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MICHELLE UTSLER, COUNTY RECORDER  
MADISON IOWA

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IOWA DISTRICT COURT  
MADISON COUNTY IOWA

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Darwin Holtmyer  
1204 Mackeburg Rd.  
Mackeburg, Ia 50155

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY  
EQUITY NO. CV031203

CYRENA HOLTMYER f/k/a CYRENA PARISH )  
AND DARWIN HOLTMYER )  
Petitioners )

vs. )

JAMES GREGORY, DANIEL BROWNLEE, )  
AND RON BROWNLEE )  
Defendants. )

ORDER AND DECREE

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IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

JAMES GREGORY, DANIEL BROWNLEE )  
AND RON BROWNLEE, )  
Counter Claimants )

vs. )

CYRENA HOLTMYER f/k/a CYRENA PARISH )  
AND DARWIN HOLTMYER, )  
Counter-Claim Defendants. )

EQUITY NO. CV031203

ORDER AND DECREE

Now on this 30th day of September, 2004, the parties complete their presentation of evidence, exhibits, and arguments and the Court proceeds to findings of facts, conclusions of law, and Orders.

The Court upon examination of the files and records herein and being otherwise fully advised in the premises, finds that appropriate Original Notices of the Petition and Counter-Claim have been made and that the Court has jurisdiction of the parties and the subject matters.

The Court upon conclusion of the evidence finds:

The Petitioner, Darwin Holtmyer, is the owner of the following described real estate to-wit:

All that part of the North Half of the Northeast Quarter of the Southeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Seventeen (17) in Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., lying East of the main channel of Grand River as the same now runs through said 40 acre tract, except the following described tract: Beginning at the Northeast Corner of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section Seventeen (17), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th

P.M., thence S 70.0 feet; thence W. 751.6 feet to the centerline of the main channel of Grand River, thence N 70.0 feet; thence E. 751.6 feet to the point of beginning and containing 1.21 acres, more or less.

That Petitioner, Cyrena Holtmyer, is the owner of the following described real estate, to-wit:

Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section Sixteen (16); and a track of land described as follows: commencing at the Southeast (SE) corner of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Seventeen (17), running due West Twenty-five (25) rods across Grand River, thence in a Northwesterly direction on the bank of the river Thirty-two (32) rods, thence due North (crossing the river) Nine (9) rods to the North line of the South Half (S $\frac{1}{2}$ ) of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ ) of said Section Seventeen (17), thence East to the section line, thence South Forty (40) rods to the place of beginning; all in Township Seventy-four (74), Range Twenty-nine (29), Madison County, Iowa.

The Respondent, James Gregory, is the owner of the following described real estate, to-wit:

The East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$ ) and the West Half of the Southeast Quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$ ) and all that part of the East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$ ) lying and being Southwest, West and Northwest of the Grand River as the same runs through said 80-acre tract in Section Seventeen (17), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa.

The Court further finds with regards to the issue of whether there was an acquiescence in the border between James Gregory's property, above described, and the property of Darwin Holtmyer, above described, that there was in fact a fence on the West bank of the Grand River within the bounds of the real estate described as the Gregory real estate. However, the Court specifically finds that there was no acquiescence by Gregory or a previous title holder to his land that that fence constituted a boundary fence. Further, the Court finds that there has never been a "lost" boundary and that the Grand River flowing between the Gregory tract and the Darwin

Holtmyer tract is and shall remain the boundary between the Gregory tract and the Darwin Holtmyer tract.

The Court further finds that the "fence agreement" associated and signed by Dan Brownlee, as an agent of James Gregory, and Darwin Holtmyer and Cyrena Holtmyer dated 6-9-2000, and made a part of this record, as Respondent's Exhibit "A" is hereby ratified and held by this Court to be binding upon the parties.

Dan Brownlee, incidentally the tenant of James Gregory, owns land immediately to the South of Cyrena Holtmyer, which land is above described, and immediately to the East of Cyrena's tract, above described, and Darwin Holtmyer's tract, above described. With regard to the dispute between Brownlee and the Holtmyers, the Court specifically finds that the traditional right-hand rule applies to the boundary fence maintenance. The Court, however, makes no ruling as to the type of fence that should exist between these two properties and specifically finds that that issue is within the province of the appropriate Township Fence Viewers. Finally, the Court finds that Respondent, Dan Brownlee, has agreed to place a tile inlet at the Southeast corner of Cyrena Holtmyer's property and the Court adopts this agreement as an appropriate solution to that controversy.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That there has been no acquiescence that would shift the boundary between the Darwin Holtmyer property, above described, and the James Gregory property, above described. It is accordingly DECREED that the boundary between the Darwin Holtmyer property and the James Gregory property be and hereby is the Grand River.

2. That the responsibilities of the parties declared in the fence agreement of June 7, 2000, Respondent's Exhibit "A", are ratified as set forth in that agreement and Petitioner, Darwin Holtmyer is specifically Ordered to perform that agreement by placement of a fence between his tract of land and James Gregory's tract of land, which fence shall specifically be placed East of the Grand River.

IT IS, FURTHER ORDERED that the right-hand rule applies with regard to any fence disputes arising as to the boundary fence between the property of Cyrena Holtmyer, above

described, and the land owned by Dan Brownlee immediately to the South and East of Cyrena Holtmyer's land all East of the Grand River.

IT IS FURTHER ORDERED that Dan Brownlee shall place a tile inlet on his land immediately South of the Southeast corner of Cyrena Holtmyer's property, above described.

Costs of this action are assessed to the Petitioners.

Danell Goodhue  
Judge, Fifth Judicial District

APPROVAL AS TO FORM BUT NOT CONTENT

[Signature]  
Joel Baxter, Attorney for Petitioners

11-24  
Nielsen  
Wild

<b>CERTIFICATE</b>	
I, Janice Bowers, Clerk of District Court of the State of Iowa, in and for Madison County, do hereby Certify that this is a true and complete copy of the Original Instrument filed in this office. IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court at my office in Winterset, Iowa this	
day of	12/13/05
By	<u>[Signature]</u> Clerk of District Court
	Deputy

6/9/2000

JEFF KIDDOO

GRAND RIVER TOWNSHIP TRUSTEE

ON FENCE BETWEEN DARWIN HOLTMYER AND JAMES GREGORY + BETWEEN CYRENA HOLTMYER AND JAMES GREGORY.

JAMES GREGORY AGREES TO BUY ALL FENCING MATERIAL + DARWIN HOLTMYER AGREES TO INSTALL ALL OF THE FENCE THE FIRST TIME.

DARWIN WILL MAINTAIN ALL OF THE FENCE.

WHEN THE RIVER GOES OUT + DESTROYS FENCE, DARWIN WILL BUY REPAIRS + FIX HIS HALF (NORTH 1/2) AND GREGORY WILL BUY REPAIRS + FIX HIS HALF (SOUTH 1/2)

ONCE IT ~~WAS~~ IS REBUILT DARWIN WILL MAINTAIN ALL OF FENCE

THIS IS NOT A PROPERTY LINE FENCE.

THE PROPERTY LINE WILL STAY WHERE IT ORIGINALLY WAS.

THE FENCE BEING BUILT WILL BE ON EAST SIDE OF RIVER.

*[Signature]*  
James Gregory  
By Don Burke Trust

*[Signature]*  
Gregory Holmyer

DEPOSITION EXHIBIT

RESPONDENT'S EXHIBIT  
A  
9-29-04 UC

#(DH)  
6-30-04