he said:

What I am saying, when I said that the same principle lies, if the court is going to follow title lines rather than boundary by acquiescence then we would be entitled to the green slashed area and we believe that if Mr. Halladay is entitled to the orange slashed area to his title line, that we are entitled to move over to the title line. There should be a consistency. (R. 56:1-7)

THE COURT: . . . [B]ut as far as the fence line is concerned here, you don't claim to the west of it, right Mr. Jeffs?

That's true, we think it became there by boundary by acquiescence, the same as we claim the other piece. But, if the court were to adopt the rule that there was no boundary by acquiescence, and you are going to examine the title, then I think we will be entitled to that title. (R. 56:8-20).

The one distinguishing factor between the claim of boundary by acquiescence of the Halladays to the green shaded area that marks it different than the orange slashed area is that between the title line of the Cluff property lying on the west or left hand side of the green shaded area and the east boundary line of the title of Halladay in parcel 5, there was a gap marked on Appendix "A" in blue. Halladays' first witness was Lynn Gottfredson who, in cross examination, was asked to identify that gap of title area. Mr. Gottfredson said:

Q: When you did this survey, Mr. Gottfredson, you show the Cluff property bounded on the west by a fence in place, do you not?

A: Yes.

Q: And that fence is within the title line of the Cluff property, is it not?

A: Yes.

Q: Do you also show on this survey the property that lies immediately to the west, shown on Exhibit A and marked as Parcel No. 5 and as the Halladay property?

A: Yes, I do.

Q: Does this exhibit show that the title line of the Halladay property has a gap between that title line and the title line of the Cluff property?

A: Yes. (R. 65:5-19).

The land surveyor, Clyde Naylor, also testified to the lack of the parcel 5 of the Halladay property being contiguous to the Cluff property where in cross examination, Mr. Naylor stated:

Q. In preparing your tracings, Exhibits 8 and 12, did you also discover that the Halladay title line or parcel 5 between that and the Cluff title line at parcel 3, leaves an area that is not within either party's legal description.

A. Yes. (R. 75:27-30; 76:1)

In the testimony of Elmo Halladay, the older brother to plaintiff, Mack Halladay, he was asked regarding the fence running between X and Y an Exhibit 8 and 12 and the lack of a dispute between the parties. Upon questioning by counsel for Mack Halladay, the following testimony was given:

Q: Now I direct your attention to a different part of the drawing. I direct your attention to a line between the point X and Y on Exhibit 8. There appears to be a fence line there, is that right?

A: Right. (R. 99:28-30; 100:1-2)

. . .

Q: Now what was the purpose of this old fence that runs between point X and point Y on Exhibit 8.

A: That divided the property between our place and I think, Brother Durnell, who owned it at that time. That was Madge's (Cluff) father.

Q: Are you aware of any conflict regarding that fence line.

A: None at all. (R. 100:28-30; 101:1-2, 7-9)

Mack Halladay testified:

THE COURT: For the record, can you indicate which property line he is referring to?

Q (By Mr. Young): Are you referring to the fence line--

A: The old fence line, yes.

Q: between points X and Y.

A: Yes, uh-huh.

Q: Have you talked to Mrs. Cluff about this property or had any problems relating to this fence line?.

A: No, I have never had any problems with her. We never had any question over it.

Q: Now what was your attitude toward the fence line.

A: That was the property line. (R. 118:4-17)

. . .

Q: You indicated that you never, ever had a controversy with Madge Cluff over the M to Y fence line.

A: No I have never had any arguments over the fence line. (R. 142:14-17)

Applying the principle announced by this Court in Halladay v. Cluff, et al, supra., this Court ruled that in addition to the four elements pronounced in Fuoco v. Williams, supra., and Hales v. Frakes, supra., and set forth in the Conclusions of Law signed by Judge Ballif in the first proceeding (R. 7:4-10), the Court added a fifth requirement of uncertainty or dispute as an ingredient in boundary by acquiescence.

The record above quoted demonstrates by the testimony of Mack Halladay himself as well as his older brother, Elmo

Halladay, that there had never been a dispute or problems connected with the fence line running between points X and Y. Thus, under the principle as now pronounced by the Court, the Halladays' claim to boundary by acquiescence to the green shaded area fails because of not meeting the requirement that it must be contiguous to the adjoining land owner's property by reason of the gap in the title between the title line of Halladay and the green shaded area. It now also fails because of their testimony that there was no dispute over that area at any time, precluding a determination that the fifth element of boundary of acquiescence was met.

In this matter, Madge Cluff advanced two alternate theories. First, if the title lines are controlling, she would be entitled to the green shaded area and Mack Halladay would be entitled to the orange slashed area. The alternative theory was that if boundary by acquiescence applied, it applied to confer title upon Madge Cluff to the orange shaded area and to Mack Halladay on the green shaded area. Her primary position was that the application of the doctrine of boundary by acquiescence was supported in the facts.

When the trial court ruled on the matter, Judge Ballif found that boundary by acquiescence applied to both the green shaded area incurring to the benefit of Mack Halladay and the orange shaded area incurring to the benefit of Madge Cluff. This was following the mandate in the decision in Fuoco v. Williams, supra., and Hales v. Frake, supra.

Having had the Court rule favorably on the primary theory advanced by Madge Cluff, it would be inconsistent and ludicrous to expect that Madge Cluff would file a cross-appeal challenging the Court's ruling as to the green shaded area.

On appeal to the Supreme Court, when the matter was reversed and the elements for boundary by acquiescence were redefined, this Court stated at page 508: "The decree is reversed, and the case remanded to the District Court for entry of a new decree in conformity with this opinion."

Upon the further hearing and arguments in the case, (R. 234-253) the trial court declined to apply the rule of law announced in Halladay v. Cluff, et al., supra., to the green shaded area, WXYZ on appendix "A", despite the fact that the trial transcript showed that there had been no dispute over the boundary line and that the title line controlled.

The Court further indicated that because no cross-appeal had been made by Madge Cluff challenging the ruling of the trial court, regarding the green shaded area that that issue was not before the Court on remand. The trial court reasoned that since Madge Cluff had not filed an appeal on the issue of boundary by acquiescence on the green shaded area, the Court could not grant in the new decree title to the green shaded area to Mrs. Cluff based on the title lines. It is obvious that the trial court in the first decree entered having accepted Madge Cluff's primary theory and applied boundary by

acquiescence to both parcels, Madge Cluff would not file an appeal from a decision she had won.

On remand, this Court having declared that boundary by acquiescence was not applicable because of a lack of dispute over the boundary line, to apply said rule only as to parcel marked ABCD and not to apply the title line to the green shaded area produces a very inequitable result. Halladay thus acquires the property marked MNOP under his title and acquires the green shaded area under the now discredited doctrine of boundary by acquiescence.

In reversing the decision of the trial judge and instructing Judge Ballif to enter a decree in conformity with the opinion, ruling that the now pronounced elements of boundary by acquiescence had not been met, that provision of the decree applying to the green shaded area should have received the same treatment and application of rules as those pronounced by the court in regard to the orange area.

Following the decision in Halladay v. Cluff, et al., supra., handed down on May 1, 1984, the Court again had before it the issue of a claim of boundary by acquiescence almost identical with the case in Halladay v. Cluff, supra. In Hottinger & Dastrup v. Jensen, 684 P.2d 1271 (1984), the circumstances were an occupation for a number of years up to a fence line that reached beyond the title line of the party occupying the disputed area. The opinion notes that though

the parties both argued boundary by acquiescence, the trial court had decided on equitable grounds that it would be inequitable to dislodge the occupier of the land that reached beyond their title. That condition of inequity permeates the case now before the Court and which was initially before the Court in the May, 1984 ruling. The Court made no mention in Hottinger of its ruling in Halladay v. Cluff.

Just 40 days later, the Court addressed the issue again in Stratford v. Morgan, 689 P.2d 360 (Utah, 1984), affirming its position taken as to the elements of boundary by acquiescence and previously announced in Halladay v. Cluff. That decision was handed down on August 30, 1984, and the following day, on August 31, 1984, in Parsons v. Anderson, 690 P.2d 535 (Utah, 1984), the Court reaffirmed its position in Halladay v. Cluff.

This writer asks the Court to recognize and apply the now announced principle for the determination of the requirements for establishment of a boundary by acquiescence consistently in the case now before the Court and hold that Mrs. Cluff, appellant herein, is entitled to have the title quieted in her on the green shaded area encompassed in her title line.

POINT II

THE TRIAL COURT ERRED IN HOLDING THAT ALL OTHER CLAIMS RAISED BY THE DEFENDANTS AS AGAINST THE PLAINTIFFS IN CIVIL NO. 53243 HAVE BEEN DECIDED AND ARE RES JUDICATA

Following the decision rendered by this Court in Halladay v. Cluff, supra., the file was returned to the Utah County Clerk pursuant to the remittur (R. 12). Following the remittur, counsel for Madge Cluff requested a hearing on the issue of the decree to be rendered pursuant to that remittur. (R 25-26)

The matter came before the court on the 21st day of September, 1984 and arguments were presented by counsel for the various parties (Reporter's transcript; R. 234-253). No other pleadings were filed with the court following the remittur. On the 27th day of September, 1984, Judge Ballif sitting for the Fourth District Court entered his ruling on the entry of the order pursuant to the remittur and the remand for entry of modified decree (R. 27-28).

In the ruling of Judge Ballif, he directed counsel for Halladays to prepare a new decree quieting title in the Halladays as to parcel 3 using the description circumscribed by points ABCD (R. 28).

In the order submitted by Halladays' counsel and signed by the court on October 18, 1984 (R. 29-30), counsel for Halladays inserted a paragraph 2 "that all other claims raised by defendants as against the plaintiffs in Civil No.

53243 have been decided and are res judicata." That volunteer paragraph is unsupported by pleadings in the file or in the record and are a voluntary addition of counsel. Said order entered was not in conformity to the instructions on remand, nor supported by pleadings, and this Court should now rule that paragraph 2 of the order dated October 15, 1984 (R. 29-30) should be stricken.

CONCLUSION

Appellant, Madge Cluff, asks this Court to remand this proceeding with directions to the trial court to enter a decree quieting title in Madge Cluff to the green shaded area lying within her title line and shown by points WXYZ on Appendix "A" attached hereto.

Respectfully submitted this 1st day of March, 1985.

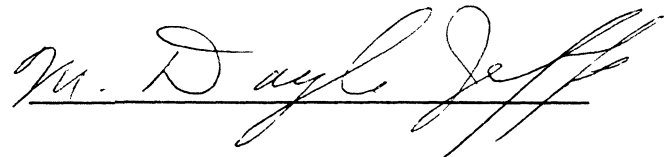

M. Dayle Jeffs

CERTIFICATE OF MAILING

I hereby certify that ten copies of the foregoing were mailed to the Utah Supreme Court, State Capitol Building, Salt Lake City, Utah 84114, and four copies were mailed to the below named parties in the United State Mails, postage prepaid, this 1st day of March, 1985, at the following addresses:


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Provo, Utah 84601

A handwritten signature in cursive script that reads "Mr. Dayle Jeff". The signature is written in black ink and is positioned above a horizontal line.

Bigelow and Cluff respectively. Therefore, the only matter before the Supreme Court had to do with Parcel 3 and that the same be quieted in the record owners. The Court therefore directs counsel for Halladays to prepare a new Decree quieting title in the Halladays as to Parcel 3 along the description contained from points "A" to "B" to "C" to "D".

Dated at Provo, Utah County, Utah, this 27th day of September, 1984.


GEORGE E. BALLIF, JUDGE

1984 OCT 19 PM 9 46

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IN THE DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

MACK HALLADAY and MERLE)
HALLADAY,)

Plaintiffs,)

vs.)

MADGE CLUFF, PERRY K. BIGELOW)
and NORMA G. BIGELOW,)

Defendants.)

ORDER

Civil No. 53,243

This matter came before the court on the 21st day of September, 1984, wherein the court heard oral argument from counsel as to the disposition to be made of this case on remand from the Supreme Court, and all of counsel were heard and the court having thoroughly considered the alternatives, and the language of the Supreme Court directing that they " . . . reverse with directions to quiet title in the Halladays, the record owners."

It is noted that the plaintiffs Halladay appealed from the court's ruling as to that portion of defendant's Exhibit 12 identified as "A", "B", "C", "D" or Parcel 3, and no cross appeal was taken as to the court's finding of boundary by acquiescence as to Tracts 1 and 2 in Bigelow and Cluff respectively. Therefore, the only matter before the Supreme Court had to do with Parcel 3 and that the same be quieted in the record owners. The court

therefore directs counsel for Halladays to prepare a new decree quieting title in the Halladays as to Parcel 3 along the description contained from points "A" to "B" to "C" to "D".

Based upon the foregoing IT IS HEREBY ORDERED:

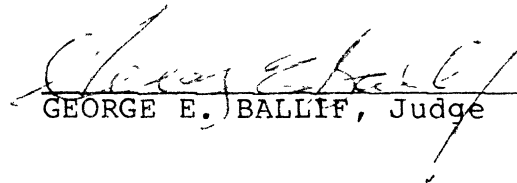
1. That title to the following described property is is quieted in plaintiffs, Mack Halladay and Merle Halladay:

Commencing 488.08 feet West and 495.00 feet North from the Southeast corner of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian, thence West 118.10 feet, thence North 0° 03' 17" East along a fence line 55.31 feet, thence South 89° 51' 20" East along a fence line 118.20 feet thence South 0° 09' 25" West along a fence line, 55.01 feet to the point of beginning. Area .15 acres.

2. That all other claims raised by the defendants as against the plaintiffs in Civil No. 53,243 have been decided and are res judicata.

Dated: October 15, 1984.

BY THE COURT:

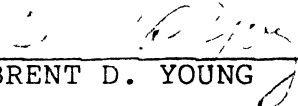

GEORGE E. BALLIF, Judge

CERTIFICATE OF MAILING

I hereby certify that on this 4th day of October, 1984 I mailed a true and correct copy of the foregoing Order to S. Rex Lewis, Attorney for Defendants Bigelow, and to M. Dayle Jeffs, Attorney for Defendant Cluff, postage prepaid, addressed as follows:

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