

IN THE DISTRICT COURT OF MARION COUNTY, KANSAS

FILED
MARION COUNTY
APR 15 AM 11:15

GORDON L. PENDERGRAFT and
JUDY J. PENDERGRAFT, husband and wife

Plaintiffs

vs.

No. 02-C-60

WALLACE N. PETERSON and DOROTHY PETERSON, husband and wife; WILLIAM WHITLEY and MARY JANE WHITLEY, husband and wife; GERALD SATER and PHYLLIS L. SATER, his wife; ROBERT HEIN, LEROY WETTA, and HOWARD COLLETT, Marion County Commissioners; the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any deceased landowners; the unknown spouses of any defendants; the unknown officers, successors, trustees, creditors and assigns of any defendants that are existing, dissolved or dormant corporations; the unknown executors, administrators, devisees, trustees, creditors, successors and assigns of any defendants that are or were partners or in partnership; the unknown guardians, conservators and trustees of any defendants that are minors or are under any legal disability; and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of JACOB SCHLOTTHAUER, deceased; and of VERONA MULLIKEN, deceased;

COPY

Defendants

(Petition filed Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY TO QUIET TITLE

NOW on this 14 day of April, 2003, the above matter comes on for hearing.

The Plaintiffs, Gordon L. Pendergraft and Judy J. Pendergraft, appear by and through their attorney, Daniel L. Baldwin of BALDWIN LAW OFFICE, Marion, Kansas. Also appearing is John Klenda as Guardian Ad Litem and attorney for persons in military service. The Marion County Commissioners, Robert Hein, Leroy Wetta and Howard

Collett. appear by and through Susan C. Robson, Marion County Attorney. There are no other appearances.

THEREUPON, the Court upon examining the files, hearing arguments of counsel and upon evidence presented makes the following findings:

1. That personal service of summons within the State of Kansas was made upon the Marion County Commissioners, Robert Hein, Leroy Wetta and Howard Collett; all other Defendants known and unknown have been served by publication service in compliance with statute under K.S.A. 60-307. The Court further finds that Plaintiffs acted with due diligence to secure the addresses of the various defendants in order to secure personal service upon them. Further, Plaintiffs have exercised reasonable diligence to attempt locations of persons served by publication.

2. The Court has jurisdiction of all parties in this action and that none of the Defendants, named or unnamed, have filed a substantive answer except for the Guardian Ad Litem and Attorney for Persons in Military Service in the form of a general denial.

3. Plaintiffs are the owners of and in the open and peaceable possession of the following described real estate situated in Marion County, Kansas, to-wit:

***North 25 feet of Lot 1, Schlotthauer Subdivision #4
adjacent to Marion County Park and Lake;***

***AND Lot 5, Summerhaven Subdivision, adjacent
to Marion County Park and Lake***

Plaintiffs purchased the above described real estate from Wallace N. Peterson and Dorothy Peterson, husband and wife, as reflected in the joint tenancy warranty deed recorded in Book 345 at page 109(1); said property being located within an unincorporated area in Marion County, Kansas.

4. Plaintiffs are seeking vacation of a certain road right of way along the south side of Random Road as it passes the frontage of Lot 5, Summerhaven Addition to Marion County Lake and Park and the North 25 feet of Lot 1, Schlotthauer's Subdivision

No. 4 to Marion County Lake and Park, Marion County, Kansas. Said area being described as follows:

Beginning at the Southeast corner of Lot 5, Summerhaven Addition to Marion County Lake and Park; thence southwesterly to the northeast corner of Lot 1, Schlotthauer's Sub-division Nor. 4 to Marion County Lake and Park; thence southeasterly a distance of 25 feet along the east line of said Lot 1; thence northeasterly a distance of 25 feet to a point on the east line of Lot 5, Summerhaven Addition extended; thence along the same line northwesterly a distance of 25 feet to the point of beginning (total area equals 625 sq. ft.)

5. Plaintiffs and their predecessors in title have been in the open, exclusive and continuing possession of the last above described area as parking adjacent to the residential property owned by Plaintiffs and situated on the real estate described in allegation No. 2 of Plaintiffs' Petition and described in Paragraph No. 2 of this Order.

6. Plaintiffs and their predecessors have always used said area as parking and it has never been used for road right of way, as the original plat of the road has not been followed in the laying out and use of the current road. Plaintiffs and their predecessors in title have been in the adverse use and possession of the area under a belief of adverse ownership to any of the named defendants or any other person. Further, that the physical makeup of this area over this period of time has been for the use of parking and covered with material similar to the road which has been limestone rock.

7. Defendant, Marion County, Kansas, claims no interest in the above described real estate.

8. All other Defendants, known or unknown, do not have any right, title, interest or estate in the area last above described which is superior to Plaintiffs' right, title, interest or estate therein, and for this reason, the adverse possession and title should be quieted against the defendants and each of the according to law and Plaintiffs have the fee simple ownership vested in them.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the above findings be and constitute the orders of this Court.

That the title to the following described area be adjudged to be the property of Plaintiffs, to-wit:

Beginning at the Southeast corner of Lot 5, Summerhaven Addition to Marion County Lake and Park; thence southwesterly to the northeast corner of Lot 1, Schlotthauer's Sub-division No. 4 to Marion County Lake and Park; thence southeasterly a distance of 25 feet along the east line of said Lot 1; thence northeasterly a distance of 25 feet to a point on the east line of Lot 5, Summerhaven Addition extended; thence along the same line northwesterly a distance of 25 feet to the point of beginning (total area equals 625 sq. ft.), Marion County, Kansas

as against any claim of right, title or interest of the defendants and that the same be barred from any assertion thereof.

IT IS FURTHER ORDERED that all costs of this matter shall be assessed to Plaintiffs.

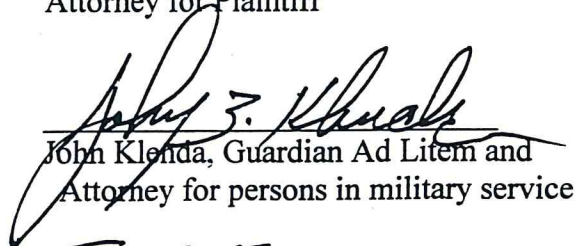


Judge of the District Court
Marion County, Kansas

APPROVED:



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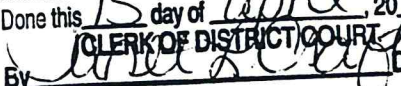


John Klenda, Guardian Ad Litem and
Attorney for persons in military service



Susan C. Robson, Attorney for
Defendant, Marion County, Kansas



CERTIFICATE OF DISTRICT COURT
The above is a true and correct copy of the original
instrument which is on file or of record in this Court.
Done this 15 day of April, 2003
By  Deputy
CLERK OF DISTRICT COURT