Book 2013 Page 287

Document 2013 287 Type 06 010 Pages 7
Date 1/18/2013 Time 9:58:17AM
Rec Amt $37.00 Aud Amt $5.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Entered for taxation 22nd day
of January AD 2013
Carla K. Becker Auditor
By P. Hildebrand Deputy

Affidavit Explanatory of Title

W/D Prepared by and Return to:
William S. Vernon, 115 Third St SE, Suite 1200, Cedar Rapids, IA 52401; Phone: 319-366-7641.
Tax Statements to: Janet Glynn, 2948 State Highway 13, Ryan, IA 52330

Grantor: William S. Vernon Grantee: Richard & Janet Glynn, Carl & Marilee Steffen

RE: A part of the northwest quarter of the southwest quarter of section 7, township 87 north, range 5 west of the 5th principal meridian, Delaware County, Iowa described as follows:

Commencing at the west quarter corner of said section 7;

Thence N88°19'41"E along the north line of the northwest quarter of the southwest quarter of said section 7 a distance of 204.10 feet to the east right of way highway #13 and the point of beginning.

Thence continuing N88°19'41"E along said north line a distance of 856.94 feet to the northeast corner of the west 64.17 acres;

Thence S1°30'02"E along the east line of the west 64.17 acres a distance of 9.22 feet;

Thence S87°25'39"W along an existing fence line a distance of 36.66 feet;

Thence S86°27'11"W a distance of 372.39 feet;

Thence S86°07'34"W a distance of 119.30 feet;

Thence S88°50'09"W a distance of 328.46 feet to said east right of way;

Thence N2°39'46"W along said east right of way a distance of 23.66 feet to the point of beginning.

Said parcel "B" contains 17,411 sq.ft, 0.40 acres, subject to easements and restrictions of record.

AFFIDAVIT EXPLANATORY OF TITLE PURSUANT TO IOWA CODE SECTION 558.8

STATE OF IOWA)
)ss.
COUNTY OF LINN)

The undersigned, being duly sworn, hereby acknowledges and states:

1. Pursuant to Case No. EQCV007078 in the Iowa District Court in and for Delaware County, Richard Glynn and Janet Glynn, Plaintiffs v. Carl Steffen and Marilee Steffen, Defendants ("Case") and the Court's Supplemental Ruling in the Case filed November 27, 2012, a copy of which is attached, the Court concluded at Page 3:

> Plaintiff Janet Glynn has title to Parcel B, as shown in the plat attached to the survey, said parcel being legally described as follows: Per Bk 2012 Page 2547
>
> > A part of the northwest quarter of the southwest quarter of section 7, township 87 north, range 5 west of the 5th principal meridian, Delaware County, Iowa described as follows:
> >
> > Commencing at the west quarter corner of said section 7;
> >
> > Thence N88°19'41"E along the north line of the northwest quarter of the southwest quarter of said section 7 a distance of 204.10 feet to the east right of way highway #13 and the point of beginning.
> >
> > Thence continuing N88°19'41"E along said north line a distance of 856.94 feet to the northeast corner of the west 64.17 acres;
> >
> > Thence S1°30'02"E along the east line of the west 64.17 acres a distance of 9.22 feet;
> >
> > Thence S87°25'39"W along an existing fence line a distance of 36.66 feet;
> >
> > Thence S86°27'11"W a distance of 372.39 feet;

Thence S86°07'34"W a distance of 119.30 feet;

Thence S88°50'09"W a distance of 328.46 feet to said east right of way;

Thence N2°39'46"W along said east right of way a distance of 23.66 feet to the point of beginning.

Said parcel "B" contains 17,411 sq.ft, 0.40 acres, subject to easements and restrictions of record.

2. I am the attorney for Plaintiff, Janet Glynn, in the Case.

3. The purpose of this Affidavit is to confirm title of the Real Estate in Janet Glynn as provided in the Case.

Further affiant sayeth not.

Dated this 17th day of January, 2013.

William S. Vernon

Subscribed and sworn to before me by William S. Vernon this 17th day of January, 2013.

MICHELLE SMEJKAL
COMMISSION NO. 189400
MY COMMISSION EXPIRES
4-1-15

Notary Public – State of Iowa
My Commission expires: 4/1/15

FILED 11/27/2012 08:59AM
CLERK DISTRICT COURT
DELAWARE COUNTY IOWA

IN THE IOWA DISTRICT COURT IN AND FOR DELAWARE COUNTY

RICHARD GLYNN and JANET GLYNN, **Plaintiffs,** **vs.** **CARL STEFFEN and MARILEE STEFFEN,** **Defendants.**	**Case No. EQCV 007078** **SUPPLEMENTAL RULING**

This matter came before the Court for a bench trial on October 6-7, 2011. Plaintiffs appeared personally, together with their attorney, William Vernon. The Court entered its judgment on December 30, 2011. Defendants timely filed a motion pursuant to I.R.C.P. 1.904(2). By an agreement memorialized in a January 12, 2012 order, the parties asked the Court to stay its ruling on the motion. Defendants requested a response and Plaintiffs filed their resistance.

Following a telephonic hearing, the Court ordered that the record be reopened for the presentation of additional evidence regarding how the boundary line described in the Court's December 30, 2011 ruling could or should be legally described. The Court reopened the record at a hearing on September 11, 2012. Plaintiffs Richard and Janet Glynn appeared personally, together with their attorney, William Vernon. Defendants Carl and Marilee Steffen appeared personally, together with their attorney, Dan Swift. Both sides presented evidence. Based on the record, the Court makes additional findings as follows:

Ryan Remling is a qualified land surveyor. He surveyed the boundary between the parties' properties. (Exhibit 30). In doing so, he followed the wooden posts that were part of the fence that previously ran between the parties' properties. As the Court found in its original ruling, the parties' predecessors acquiesced in the fence as the boundary for many years. After the fence was removed, the Steffens (to the south) plowed and farmed up to where the fence had been, and the Glynns (to the north) mowed grass to the edge of the Steffens' crop field. At trial, the Steffens argued that the line between the crop field and the grass could not constitute the boundary because it lacked consistency from year to year. The Court rejected that argument, noting as follows:

> The Court also rejects the argument that any year-to-year variance in the line based on how far the Steffens or their predecessors plowed made the line a "shifting" one and therefore insufficiently definite. Carl Steffen testified that when he farmed the land in the 1970's and 1980's with Carl Lyness, he was not concerned with whether or not the fence was the actual line because that was what the landowners (then Glynn and Steffen) had "apparently agreed." After portions of the fence were removed, Steffen plowed on "guesstimate," but there is no evidence that the line varied significantly from year to year. Steffen admitted to having no actual knowledge about the exact amount of yearly variance, if any, in the line. Janet Glynn testified that she has mowed the same line (separating the grass from the plowed field) since 1973, with or without a fence or the trees that once existed on that line.

In its decision, the Court ruled that boundary by acquiescence had been established. Based on the record, the Court described "the boundary line between the Glynns' and the Steffens' Section 7 property (as) the meeting of the Glynns' grass and the Steffens' crop residue line," and ruled that "(t)he line shall be as shown in Plaintiffs' Exhibits 18, 19 and 20..." This was the best description available to the Court because no formal survey or legal description was offered by the Glynns at trial.

In their post-trial motion, the Steffens argued that the Court's description of the boundary line could "cause additional litigation, gray cloud on the title of both parties, and possibly, render each parties' (sic) real estate less valuable for purposes of sale." The Steffens further asked the Court to "enlarge its Findings and Decision to specifically describe the line the Court is purportedly finding as the acquiesced line, so the parties may rely on the Court's decision to establish the Court's vision of the boundary." In response, the Court re-opened the record to allow the parties an opportunity to present evidence that would allow the Court to legally describe the line envisioned by the Court.

The Steffens are correct in their argument that the Remling survey does not follow precisely the line between the Glynns' grass and the Steffens' crop ground, as shown in Exhibits 18, 19 and 20. That line, which is not perfectly straight, approximates the fence line that existed for many years and constituted the boundary by acquiescence. Although there has been some variance from year to year, the demarcation between the grass and the crop ground has always approximated the original fence line. It is that original fence line, as opposed to

the demarcation between grass and crop ground, that constitutes the acquiesced boundary. Based on the evidence presented at trial, said demarcation (as shown in Exhibits 18, 19 and 20) was merely the best method of describing the boundary that was available to the Court.

The Remly survey describes the line intended by the Court in a precise legal fashion that can be relied on by the parties and governmental entities alike. Accordingly, the Court finds that the boundary line between the Glynns' and the Steffens' Section 7 property to be the southernmost line shown in Exhibit 30. In accordance with this determination, the Court concludes that Plaintiff Janet Glynn[1] has title to Parcel B, as shown in the plat attached to the survey, said parcel being legally described as follows:

> A part of the northwest quarter of the southwest quarter of section 7, township 87 north, range 5 west of the 5th principal meridian, Delaware County, Iowa described as follows:
>
> Commencing at the west quarter corner of said section 7;
>
> Thence N88°19'41"E along the north line of the northwest quarter of the southwest quarter of said section 7 a distance of 204.10 feet to the east right of way highway #13 and the point of beginning.
>
> Thence continuing N88°19'41"E along said north line a distance of 856.94 feet to the northeast corner of the west 64.17 acres;
>
> Thence S1°30'02"E along the east line of the west 64.17 acres a distance of 9.22 feet;
>
> Thence S87°25'39"W along an existing fence line a distance of 36.66 feet;
>
> Thence S86°27'11"W a distance of 372.39 feet;
>
> Thence S86°07'34"W a distance of 119.30 feet;
>
> Thence S88°50'09"W a distance of 328.46 feet to said east right of way;

[1] In 1982, the Glynns split their property for estate planning purposes, and Janet Glynn became the titleholder of the Section 7 property. Thus, although the Court has continuously referred to the Section 7 property as "the Glynn property" or "the Glynns' property," the title holder is actually Janet Glynn.

Thence N2°39'46"W along said east right of way a distance of 23.66 feet to the point of beginning.

Said parcel "B" contains 17,411 sq.ft, 0.40 acres, subject to easements and restrictions of record.

The Court enlarges and amends its December 30, 2011 ruling in accordance herewith. All other aspects of Defendants' Rule 1.904(2) motion are denied.

Done and ordered this 16th day of November, 2012.

BY THE COURT:

MICHAEL J. SHUBATT, JUDGE
FIRST JUDICIAL DISTRICT OF IOWA

*Order has been filed electronically.
*Distributed To:*_____
_____
_____
_____
By: _____ On: _____

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator @ 1-319-833-3332. If you are hearing impaired, call Relay Iowa @ 1-800-735-2942.