



INDX
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IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

RYAN D. RATER and
ANGELA D. RATER,

Plaintiffs,

vs.

GREG BREEDING and
BETSY BREEDING,

Defendants.

LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

NO. CVCV033566

ORDER OF COURT

2014 FEB -5 PM 12:51

*pick up
✓ Greg Breeding*

FINDINGS OF FACT

The Court finds that the Plaintiff, Ryan D. Rater, is the title holders of the South Half (S ½) of Outlot Eleven (11) of the East Addition of Outlots on the East Side of the Town of Winterset, Madison County, Iowa. Plaintiff, Ryan D. Rater, purchased this property on contract in 2002 and received a warranty deed in fulfillment of said contract in 2004. Plaintiff, Angela D. Rater, has a marital interest in the property and this property is the marital home of the Plaintiffs.

The Court finds that the Defendants, Greg Breeding and Betsy Breeding, are the title holders of the North Half (N ½) of Outlot Eleven (11) of the East Addition of Outlots on the East Side of the Town of Winterset, Madison County, Iowa. The Defendants obtained a warranty deed to their property in 2003 and it is the marital home of the Defendants.

The Parties were neighborly with each other prior to this litigation and even on friendly terms. The Parties children played together on many occasions. Both Parties believed they owned at, near, or on one side or the other of a tree line in between their properties. The precise location of the centerline between the properties was unknown to the Parties. The Parties are no longer on friendly terms as a result of this litigation.

The first discussion about the property line came after Defendant, Greg Breeding, built a tree house on the property. The next conversation came sometime after Plaintiff, Ryan D. Rater, removed scrub trees from the property. At the time the scrub trees were removed in November of 2011, a 2003 survey supported the belief that the Plaintiffs owned the trees that were cut down.

Shortly after the trees were removed, Plaintiff, Ryan D. Rater, was notified by Defendants' Attorney that he did not own the trees. Mr. Rater apologized for his actions at that time to his credit.

Historical background regarding Outlot Eleven (11) is important and confusing. There are multiple differing surveys, errors in the surveys and original plat, and an undedicated street. The Court believes the Defendants position on where the boundary is located is more persuasive. The Court finds that the west line of Outlot Eleven (11) should be 4.60 chains in length from north to south.

Further complicating this case is the street running through the southern portion of Outlot 11. Said street, today called High Street, came into existence between the filing of the 1851 plat and 1875. High Street is 57 feet in width and runs through the southern most portion of Outlot 11. The Winterset City Council never dedicated the street and never took the necessary steps to acquire the road. Plaintiffs, Ryan D. Rater and Angela D. Rater, technically own High Street. This may not help them in any way. The Court does not make further ruling on this issue, because it does not impact this case. In 1876 the Winterset City Council approved a report of the Committee on Street and Alleys stating that the road had been established by prescription.

The final complication in this case is the numerous surveys that are not consistent. Based on the Original Plat the Court determines that the southern boundary of Outlot 11 is the northern

boundary of Outlot 10. The second Boldman Survey relies on those same boundaries.

The Court concludes the second Boldman Survey is most consistent. The Court does not disagree with the Defendants that the burden of a shortage is on the second purchaser. The Court after determining the second Boldman Survey is correct does not find there is shortage.

ORDER OF COURT

The Court quiets title to the Breeding property and adjudges them the owners of the North Half (N ½) of Outlot Eleven (11) of the East Addition of Outlots on the East Side of the Town of Winterset, Madison County, Iowa, as shown in the second Boldman Survey dated and filed December 20, 2011, in Book 2011, Page 3443 of the Recorder's Office of Madison County, Iowa. The Court adopts the second Boldman Survey as accurate and such survey is attached hereto and incorporated by this reference.

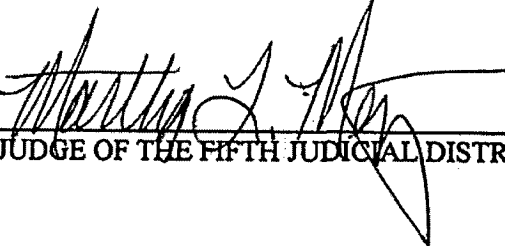
Since the Court has quieted title in the fashion that it did, the Plaintiffs' Motion for Permanent Injunction is denied.

Damages were requested by the Defendants for the removal of trees by the Plaintiff, Ryan D. Rater. The Court finds that the Defendants request for treble damages based on trespass is an at law action. Though this case is in equity, the Court will treat the damages portion as if it were at law. The Court finds that Mr. Rater thought he owned the trees he cut down and therefore did not willfully injure the Defendants' property. Thus, no treble damages are awarded. The Court also finds that the Defendants did not prove the value of the damage that was caused. However, there was damage to the Breeding property. The Court awards the amount of \$100.00 to the Defendants, Greg and Betsy Breeding.

The Court concludes that this litigation was not the fault of either the Plaintiffs or the

Defendants and that there was not intent by anyone to do harm. The Court therefore taxes the costs of the action one-half to each party.

IT IS SO ORDERED.



JUDGE OF THE FIFTH JUDICIAL DISTRICT

Copy to:

✓ Attorney Mark L. Smith
✓ Attorney Thomas G. Fisher

Document 2011 3443

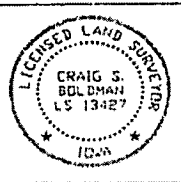
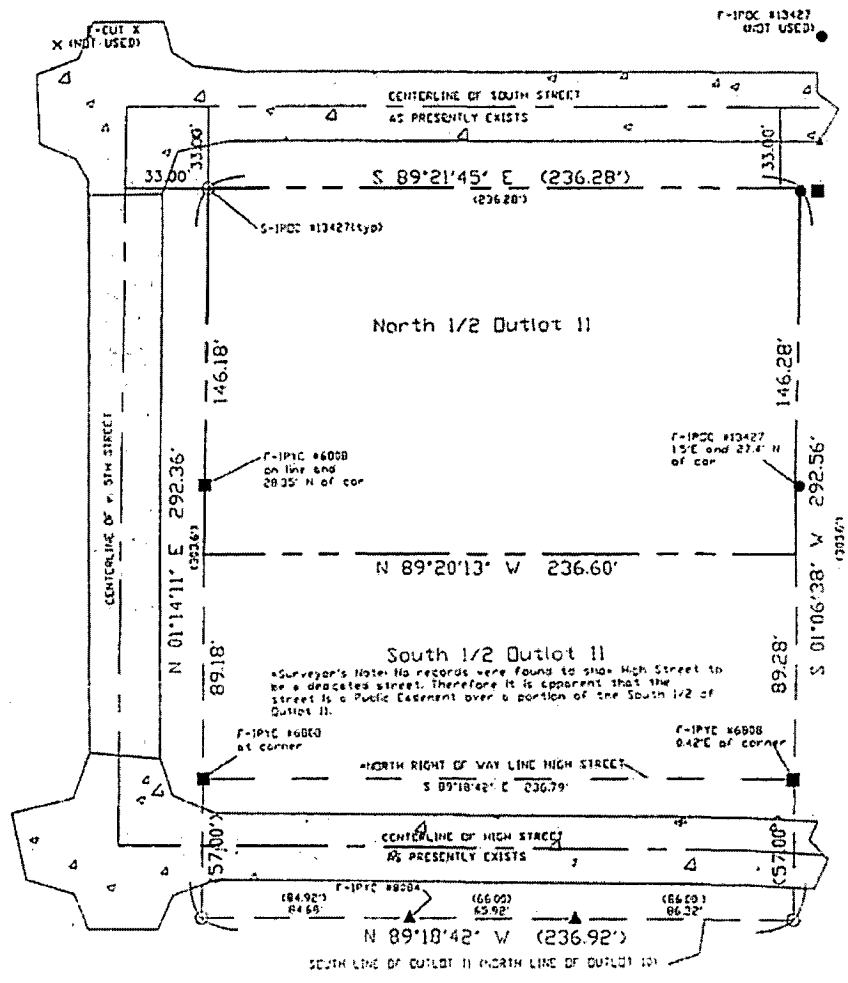
Book 2011 Page 3443 Type 06 026 Pages 1
Date 12/20/2011 Time 10:26 AM
Rec Amt \$7.00

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MADISON COUNTY IOWA

PREPARED BY: BOLDMAN SURVEYING CONSULTANTS, 521 WEST GREEN STREET, WINTERSSET, IA 50273 PH 515-462-9242

Corrected Retracement Plat of Survey of the North One-Half (1/2) of Outlot 11 in East Addition Outlots to the Town of Winterset, Madison County, Iowa. This Plat corrects a Plat of Survey recorded in Book 2003 Page 5314 Office of the Recorder, Madison County, Iowa. The midline was shown incorrectly.



I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.

Signature: *Craig S. Boldman* Date: *Dec. 29, 2011*
 Name: Craig S. Boldman P.L.S. No. 13427
 Renewal date is December 31, 2012
 Pages or sheets covered by this seal: *1*

Proprietor(s): Greg and Beth Breeding
 Requested by: Greg Breeding
 Date of Survey: Dec 7, 2011
 Project No: 11055

