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COURT OF COMMON PLEAS
WYANDOT COUNTY, OHIO

PAUL A. BURSON, Executor
of the Estate of Carrie
M. Phillips, Deceased : Case No. 77-CV-68-18002

Plaintiff,
VS.

EUGENE LONSWAY, et al : JUDGEMENT ENTRY

Defendants

This matter came on to be heard upon the Motion of Plaintiff for a Summary Judgement pursuant to the authority of Rule 56 of the Ohio Rules of Civil Procedure. Plaintiff had attached affidavits to its Motion and Plaintiff and the Defendants had filed Memoranda of Law in support of their respective positions regarding the Motion for Summary Judgement. The Motion was argued by Counsel for both parties before the Court on Wednesday, April 12, 1978. After careful consideration of all the Memoranda and Materials attached thereto which have been submitted by the parties, the Court hereby finds that no genuine issue as to any material fact has been raised and that, therefore Plaintiff's Motion for Summary Judgement is well taken and Plaintiff is entitled to a judgement as prayed for in his Complaint.

The Court bases its finding upon the following reasoning. The parties, involved in a real estate boundary dispute, have both referred the Court to a 1871 survey filed in Vol. 2 Page 195 of the Wyandot County Engineer Survey Records that was surveyed for John Mitten and Jacob Gilliland showing a 98.86 tract of land and a 17.80 tract of land. This survey was made subsequent to two conveyances made in 1870 by John Mitten whereby said John Mitten conveyed by rather imprecise language a tract of 20

State of Ohio, Wyandot County, etc.
I hereby certify that this is a true and correct copy of the original as the same appears in the files of the Court.
Witness my hand and seal this 12th day of April, 1978.
Clerk

Ann J. Blatz

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State of Ohio, Wyandot County, S. S.
Presented For Record at 3 o'clock
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In Book No. Page
Recorder

acres to Tacy Hole and a tract of 103 acres to Jacob Gilliland. This 1871 survey clearly shows that both tracts conveyed by John Mitten did not contain the acreage stated in the deeds.

However, in 1891, the same Jacob Gilliland who was a party to the 1871 survey granted a 5 acre parcel of land to Henrietta Dippery "to be surveyed off the North part of the tract lying South of the Tract, this day deeded to Mrs. Dippery by the heirs of Mrs. Tacy Hole" Vol. 46, Page 199 of the Wyandot County Deed Records. It is clear to the Court that since Jacob Gilliland in his deed to Mrs. Dippery for five acres made specific reference to the deed filed the same day to Mrs. Dippery which conveyed 20 acres, and that since Jacob Gilliland was a party to the 1871 survey, he intended to ignore the survey. The Court finds that the intention of the grantors to Mrs. Dippery in 1891 was to convey 25 acres and that absent a clear metes and bounds description, this intent should control.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the 25.9 acre tract of land represented in the surveys attached to Plaintiff's Complaint and designated as Exhibits B and C be quieted in the names of John N. Phillips and the Estate of Carrie M. Phillips, deceased, free and clear from any claims of the Defendants. It is further ordered that the Plaintiff, an Executor of the Estate of Carrie M. Phillips and John N. Phillips be permitted to execute deeds to said 25.9 acres of land free and clear from any claims of the Defendants. It is further ordered that the Wyandot County, Ohio Recorder cause a certified copy of the Judgement Entry to be recorded in the Deed Records of said Recorder.

DATED: _____
Judge, Wyandot County
Court of Common Pleas