[Cite as *Wasserman v. Copsey*, 2013-Ohio-1274.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Zeno F. Wasserman, et al.	Court of Appeals No. S-12-008
Appellees	Trial Court No. 09CV671
v.	
Haldon N. Copsey, et al.	**DECISION AND JUDGMENT**
Appellants	Decided: March 29, 2013

* * * * *

John L. Zinkand, for appellees.

John P. Kolesar, for appellants.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of Common Pleas on appellees' complaint to quiet title to real estate. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} On September 9, 1988, appellees Zeno and Emma Wasserman ("Wassermans") purchased at auction an agricultural strip of land in Sandusky County,

Ohio, from appellants Haldon and Sandra Copsey ("Copseys"). It is undisputed that the offer to purchase signed at the auction described the property as a strip of equal width and "75 acres more or less * * *," while the deed conveying the land identified the parcel of land as being 75 total acres. The record reflects that in 1989, Copseys commissioned a survey which found 75 acres, but with different boundary lines than shown in prior survey records. It appears that the parties lived on and farmed their respective properties uneventfully until 2009, when Wassermans, concerned that the boundary lines as they understood them were different from those stated in the 1989 survey, commissioned a survey. According to the record, the 2009 survey relied on different points of reference than the 1989 survey. In fact, over the years, there were several surveys done on the same parcel of land, depicting different boundary lines. At issue then was which survey accurately depicted the true dimensions of the parcel of land. In anticipation of transferring ownership of the parcel of land to their son, Wassermans filed a complaint to quiet title to the real estate on June 9, 2009, praying that Wassermans be declared the true and lawful owners of the 75 acres described in the 2009 survey and that their title be quieted against any claim or interest of Copseys.

{¶ 3} After discovery was completed and summary judgment motions filed by both parties were denied, the matter was tried to the court over the course of four days in October 2010 and February 2011. At trial, Copseys argued that the underlying contract to purchase the land that was executed by the parties in 1988 stated that the parcel sold was 75 acres "more or less." Wassermans asked the court to quiet title to the 75 acres

they believed they purchased, to clearly establish the location of the boundary lines of the property utilizing the 2009 survey plat and legal description to reflect 75 acres, and to grant a permanent injunction.

{¶ 4} By judgment entry filed February 17, 2012, the trial court ruled that the contract to purchase merged into the deed. The trial court found that the deed was unambiguous on its face, that the deed was prepared by the seller against whom any ambiguities must be construed, and that there was no evidence of mutual mistake as to the intent of the parties. The trial court concluded that Wassermans were entitled to have their title in the property quieted and set forth the boundary lines of the premises as designated in the 2009 survey. The trial court also granted Wassermans' request for a permanent injunction and restrained Copseys from crossing the west line of the 75 acres as established by the court.

{¶ 5} Copseys now appeal, setting forth the following assignment of error:

> I. The trial court erred by applying the Doctrine of Merger and improperly excluding parol evidence limiting testimony regarding the intent of the parties at the time of the sale of the real estate in 1988.

{¶ 6} At trial, Copseys produced the offer to purchase which stated that the parties agreed for Wassermans to purchase 75 acres "more or less." However, the trial court, as a result of a motion in limine filed by Wassermans, excluded the offer to purchase, all testimony regarding flags set on the property on the day of the auction, and testimony as to boundaries by lay witnesses. Copseys argued in the trial court, and assert on appeal,

that the offer to purchase, which included the language "more or less" not found in the deed, should be considered.

{¶ 7} The doctrine of merger by deed holds that "when a deed is delivered and accepted without qualification pursuant to a sales contract for real property, the contract becomes merged into the deed and no cause of action upon said prior agreement exists." *Parahoo v. Mancini*, 10th Dist. No. 97APE08-1071, 1998 WL 180539 (Apr. 14, 1998), citing *Fuller v. Drenberg*, 3 Ohio St.2d 109, 111, 209 N.E.2d 417 (1965). *See also Osborne, Inc. v. Medina Supply Co*., 9th Dist. Nos. 2918-M, 2926-M, 1999 WL 1260865 (Dec. 22, 1999). Based on the foregoing, Copseys' reliance on the offer to purchase is unavailing because it was merged into the deed when the deed was delivered and accepted without qualification. *See Fuller*, *supra*. Therefore, we find that the trial court did not err by concluding that Wassermans' title should be quieted and boundary lines established pursuant to the 2009 survey. Appellants' sole assignment of error is not well-taken.

{¶ 8} On consideration whereof, the judgment of the Sandusky County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellants pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE