

34714

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

2007 OCT 27 AM 9:52

THOMAS FIRRIOLO,
Plaintiff,

v.

Civil Action No. 01-C-8
Thomas W. Steptoe, Jr., Judge

EVAN LEFEVER and
BETH L. LEFEVER,
Defendants.

and

ANNE CHIAPELLA and
JOHN FRYE,
Intervenors.

**MEMORANDUM OF FINAL ORDER REFORMING SETTLEMENT AGREEMENT
BETWEEN PLAINTIFF AND DEFENDANTS**

This matter came on for hearing on this 23rd day of October, upon the continuation of this matter from the previous day, and upon the re-appearance of the parties and upon the resumption of the taking of evidence on the Motion of Thomas Firriolo to have the settlement agreement between Plaintiff and Defendant set aside and/or modified;

And upon the conclusion of all evidence, the Court did hear the arguments of counsel.

WHEREUPON, the Court did retire to deliberate and grant the parties a recess for said purpose. And at the conclusion of the recess the Court did return to the Courtroom and render its decision. In support of said decision, the Court did enter findings of fact and conclusions of law into the record, and said findings are incorporated herein, as more fully set forth in the transcript thereof, which is hereto attached and made a part hereof.

For the reasons set forth upon the record, it is hereby **ADJUDGED and ORDERED** as follows:

1. The lawsuit was predicated on a mutual mistake of fact in that both parties acted under the belief that an express right of way over the 14.33 acre tract existed as to the 4.22 Acre Parcel of real estate.

2. Mr. LeFever was not the title owner of the 4.22 acre tract at the time Mr. Firriolo and Mr. LeFever were discussing the right of way through Mr. Firriolo's barn, although he believed that he was at the time and therefore, the Court finds that fraud was not committed on Mr. LeFever's part in that regard.

3. The contract between Mr. Firriolo and Mr. LeFever's should be reformed in order to properly exercise the equitable authority of the Court in this matter.

4. Based on the evidence presented at this juncture, the Court finds that no fraud or inequitable conduct occurred between the Plaintiff and Defendants Evan and Beth LeFever as far as the original transaction is concerned.

5. Legal title to the 4.22 acre tract is vested in Thomas Firriolo who shall, convey the parcel to John Frye upon the tender from Dr. Frye of the sum of \$26,000, in cash or its equivalent within thirty (30) days of this date. Should Dr. Frye purchase the 4.22 acre tract from Mr. Firriolo, the first \$9,500 of the purchase price shall go to Mr. Firriolo and the balance to the LeFever's.

6. The Rule 70 motion is rendered moot by the decisions of this Court.

7. The objections of the parties are noted and preserved.

The Clerk shall enter the foregoing as and for the day and date first hereinabove written and shall forward an attested copy of this Order to:

CC: 11-22-07

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Beth & Thomas LeFever*

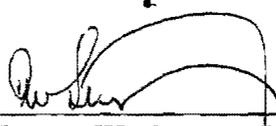
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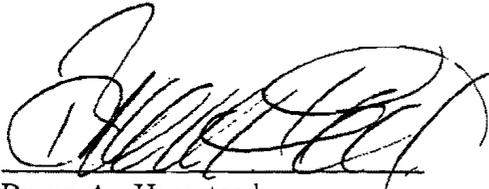
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11/26/07

Thomas W. Steptoe, Jr., Judge, Circuit Court of
Jefferson County, West Virginia

Submitted by:



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A TRUE COPY, ATTEST:



Clerk of the Circuit Court
of Morgan County, West Virginia

