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IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

MARVIN J. HIETBRINK & MABEL E.  
HIETBRINK,

Plaintiffs,

v.

DENNIS D. GOETZ & ANGELA M.  
GOETZ, JOHN DOE & JANE DOE,

Defendants.

Case Number CI 05-180

ORDER

This matter is before the court on the complaint to quiet title of the plaintiffs Hietbrink. In their complaint, the plaintiffs allege that they are the owners, by reason of adverse possession, of the real estate located West of the West line of the East 30.00 acres of the West half of the Northwest Quarter (Lot 1 I.T.) in Section 23, Township 7 North, Range 8 East, of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows:

Commencing at the Northwest corner of said Section 23, thence easterly S 89°33'01" E, on the North line of the West half of the Northwest Quarter of said Section 23, 802.84 feet, to the Northwest corner of Lot 1, I.T., also being the POINT OF BEGINNING; thence southerly S 00°03'09" E, on the West line of the said Lot 1, I.T., 2621.38 feet, to the Southwest corner of said Lot 1 I.T.; thence westerly N 89°46'19" W, on the South line of the Northwest Quarter, 67.6 feet to a point on the said South line intersecting a barbed wire fence; thence northerly on said fence to a point 52.1 feet westerly of the Northwest corner of Lot 1 I.T., being the fence projected to the North line of said West half; thence easterly S 89°33'01" E, on the North line of said West half, 52.1 feet, to the POINT OF BEGINNING, containing a total calculated area of

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LANCASTER COUNTY

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DISTRICT COURT



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Rob Ravenscroft  
3340 Potomac Dr  
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3.603 acres, more or less, of which 0.039 acres is reserved for county road right-of-way purposes, leaving 3.564 net acres, more or less (hereinafter referred to as the Disputed Real Estate).

The defendants Goetz generally deny the plaintiffs' complaint.

Trial was held on December 12, 2005. The plaintiff Marvin J. Hietbrink (Marvin) appeared with his counsel Robert M. O'Gara. The defendant Dennis D. Goetz (Dennis) appeared with his counsel Stephen Bartling. Evidence was adduced. The matter was argued and taken under advisement. The court finds as follows:

In 1966, the plaintiffs purchased the East Half of the Northwest Quarter (E1/2NW1/4) and Lot 1 in the West Half of the Northwest Quarter (Lot 1 in W1/2NW1/4) of Section Twenty-three (23), Township Seven (7) North, Range Eight (8) East of the 6th P.M., Lancaster County, Nebraska, containing 110 acres, more or less (hereinafter referred to as the farm land). The farm land has been farmed by the plaintiffs, or on their behalf, continuously since 1966.

The west boundary line of the farm land is the east boundary line of Lot 3 I.T. In 1966, Lot 3 I.T. was owned by Howard Hesser (Hesser). In 1966, the farm land and Lot 3 I.T. were separated by a barbed wire fence located within trees (the fence line). Every year since 1966, the farm land has been farmed between early spring and late fall and has been farmed up to the fence line. According to Marvin, between 1966 and summer/fall 2004, no one made any type of claim to an ownership interest in any of the real estate located immediately east of the fence line.

In the early 1970's, Marvin and Hesser decided to replace the fence line. The replacement started with Marvin and Hesser measuring off, along the north-south axis of the then existing fence line, 50+ feet and setting markers. After the markers were set, the old fence line, along with trees and other miscellaneous materials, was bulldozed out of the area. Once the area was cleared, a new fence line was built where the old fence line had been (i.e., moved back the 50+ feet to the original fence line) reestablishing the fence line. According

to Marvin, the fence line standing today between the farm land and Lot 3 I.T. is the same fence line he and Hesser built in the early 1970's and is in the same location as the 1966 fence line.

The Goetz purchased Lot 3 I.T. in May 2004. In August or September 2004, Marvin's son, who was farming the farm land, discovered that railroad ties had been placed in the farm land, east of the fence line. The railroad ties were placed in the farm land at locations which Dennis believed accurately represented the actual boundary line between the farm land and Lot 3 I.T. (Dennis placed the railroad ties 1 ½ inches west of where he believed the actual boundary line is between the farm land and Lot 3 I.T.) The railroad ties were placed approximately 36' east of the fence line. The land between where Dennis has placed the railroad ties and the fence line is the Disputed Real Estate.

The metes and bounds of the Disputed Real Estate, as set forth previously, was determined by Brent Jorgensen, a licensed surveyor. As can well be imagined, the evidence is that the existing fence line, which is over 20 years old, is not necessarily a straight line and may vary a couple of feet from north to south. While the defendants Goetz have some issues with Jorgensen's survey, the fact is that there is no survey evidence contradicting Jorgensen's survey of the location of the Disputed Real Estate. The metes and bounds description of the Disputed Real Estate sets forth the exact description of the real estate which the plaintiffs claim to own by adverse possession and is not based upon speculation and conjecture.

In discussing the issue of adverse possession, the Nebraska Supreme Court has stated:

... A party claiming title through adverse possession must prove by a preponderance of the evidence that the adverse possessor has been in actual, continuous, exclusive, notorious, and adverse possession under a claim of ownership for the statutory period of 10 years. [Citation omitted.] The acts of dominion over land allegedly adversely possessed must, to be effective against the true owner, be so open, notorious, and hostile as to put any ordinarily prudent person on notice of the fact that the lands are in adverse possession of another. [Citation omitted.]

Moreover, an adverse possessor can succeed in his claim even if he does not know he is occupying land not included in his deed or chain of title. [Citation omitted.] However,

the placement of a fence within one's boundary line does not lead to the relinquishment of ownership of lands outside the fence, without an additional showing that those lands outside the fence have been used by the neighboring landowner under a claim of ownership for the requisite period of time.

[Citation omitted.]

*Gustin v. Scheele*, 250 Neb. 269, 282, 549 Neb. 135, 142 (1996).

The court finds that a fence line has existed between Lot 3 I.T. and the Disputed Real Estate since the farm land was purchased by the plaintiffs in 1966. In the early 1970's, the original fence line was replaced, in its entirety, by the plaintiffs and Hesser, a successor in interest of the defendants Goetz. Although there may have been some variation due to setting markers from the original fence line and then measuring from those markers back for the placement of the existing fence line, any variation was slight. As a result, the court finds that the replacement fence line, which is the existing fence line, was placed in substantially the same location as the original fence line. In any event, the existing fence line has been in existence for between 20 and 30 years.

Since the farm land was purchased by the plaintiffs in 1966, the Disputed Real Estate has been in the actual possession of, and farmed by, the plaintiffs, or by others at their direction, as a part of the farming of the farm land. Subsequent to their purchase of the farm land in 1966, there is no evidence of any interruption in the plaintiffs' farming of the Disputed Real Estate in connection with their farming of the farm land prior to summer/fall 2004. Between 1966 and at least the summer/fall 2004, the plaintiffs' use of the Disputed Real Estate was exclusive; that is, there is no evidence that, during that period of time, anyone else made an ownership claim to the Disputed Real Estate. The plaintiffs continuous

farming of the Disputed Real Estate constituted visible and conspicuous evidence of their claim to possession and use of the Disputed Real Estate.

It is clear that the plaintiffs' considered the fence line to be the boundary line between the farm land and Lot 3 I.T. and that they acted accordingly when they farmed the Disputed Real Estate as part of the farm land. The court finds that the evidence supports that conclusion. Clearly, anyone observing the plaintiffs' use of the Disputed Real Estate would have been placed on notice that the plaintiffs were asserting an ownership claim to the Disputed Real Estate.

The court finds that the plaintiffs actually, continuously, exclusively, notoriously and adversely possessed the Disputed Real Estate under a claim of ownership for the full statutory period of 10 years.

For the reasons set forth herein, the court finds that title to the following described real estate should be, and hereby is, quieted in the names of the plaintiffs, Marvin J. Hietbrink and Mabel E. Hietbrink, husband and wife, and, as a result, as of the date of this order, the plaintiffs are the owners of said real estate, to wit:

Commencing at the Northwest corner of said Section 23, thence easterly S 89°33'01" E, on the North line of the West half of the Northwest Quarter of said Section 23, 802.84 feet, to the Northwest corner of Lot 1, I.T., also being the POINT OF BEGINNING; thence southerly S 00°03'09" E, on the West line of the said Lot 1, I.T., 2621.38 feet, to the Southwest corner of said Lot 1 I.T.; thence westerly N 89°46'19" W, on the South line of the Northwest Quarter, 67.6 feet to a point on the said South line intersecting a barbed wire fence; thence northerly on said fence to a point 52.1 feet westerly of the Northwest corner of Lot 1 I.T., being the fence projected to the North line of said West half; thence easterly S 89°33'01" E, on the North line of said West half, 52.1 feet, to the POINT OF BEGINNING, containing a total calculated area of 3.603 acres, more or less, of which 0.039 acres is reserved for county road right-of-way purposes, leaving 3.564 net acres, more or less.

The taxable costs of this action, in the amount of \$58.70, are taxed against the defendants Goetz and a judgment in favor of the plaintiffs and against the defendants Goetz in said amount is entered, to accrue interest at the rate of 6.42% simple interest per annum

from the date of this order until paid in full. The parties are to pay the remainder of their fees and attorney's fees incurred herein.

A copy of this order is sent to counsel of record.

Dated February 7, 2006.

SO ORDERED.

BY THE COURT



Paul D. Merritt, Jr.  
District Judge

c: Mr. Robert M. O'Gara, Mr. Stephen Bartling

**SUZANNE M. KIRKLAND**

**CLERK of the DISTRICT COURT**

**LANCASTER COUNTY**

575 South 10<sup>th</sup> Street

Lincoln, Nebraska 68508-2810

402-441-7328/Fax 402-441-6190

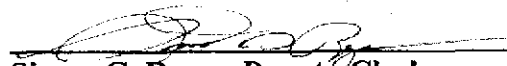
**IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA**

**--CERTIFICATE--**

I, Simon G. Rezac, Deputy Clerk of the District Court of Lancaster County, Nebraska, do hereby certify that the foregoing is/are a full and correct copy/copies of the original instrument(s) duly filed and or record in this court. This Certificate, which bears the seal of the District Court of Lancaster County, State of Nebraska, USA, was signed on

3-25-10

By:

  
Simon G. Rezac, Deputy Clerk

