

TRANSMITTAL

DATE: January 2, 1997

TO: Kay @ R.O.D

FROM: [REDACTED]

RE: 43451/Waisner

Please find copies of the petition and the journal entry of Case No.91 C 1074, regarding the Quiet Title involving the Powells' property. We can record certified copies of these documents if you deem it necessary. Please review and advise. Please call if you have any questions or are in need of any further assistance.

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

Wayne D. Powell and JoAnne Powell,
husband and wife,

Plaintiffs,

vs.

Case No. 91C 1074
Division No. 1

Pascal Fish, Louis W. Pfeif, Elizabeth
Pfeif, Charles Durr, Erdmann Degel,
John M. Herget, Ernst Arppe, Joseph
Nowak, Adolph Geilfuss, F. J. Guntz,
Mary Guntz, Emile Guntz, H. C. Croll,
Minna E. Guntz, Charles Fish, A. L.
Cohn, S. Cohn, Johan Kellerman, Ludwig
Kellerman, Louis Kellerman, Marie Kellerman,
Mary Kellerman, John C. Suttles, Lillie B.
Suttles, Henry C. Croll, Sarah A. Croll,
J. M. Still, R. M. Still, Oscar G. Richards,
Sophia D. Richards, Francis J. Fox,
Sylvesten E. Croll, Amanda D. Croll,
Agnes P. Heffner, Daniel A. Heffner,
Eulalia Myers, August F. Myers, Lizzie
L. Schneller, John P. Schneller,
Howard H. Croll, Emma Croll, Ellsworth N.
Croll, Annie M. Croll, M. Eleanor Croll,
Heister Croll, Ellsworth H. Croll, The
Eastern Trust Company as Guardian of
Ellsworth H. Croll, A. K. Wyatt,
Hattie B. Wyatt, John Rathberger, John
Rothberger, Anna Rathberger, Anna
Rothberger, James Edwards, Tillie E.
Edwards, Katherine Rothberger, Max Rothberger,
George Rothberger, Anna Vines, John Rothberger,
Joseph Rothberger, Grace Rothberger, Fred
Rothberger, Madge Rothberger, Arthur Bailey,
Mary Bailey, Barbara Eker, Frank Eker,
Simeon J. Rothberger, Elizabeth F. Meyer,
Frank A. Meyer, Mary A. Meyer, Charles
F. Meyer, Fred J. Eker, Christine R.
Eker, Leroy Stephens, Lucille A. Stephens,
Charles E. Eker, Mary Ann Eker, Rose A. Ashren,
James D. Ashren, Jennie V. Eker, Josephine C.
Mika, Herbert L. Mika, Hazel D. Tyler, Joan E.
Shelley, Rosalie A. Fulks, William Herman Tyler
a/k/a William H. Tyler, Charles R. Shelley,
Bobby Ray Fulks a/k/a Bobby R. Fulks, Robert
Bartusch, Theodore Tiedmann, Trustees of

Homestead Association of the City of Eudora, Mary Ann Fish, Francis Fritz, Agnes Fritz, W. W. Nevison, Mary Bartusch, Charles Schuricht, Linna Schuricht, John Hoedl, Theresia Hoedl, Louis Eder, Lena Eder, Hazel Rothberger, City of Eudora, a Municipal Corporation, The Board of County Commissioners of Douglas County, Kansas, and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of such defendants as may be deceased; the unknown spouses of the defendants; the unknown officers, successors, trustees, creditors and assigns of such defendants as are existing, dissolved or dormant corporations; the unknown executors, administrators, devisees, trustees, creditors, successors and assigns of such defendants who are or were partners or in partnerships; and the unknown guardians, conservators and trustees of such of the defendants as are minors or are in anywise under legal disability; and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any person alleged to be deceased.

Defendants.

Proceeding Under K.S.A. Chapter 60.

PETITION

COME NOW the plaintiffs and for their cause of action against the above-named defendants allege and state as follows:

1. That plaintiffs are residents of Douglas County, Kansas, and their post office address is Route 5, Lawrence, Kansas 66046.
2. The Board of County Commissioners of Douglas County, Kansas, can be served by serving a copy of the Summons and the Petition on Patty Jaimes, County Clerk, Douglas County, Kansas,

at the County Courthouse, 11th & Massachusetts Street, Lawrence, Kansas.

3. The City of Eudora, a municipal corporation, can be served by serving a copy of the Summons and the Petition on Joanne Becker, City Clerk, at 4 East 7th Street, Eudora, Kansas 66025.

4. Joan E. Shelley can be served at her residence, Route 5, Lawrence, Kansas, 66046.

5. Rosalie A. Fulks can be served at her residence, 1606 West 2nd Street, Lawrence, Kansas, 66044.

6. Plaintiffs do not know the places of residence or addresses of any of the defendants above-named and designated, other than those previously noted.

7. Plaintiffs do not know whether the individual defendants above-named and designated, or any of them, are living or deceased, and do not know the names or addresses of the heirs, executors, administrators, devisees, trustees, creditors and assigns of such of the defendants as may be deceased.

8. Plaintiffs do not know whether any of the defendants are married, and do not know the names or addresses of the spouses of such of the defendants as may be married, or any of them.

9. Plaintiffs do not know whether any of the defendants are minors or are in any wise under legal disability, and do not

known the names, residences or addresses of the guardians or trustees of such defendants, or any of them.

10. None of the defendants herein have designated any process agent upon whom service of summons can be made within the State of Kansas, under the provisions of the statutes of Kansas, relating thereto.

11. Plaintiffs are the owners and in possession of the following described real estate situated in Douglas County, Kansas, to-wit:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9) and Ten (10), all in Block 236, in the City of Eudora, Douglas County, Kansas; and

A tract of land beginning at the Southeast corner of the Northeast Quarter of the Northeast Quarter of Section Eight (8), Township Thirteen (13) South, Range Twenty-One (21) East of the Sixth P.M.; thence North along the East line of said Northeast Quarter 80.57 feet to a point which is South 89 degrees 44 minutes 16 seconds East of the Southeast corner of Lot 10, in Block 236, in the City of Eudora, for the point of beginning; thence North 89 degrees 44 minutes 16 seconds West 16.44 feet to the Southeast corner of said Lot 10; thence North along the East line of said Block 236, 504.99 feet, more or less, to the Northeast corner of Lot 1, in Block 236; thence South 89 degrees 44 minutes 16 seconds East 14.13 feet, more or less, to the East line of said Northeast Quarter of Section Eight (8); thence South along the East line of the Northeast Quarter of said Section Eight (8) and the West line of the Northwest Quarter of Section 9, 504.99 feet, more or less, to the point of beginning; in the City of Eudora, in Douglas County, Kansas; and

The West half of the Northwest Quarter of the Northwest Quarter of Section Nine (9), Township Thirteen (13) South, Range Twenty-One (21) East of the 6th Principal

Meridian, less the public highway and less the following described tract:

Beginning at the Northwest corner of Section Nine (9), Township Thirteen (13) South, Range Twenty-One (21) East, thence East along the North line of said Section 665 feet, more or less, to the intersection with the North right-of-way line of the proposed highway; thence in a Westerly direction along said right-of-way line to a point on the West line 108 feet South of the Northwest corner of said Section; thence North 108 feet to the place of beginning, containing 1.3 acres, more or less, in Douglas County, Kansas.

12. Plaintiffs and their predecessors in interest, and their grantors, have been in open, adverse, continuous and exclusive possession of the above described real estate for more than fifteen (15) years last past, under claim of title; and during such time, plaintiffs and their predecessors in title have exercised all the rights of ownership thereto and have paid taxes on said property as the owners thereof.

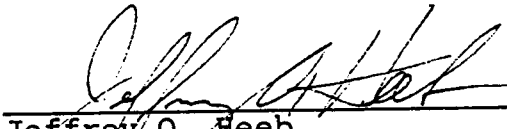
13. The defendants above named and designated, and each of them, claim some title, estate or interest in or lien upon the real estate above described, adverse to the plaintiff, the exact nature of which claim is unknown to the plaintiffs, but none of the said defendants has any title, estate or interest in said real estate, or lien thereof, and the claims of said defendants are a cloud upon the plaintiffs' title, and plaintiffs are entitled to judgment determining such adverse claims and quieting plaintiffs title to the said real estate against the defendants, and barring and excluding the defendants and each of them, from


any estate or interest in, or lien upon or claim against said real estate.

WHEREOF, plaintiffs pray that they be adjudged to be the owners in fee simple of the real estate above described; that the Court determine the adverse claims of each of the defendants to the estate or interest therein, or lien thereon; and that the plaintiffs' title to said real estate be quieted against the defendants; and that said defendants and all persons claiming by, through or under them be forever barred and excluded from any estate or interest in or lien upon, or claim against the said real estate.

PETEFISH, CURRAN, IMMEL & HEEB
P.O. Box 485
Ninth & Louisiana Streets
Lawrence, KS 66044
913-843-0450
Attorneys for Plaintiffs

By


Jeffrey O. Heeb
Supreme Court #08461

FILED
DOUGLAS COUNTY
DISTRICT COURT
DEC 19 9 37 AM '91
SHERRILL A. SAMPSON
CLERK
BY: 

Publication, Publication Notice and Proof of such Notice are now and hereby approved.

The Court further finds that Shelley Kurt Bock, appointed as attorney herein, has filed a general denial on behalf of the defendants, if any, who are in the military service of the United States as defined in the Soldiers and Sailors Civil Relief Act of 1940, as amended, and also on behalf of all minors, if any.

The Court further finds that the defendant, City of Eudora, Kansas, has heretofore filed its Answer and Counterclaim and, more recently, has filed a Disclaimer of any ownership in the land described in plaintiffs' Petition except for easements or dedications for public access.

The Court further finds that defendant, Douglas County, Kansas, has filed its Answer and, further, that the real estate described in plaintiffs' Petition is subject to lien rights in favor of said defendant related to 1992 real estate taxes on said property.

The Court further finds that the plaintiffs are the owners of and are in possession of the following described real estate situated in Douglas County, Kansas, to-wit

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9) and Ten (10), all in Block 236, in the City of Eudora, Douglas County, Kansas; and

A tract of land beginning at the Southeast corner of the Northeast Quarter of the Northeast Quarter of Section

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

Wayne D. Powell and JoAnne Powell,
husband and wife,

Plaintiffs,

vs.

Case No. 91 C 1074
Division No. I

Pascal Fish, et al.,

Defendants.

Proceeding Under K.S.A. Chapter 60.

JOURNAL ENTRY

NOW on this 28th day of April, 1993, the above-entitled matter comes on for hearing. The plaintiffs appear by their attorney, Jeffrey O. Heeb of Petefish, Curran, Immel & Heeb; Shelley Kurt Bock, heretofore appointed by the Court to represent such of the defendants as are in the military services of the United States as defined by the Soldiers and Sailors Civil Relief Act of 1940, as amended, and also appointed by the Court to represent any of the defendants who are minors also appears; defendant, City of Eudora, Kansas, appears by its attorney, Jack A. Murphy; defendant, Douglas County, Kansas, appears by its attorney, Nancy D. Walker; there are no other appearances.

THEREUPON, the Court, after examining the files and being duly advised in the premises, finds that due and legal publication notice of summons has been made on all of the defendants in the above-entitled action; and that the Affidavit for Service by

Eight (8), Township Thirteen (13) South, Range Twenty-One (21) East of the Sixth P.M.; thence North along the East line of said Northeast Quarter 80.57 feet to a point which is South 89 degrees 44 minutes 16 seconds East of the Southeast corner of Lot 10, in Block 236, in the City of Eudora, for the point of beginning; thence North 89 degrees 44 minutes 16 seconds West 16.44 feet to the Southeast corner of said Lot 10; thence North along the East line of said Block 236, 504.99 feet, more or less, to the Northeast corner of Lot 1, in Block 236; thence South 89 degrees 44 minutes 16 seconds East 14.13 feet, more or less, to the East line of said Northeast Quarter of Section Eight (8); thence South along the East line of the Northeast Quarter of said Section Eight (8) and the West line of the Northwest Quarter of Section 9, 504.99 feet, more or less, to the point of beginning; in the City of Eudora, in Douglas County, Kansas; and

The West half of the Northwest Quarter of the Northwest Quarter of Section Nine (9), Township Thirteen (13) South, Range Twenty-One (21) East of the 6th Principal Meridian, less the public highway and less the following described tract:

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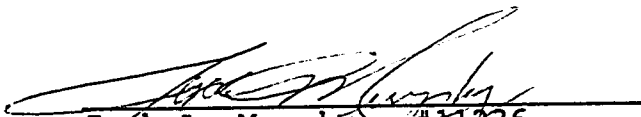
IT IS, THEREFORE, BY THE COURT ORDERED, ADJUDGED AND DECREED that plaintiffs' title in and to the real estate hereinbefore described be, and the same is hereby quieted against pretended interest, right, title, lien, claim or estate of the defendants, or any of them, in and to said described real estate, except: (1) Douglas County, Kansas, with respect to lien rights which it may have arising out of the non-payment of 1992 real estate taxes



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