

FILED

MAR 01 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 292690

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

ELMER SEGRAVES,

Plaintiff/Respondent,

V.

CARL C. FULTON,

Defendant/Appellant.

APPELLANT'S BRIEF

Dennis W. Morgan WSBA #5286
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Ritzville, Washington 99169
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ASSIGNMENTS OF ERROR

1. The trial court's Findings of Fact III, IV, V, VI and VII are not supported by the evidence adduced at trial. (CP 153; Appendix "A").
2. The trial court's Conclusions of Law I and II are not supported by the Findings of Fact. (CP 155; Appendix "B")
3. The trial court erroneously quieted title to the disputed property in Elmer Segraves. (Segraves) (CP 158)

ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Did Segraves present sufficient evidence of adverse possession in order to have title to the disputed property quieted in his name?
2. Did Segraves present sufficient evidence of the doctrine of mutual recognition and acquiescence in order to have title to the disputed property quieted in his name?
3. Did the trial court correctly determine that the fence in question was a boundary-line fence?

STATEMENT OF CASE

Carl Fulton and Jane Doe Fulton, husband and wife, and Floyd Fulton and Patricia Fulton, husband and wife (Fulton) are the record owners of the Southwest Quarter of the Southeast Quarter of Section 11, Township 9 North, Range 39 E.W.M. Columbia County, Washington. (RP 24, ll. 19-22; CP 132).

Segraves is the current owner of the Northwest Quarter of the Northeast Quarter of Section 14, Township 19 North, Range 39 E.W.M. Columbia County, Washington. (Ex. 13)

The property in dispute is trapezoidal in shape. It consists of approximately .99 acres all located in the Southwest Quarter of the Southeast Quarter of Section 11. (Ex. 4).

Segraves filed a complaint to quiet title to the disputed property on September 18, 2009. An Amended Complaint was filed on September 24, 2009. (CP 1; CP 4).

Fulton filed an answer, affirmative defenses and a counter claim on October 27, 2009. (CP 7).

Fulton and Segraves filed cross-motions for summary judgment. The motions included declarations. (CP 18; CP 29; CP 64; CP 99).

The trial court entered an order granting partial summary judgment on March 10, 2010. Fulton filed a motion for reconsideration the same

date. An order denying Fulton's motion was entered on March 17, 2010. (CP 132; CP 135; CP 141).

A bench trial was held on June 16 and 17, 2010. Sherman Maynard is a seventy (70) year old retired cattle/wheat rancher. He was born on the Fulton property and lived there for a number of years. (Supp.RP 3, ll. 17-23; Supp. RP 4, ll. 11-22).

The Maynard family raised hay and cattle. They owned 156 acres of ground abutting the Segraves property. (Supp. RP 6, ll. 20-21; Supp. RP 7, ll. 6-21).

Kurt Segraves grew up on the property next door to Maynard. His parents raised cattle, grass, wheat and asparagus. He did not live on the property after his parents died. He did not rent it out after his parents died. The last time cattle were pastured on the Segraves property was in the 1960s or 1970s. (RP 63, ll. 4-12; RP 64, ll. 8-14; RP 67, ll. 5-12; ll. 16-17; RP 89, ll. 6-11).

Both Mr. Maynard and Kurt Seagraves maintain that a fence existed in the approximate location of the current fence for as long as they could remember. Records presented to the trial court indicate that a fence was in existence prior to 1941. Kurt Segraves claims that the fence is the property line between Fulton and Segraves. He viewed photographs of the current fence and described it as being in the approximate location of the original fence. (Ex. 14; Ex. 15; RP 77, ll. 2-6; Supp. RP 9, ll. 15-18; RP 74, ll. 13-15; RP 294, ll. 5-12; RP 297, ll. 12-20).

Mr. Maynard described the fence as going straight from the roadway to the Wolf Fork. It then crossed over it to a corner fence. He never had any discussions with Segraves concerning the fence being a boundary-line fence. (Supp. RP 11, ll. 13-16; Supp. RP 26, ll. 2-4).

Mr. Maynard described how water always ran down the main ditch and was used for livestock. He did not know if the water came from Wolf Fork or the springs near the roadway. He described the ditch as three to four feet wide in places and eight to ten inches deep. (Supp. RP 12, ll. 7-18; Supp. RP 13, ll. 2-5).

On the other hand, Kurt Segraves, maintained that no irrigation ditch existed. He admitted the existence of the springs, but denied that they could be used for irrigation purposes. He had seen water come from Wolf Fork during periods of high water. (RP 77, ll. 9-11; ll. 13-14; RP 78, ll. 1-7; RP 87, ll. 12-14).

Evanna Segraves, Kurt's wife, does not consider the springs a spring. She described it as a low, marshy area with water running downhill onto Fulton's property. (RP 103, ll. 16-17; RP 113, ll. 8-21).

Mr. Maynard and Evanna Segraves described the area in dispute as now heavily overgrown with trees and brush. They could not see the fence except near the roadway. Photos introduced at trial reflect the overgrown nature of the disputed area. There are a variety of trees and grasses. Leaves and limbs have accumulated. An area of demarcation can be seen

though the trees to Wolf Fork. This area appears to be low lying and swampy. (Supp. RP 23, ll. 18-20; RP 111, ll. 7-17; Ex. 16; Ex. 17; Ex. 18; Ex. 20; Ex.21).

The Maynard family's successor-in-interest was James Oakley Hughes. Mr. Hughes sold to Fulton. (Supp. RP 17, ll. 2-5; RP 179, l. 21; RP 180, ll. 1-4).

James Hughes, the son of James Oakley Hughes, lived part-time in a log cabin on what is now Fulton's property. He filed a declaration prior to the hearing on the cross-motions for summary judgment. (CP 237).

James Hughes understood that the fence which existed between the Segraves property and his father's property was not a surveyed boundary. The fence was used to keep cattle out of the irrigation ditch. He remembered survey markers being 200 feet beyond the fence. (CP 238; RP 121, ll. 6-13).

James Hughes described how his father's property was irrigated when he was living there.

Q. Okay. Now, did they have an irrigation system of some kind, pipes and - -

A. Well, it had a pump, they pumped it into pipe and the pipes had different valves and you could run it to different areas.

Q. Was that pump down by the house?

A. No, it was up, up behind the cabin and, and, and a little bit south of the cabin.

Q. I see. A little bit south of the cabin where all of this water collected and went past your house?

A. Right.

(RP 314, ll. 8-18).

Jeanne Hughes Whitefeather is a granddaughter of James Oakley Hughes. She lived with her grandparents off and on from 1981-82, 1985-86, and 1990-93. At that time her grandparents raised cattle, grew wheat, and had a small orchard and family garden. (RP 117, ll. 1-15; RP 117, l. 21 to RP 118, l. 8).

She described how her grandparents used water from Wolf Fork to irrigate and water the livestock. There was a fence along a “meandering little waterway to the Southeast.” The fence was there to keep cattle out of the water. Ms. Whitefeather recalled that the property line was on the Segraves side of the fence but was unsure as to its exact location. (RP 118, l. 13 to RP 120, l. 13; RP 310, ll. 12-18).

Ms. Whitefeather described the marshy area as drainage from the springs which joined the water from Wolf Fork. It was the water from Wolf Fork and this drainage that was used for irrigation. (RP 127, l. 11 to RP 128, l. 3; RP 128, ll. 10-21).

Q. Now, there wasn't any ditches of any kind near that were created by your grandparents on the Segraves' side of the fence near the marsh area, was there?

A. We maintained it.

Q. Now, on –

A. And so we just maintained it by hand.

Q. On, on the Oakley Hughes' side of the fence or on the Segraves' side of the fence?

A. It was the Segraves' side of the fence, but it was Oakley Hughes's property.

Q. Well, who told you that?

A. My grand (unintelligible), who owned the property.

Q. I see. You never made any mention of that fact to Mr. Segraves apparently? You didn't?

A. Yeah, yeah, him, and who I refer to, with all due respect, as Old Man Segraves, because I was a kid and he was getting up there, and, yeah, they were friendly neighbors and they did talk about it.

(RP 134, l. 6 to RP 135, l. 2)

The fence was maintained over the years by Maynard, Hughes and Fulton. (RP 76, ll. 6-19; RP 120, ll. 16-22; RP 121, ll. 1-5; RP 302, ll. 10-21).

Paul Gibbons worked for both Segraves and Hughes. He would help Hughes repair fence when cattle got into the Segraves wheat. (Supp. RP 32, ll. 13-19; RP 34, l. 16; RP 35, ll. 12-21).

Mr. Gibbons described water running year-round from the springs down a ditch to the Hughes property. He understood the fence to be used to control livestock. Hughes was the one who maintained the fence. (Supp. RP 36, ll. 10-19; Supp. RP 38, ll. 14-17; Supp. RP 42, ll. 8-10).

Exhibit 14 shows Fulton's barn in the background. Exhibit 4 aids in orienting the location of the fence to the respective properties. Further orientation is achieved with the use of Exhibits 10 and 13.

Exhibits 10 and 13 are surveys. Hughes had a survey conducted in 2001. Paul Tompkins was the surveyor. Mr. Tompkins described the steps he took in effecting the survey. He also described what he observed on the ground. (RP 184, ll. 4-10; RP 281, ll. 7-9; RP).

Using Exhibits 4, 11 and 12 (aerial photo and BPA right-of-way maps) Mr. Tompkins described how the fence was North of the section line. The irrigation ditch is South of the fence. He described the ditch as a defined channel. (RP 283, l. 21 to RP 284, l. 8; RP 288, ll. 9-19; RP 291, ll. 12-14; RP 294, ll. 5-12; RP 295, ll. 14-19).

Segraves claims the fence as the property line. He did not personally work on the fence until 2002 after Fulton initially removed it. He claims the fence as the property line based upon the fact that it is a continuance of a fence from the other side of the roadway. (RP 145, ll. 19-22; RP 146, ll. 20-21; RP 147, ll. 1-8).

Segraves is in the apiary business. He keeps his bees approximately 200 feet from the disputed area so as to avoid any flooding from Wolf Fork. Segraves used an excavator to clear out brush along the fence line because it was overgrown and he was unable to see Wolf Fork. This was after he purchased the property from his uncle. Prior to purchasing the property he had never discussed with Hughes whether the fence was the boundary line. (RP 142, ll. 19-21; RP 154, l. 21 to RP 155, l. 4; RP 160, ll. 106; RP 164, ll. 1-12).

Before Fulton purchased the property he understood that the existing fence was used to keep cattle out of the ditch and springs. He reviewed water right certificates for the property. He intended to raise cattle and needed a sufficient source of water. (RP 189, ll. 4-19; Ex. 2; Ex. 3).

Fulton has made various improvements to the disputed area since 2001. He placed riprap along Wolf Fork to help control flooding. He enlarged the ditch to increase the flow of water from Wolf Fork to his property. He installed an underground mainline with irrigation risers. (RP 168, ll. 5-10; ll. 13-22; RP 227, ll. 1-6; RP 258, l. 19 to RP 259, l. 5).

When Fulton purchased the Hughes property he also bought Hughes' irrigation pumps. The pumps were used to pump water from the ditch to pastureland and the orchard area. (RP 196, ll. 7-18; RP 197, ll. 4-11).

The trial court, in its oral ruling, noted that no one had been using the property in the disputed area, except in 1996, in order to restore the ditch after the flooding. (RP 335, ll. 10-19).

The trial court entered its Findings of Fact and Conclusions of Law, as well as a Judgment Quieting Title, on August 2, 2010. Fulton filed his Notice of Appeal on August 3, 2010. (CP 161)

SUMMARY OF ARGUMENT

The trial court's Findings of Fact and Conclusions of Law fail to address the requisite elements of adverse possession.

The trial Court's Findings of Fact and Conclusions of Law fail to address the necessary predicates of mutual recognition and acquiescence.

Segraves failed to establish his claim to the disputed property by clear and convincing evidence.

Fulton is the record owner of the disputed property and is entitled to judgment in his favor.

ARGUMENT

A. Adverse Possession

To establish ownership of a piece of property through adverse possession, a claimant must prove that his or her possession of the property was: (1) open and notorious; (2) actual and uninterrupted; (3) exclusive; (4) hostile and under claim of right; (5) for a period of 10 years. **“As the presumption of possession is in the holder of legal title, the party claiming to have adversely possessed the property has the burden of establishing the existence of each element.”** Possession is established if it is of such a character as a true owner would exhibit considering the nature and location of the land in question.

Shelton v. Strickland, 106 Wn. App. 45, 50, 21 P. 3d 1179 (2001).

Fulton asserts that Segraves failed to establish all of the necessary elements for adverse possession. Moreover, the trial court's Findings of Fact do not specify which, if any, of the particular elements were satisfied. The trial court merely concluded that Segraves carried his burden of proof. It then quieted title to the disputed area in Segraves.

The area in question is overgrown and swampy. A fence has existed for a period in excess of seventy (70) years. The original purpose for the fence was not established at trial.

Over the years the fence was used to keep cattle out of the irrigation ditch. Fulton's predecessors-in-interest maintained the fence. At times Kurt Segraves would help Maynard or Hughes with the fence repair.

Kurt and Elmer Segraves are the only ones to claim the fence as a boundary fence. The surveys establish that the actual property line between the Fulton and Segraves property is the section line. The Fulton deed conveys to the section line.

Possession, to be adverse, must be actual and uninterrupted, open and notorious, hostile, and exclusive, and under a claim made in good faith. *Scott v. Slater*, 42 Wn. (2d) 366, 255 P.(2d) 377. **The mere possession of land beyond the real boundary is not sufficient to make such holding adverse, but there must be in addition an intention to claim title to the disputed land and to hold it as the owner.** *Brown v. Hubbard*, 42 Wn. (2d) 867, 259 P. (2d) 391. A fence not erected as a boundary fence, but rather as one to control pasturage, would not give rise to possession of such character as would establish an adverse title. However, the mere building of a fence on disputed land for pasturage would not militate against an adverse holding, if the use of such land were an incident under a claim of right. The question in each case is whether a property fence is maintained as a matter of convenience, or under a claim of ownership. *Young v. Newbro*, 32 Wn. (2d) 141, 200 P. (2d) 975. In *Johnson v. Conner*, 48 Wash. 431, 93 Pac. 914, we said:

“Of course, it is not necessary for a person claiming a certain tract of land adversely to prove that he has actually occupied, used, improved, or inclosed all of said tract. But it must appear that he openly and notoriously claimed the entire tract and that his possession, use, or improvement of a portion thereof was intended to hold, not merely that particular portion, but the whole of the entire tract.

Interestingly enough, the disputed property in *Taylor* is of a similar nature and shape due to the fact that a fence was not built on the section line.

Segraves has not made any improvements to the disputed area. Some farming occurred near the roadway.

There was no testimony of any timber harvest. There was no testimony that Segraves irrigated from Wolf Fork. There was no testimony that the Segraves' openly claimed the disputed area as their own.

“Open and notorious use is such use that would lead a reasonable person to assume that the claimant was the owner.” *Bryant v. Palmer Coking Coal Co.*, 86 Wn. App. 204, 211-12, 936 P. 2d 1163 (1997).

Fulton asserts that Segraves has failed to establish that possession of the disputed tract was open and notorious, actual and uninterrupted, exclusive, or hostile and under a claim of right.

“...(A) claim of right made in good faith is always an essential... . Mere naked possession is not sufficient.” *Skansi v. Novak*, 84 Wash. 39, 45, 146 P. 160 (1915).

Segraves failed to establish that any claim to the disputed area was being made in good faith. Segraves merely showed naked possession to a portion of the disputed area near the roadway.

While adverse possession may originate in a mistake it must be such a mistake as to lead to an unequivocal claim, either by acts or words, of a title or right to the land possessed. Mere possession up to the mistaken

words, of a title or right to the land possessed. Mere possession up to the mistaken line without any claim of right or ownership beyond the true line is insufficient to constitute adverse possession or to work a disseizin of the true owner.

Skansi v. Novak, supra.

In *Lappenbush v. Florkow*, 170 Wash. 23, 26 P. (2d) 388 (1933) a fence line was in dispute. The fence had been in existence for thirty-two (32) years. No one knew who originally built the fence. The testimony indicated that its practical use was to keep cattle in. Both sides helped maintain the fence.

The only difference in the *Lappenbush* case is that the fence was on the other side of the boundary line. A claim was being made for adverse possession as to the property upon which the fence encroached. The Court ruled at 28:

The respondent's attitude now is that, because the fence was there when he bought the land, he regarded it as a line fence, but he does not indicate that he, by act or word, ever disclosed that attitude to any one. **The hostile flag of any adverse claim was never unfurled. There was no open and notorious claim of right, and nothing done or said which would tend to warn the adjoining owner of such a claim.** We find nothing in the situation indicating an open and notorious hostile intent, which is always necessary in order to establish title by prescription. *Cameron v. Bustard*, 119 Wash. 266, 205 Pac. 385; *Santmeyer v. Clemmancs*, 147 Wash. 354, 266 Pac. 148; *Wells v. Parks*, 148 Wash. 328, 268 Pac. 889.

See also: Hawk v. Walthew, 184 Wash. 673, 675-76, 52 P. (2d) 258 (1935) (use of fence on wooded land is permissive and presumption favors title owner).

It is Fulton's position that Maynard and Hughes merely gave permission to Segraves for the use of a portion of the disputed property near the roadway. This is the property that had previously been farmed.

Permission to occupy the land, given by the true title owner to the claimant or his predecessors in interest, will operate to negate the element of hostility in an adverse possession claim.

Roy v. Cunningham, 46 Wn. App. 409, 411, 731 P. 2d 526 (1986).

No testimony was presented that Segraves ever had any discussion with Maynard or Hughes that the fence was the boundary line. Segraves merely assumed that the fence was the boundary line.

The lack of any use of the disputed area by Segraves, with the exception of the small portion near the roadway which was farmed, clearly establishes that all elements of adverse possession were not met.

Whether adverse possession has been established by the facts as found is a question of law, which we review de novo. We must uphold the trial court's findings if they are supported by substantial evidence. Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise.

Bryant v. Palmer Coking Coal Co., supra, 210

B. Mutual Recognition

...[T]he following basic elements must, at a minimum, be shown to establish a boundary line by recognition and acquiescence: (1) the line must be certain, well defined and in some fashion physically designated upon the ground, *e.g.*, by monuments, roadways, fence lines, etc.; (2) in the absence of an express agreement establishing a designated line as the boundary line, **the adjoining landowners**, or their predecessors in interest, **must have in good faith manifested, by their acts, occupancy, and improvements with respect to their respective properties**, a mutual recognition and acceptance of the designated line as the true boundary line; and (3) the requisite mutual recognition and acquiescence in the line must have continued for that period of time required to secure property by adverse possession.

Lamm v. McTighe, 72 Wn. 2d 587, 592-93, 434 P. 2d 565 (1967). (Emphasis supplied.)

There is no express agreement between Fulton and Segraves. There is no express agreement between Segraves and Fulton's predecessors-in-interest.

In the absence of an agreement to the effect that a fence between the properties shall be taken as a true boundary line, mere acquiescence in its existence is not sufficient to establish a claim of title to a disputed strip of ground. ...

In all cases, it is necessary that acquiescence must consist in recognition of the fence as a boundary line, and not mere ac-

quiescence in the existence of a fence as a barrier.

Thomas v. Harlan, 27 Wn. (2d) 512, 519, 178 P. (2d) 965 (1947).

The evidence establishes that there was nothing more than mere acquiescence in the existence of the fence. It was used as a barrier to keep cattle out of the irrigation ditch.

There is no dispute that the fence line is well-defined.

There is no dispute that the fence existed for the requisite ten-year period required for adverse possession.

What is missing is any act by, actual occupancy of, or improvement made by Segraves within the disputed area.

“The acquiescence must be proved by evidence which is clear, cogent and convincing.” *Muench v. Oxley*, 90 Wn. 2d 637, 641, 584 P. 2d 939 (1978).

The evidence presented by Segraves at trial does not meet the requisite burden of proof to establish ownership by mutual recognition and acquiescence.

As the *Muench* Court noted at 642:

The initial entry on the property (here the construction of the fence) may be by mistake and adverse title may still be obtained **if the claimant establishes a notoriously evinced intent to claim the land to the disputed line.** *Krona v. Brett*, 72 Wn. 2d 535, 433 P. 2d 858 (1967).

The facts in *Muench v. Oxley, supra*, are similar to the situation in this case. The fence was heavily covered by trees and underbrush. The Court determined that because of the condition of the fence “a person of ordinary prudence” would not be put on “notice of a hostile claim”.

Lack of any use of the disputed area by Segraves, with the exception of the small portion near the roadway which was farmed, clearly establishes that all elements of adverse possession were not met.

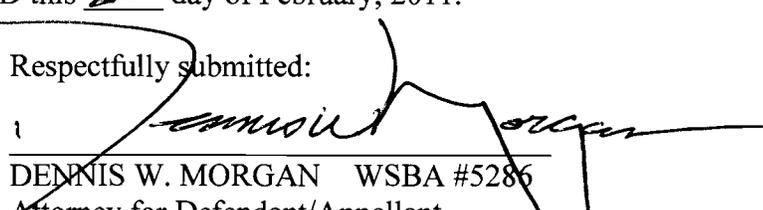
CONCLUSION

Based upon the records and testimony provided to the trial court Segraves failed to establish either adverse possession or mutual recognition and acquiescence in order to have title to the disputed property quieted in him.

The trial court’s judgment quieting title should be reversed and the case remanded with directions to enter judgment in favor of Fulton.

DATED this TH 28 day of February, 2011.

Respectfully submitted:


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APPENDIX "A"

III.

That there has existed between the property owned by the plaintiff and the property owned by the defendants a ~~boundary~~ fence; that it ~~is~~ ~~disputed~~ ~~that~~ ~~the~~ ~~boundary~~ ~~fence~~ has been in existence since at least 1937. UNTIL IT WAS REMOVED BY DEFENDANTS IN 2001.

THE COURT FINDS PLAINTIFF PROVED IT WAS AN ACTUAL BOUNDARY FENCE ~~AND~~ SO RECOGNIZED BY THE ADJACENT OWNERS AND NOT MERELY A FENCE TO CONTAIN LIVESTOCK. (AC)

That the defendant ~~did~~ ^{again} moved the boundary fence in 2003, and was advised by the plaintiff that trespassing would not be permitted; that the actions by the defendant to reclaim the property was improper; and that the defendant has "unclean hands". (AC)

V.

That the court granted partial summary judgment by written order dated March 9, 2010; that said order granting partial summary judgment is by this reference incorporated herein.

VI.

That on or about the 17th day of March 2010, the court denied a motion for reconsideration; that said order is, by this reference incorporated herein.

VII.

That the plaintiff is entitled to an order quieting title to the following described property, to-wit:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11 IN TOWNSHIP 9 NORTH, RANGE 39 EAST, WILLAMETTE MERIDIAN, COLUMBIA COUNTY, WASHINGTON STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11 IN TOWNSHIP 9 NORTH, RANGE 39 EAST,

WILLAMETTE MERIDIAN, SAID POINT BEING MONUMENTED WITH A FIVE-EIGHTHS INCH REBAR WITH YELLOW PLASTIC CAP STAMPED "TOMKINS SURVEYING" AS SHOWN ON THAT SURVEY RECORDED IN BOOK 5 AT PAGE 94 DATED NOVEMBER SECOND OF 2001 AND BEARS NORTH $88^{\circ}45'52''$ WEST 2658.84 FEET FROM THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 11; THENCE SOUTH $88^{\circ}45'52''$ EAST 627.11 FEET, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 11, TO THE WESTERLY RIGHT OF WAY LINE OF WOLF FORK ROAD; THENCE NORTH $20^{\circ}56'47''$ EAST 29.53 FEET, ALONG THE WESTERLY RIGHT OF WAY LINE OF WOLF FORK ROAD; THENCE ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF $01^{\circ}16'52''$, RADIUS LENGTH OF 2923.29 FEET, CHORD BEARING OF NORTH $21^{\circ}35'13''$ EAST, CHORD LENGTH OF 65.36 FEET, A CURVE LENGTH OF 65.36 FEET, ALONG THE WESTERLY RIGHT OF WAY LINE OF WOLF FORK ROAD; THENCE SOUTH $87^{\circ}35'23''$ WEST 661.97 FEET TO THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 11, AS SHOWN ON THAT SURVEY RECORDED IN SAID BOOK AND PAGE; THENCE SOUTH $00^{\circ}13'40''$ WEST 47.00 FEET, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 11, TO THE POINT OF BEGINNING.
CONTAINING 1.00 ACRE.

APPENDIX "B"

CONCLUSIONS OF LAW

I.

That the plaintiff is the owner in fee simple, free and clear of any claim of the defendant.

II.

That the claim by the defendant for an easement or any right to use, cross, or utilize said property in any respect shall be, and the same hereby is denied.