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IN THE COURT OF APPEALS
STATE OF GEORGIA

William Terrell Cochran, Charlene)
C. Cochran, et al.,)
Appellants)
Charles M. Paine, Jr., and)
Lynne J. Paine, et al.,)
Appellants)
v.)
Gregory Lance Nations,)
Appellee)

Docket/Case Number:

~~A09A1325~~

FILED IN OFFICE

Docket/Case Number:

MAR 24 2009

CLERK, COURT OF
APPEALS OF GEORGIA

~~A09A1324~~

REPLY BRIEF OF COCHRAN APPELLANTS

For
miscellaneous
file ~~123~~ microfilm

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**IN THE COURT OF APPEALS
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William Terrell Cochran, Charlene)	Docket/Case Number:
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Appellants)	A09A1324
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v.)	
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Gregory Lance Nations,)	
Appellee)	

REPLY BRIEF OF COCHRAN APPELLANTS

COME NOW the Appellants William Terrell Cochran and Charlene C. Cochran [herein after called jointly and severally as the context may require the “Cochran Appellants”] by and through their attorney of record, Ira K. McKee, d/b/a The McKee Firm, and do hereby reply to the Brief of Appellee Gregory Lance Nations as follows:

1. Ownership and Title to the Easterly 30 feet of the Alleged Nations Easement and in Approximately 31 feet of the Southerly end of the Entire 60 foot Easement claimed by Nations vested and still vests in fee simple in the Cochrans and Paines

Repeatedly the Appellee Nations and the Cobb County Trial Court Judge have asserted “ownership” by Nations of a 60 foot easement, the

easterly portion of which it is contended burdens a 30 foot strip of Paulding County land owned in fee simple by the Cochrans and Paines. The plats of survey introduced at trial and at least one of the Hearings and the legal descriptions in the Cochrans' and Paines' vesting deeds clearly show ownership and title in fee simple as vesting in the Appelleants, not in Nations. Further, the documents in evidence clearly show that at the southerly portion of the alleged Nations' easement, that the Cochrans and the Paines jointly own fee simple title to approximately 31 feet by 60 feet of the underlying 60 foot easement claimed by Nations [see Exhibit A vesting Deed and Exhibit B Plat of survey showing the easement area described above, both attached and incorporated]. Assuming that the jury had been allowed weigh the evidence to determine the validity of the Nations' claim of easement *vis a vis* the Cochrans/Paines claims of abandonment, laches, etc., the only evidence introduced by Nations at trial was that he had an easement for ingress and egress **only**. Nations produced no evidence of any easements for utilities, drainage, parking, fishing, hunting, or other. At most, should it be determined by a jury during a re-trial of this case in Paulding County that Nations had not abandoned any easement granted out of the chain of title, Nations would **only** be permitted to pass to and fro over the real property owned in fee simple by the Cochrans and Paines. Nations

cannot interfere with the ownership rights of the Cochrans and Paines.

Clearly, the Cochrans and Paines were within their rights as owners of fee simple title to grade and to gravel their property in order to obtain access to the balance of their real property.

Clearly the Trial Court Judge misapplied the law or did not grasp the fact that fee simple ownership vested in the Cochrans and the Paines, not Nations. Such ownership would entitle the owners to grade, gravel, and drain their own 30 foot strip of land, as well as their 60 foot strip of land near the southerly terminal of the claimed Nations Easement.[see the comments of the Judge at line 15,*et seq.*, page 5 of 23 of the Brief of Appellee Gregory Lance Nations] These improvements by the Cochrans made otherwise impassable land, passable for the intended purposes of the owners, as well as the easement holder. Before such grading, the area was not passable.

Further, what has been said about the rights of the owners to grade and make passable their property is true about the location of power poles. Nations has no utility easement across the claimed 60 foot easement area. The Cochrans and Paines own the easterly 30 feet of and the entire southerly 31 feet by 60 foot fee simple title near the southerly terminal of the claimed Nations Easement.

2. Timeliness of Objection to the Jury Verdict and Appeal

As previously argued in the Cochran Appellants' Brief, the case was not final until the entry of the Permanent Injunction, which occurred in July 22, 2008. Since the Paines could possibly assert a claim against the Cochrans for the money paid on the joint and several monetary judgment, the Cochrans are within their right to raise the issues regarding the Jury verdict. This is also correct, since the Trial Court Judge [a] granted a directed verdict to Nations [*op. cit.*] and did not allow the Jury to weigh the evidence regarding the Cochran and Paine Defendants' [and Plaintiffs in Counterclaim] defenses of laches, abandonment, etc. and [b] the highly prejudicial remarks [*e.g.*, calling the Cochrans "the neighbors from Hell"] of the Trial Court Judge in the presence of the Jury (see Cochran Appellants' Brief previously submitted, page 9 item B). *A priori*, the Jury was influenced in its monetary award by the actions and remarks of the Cobb County Trial Court Judge. While the Appellee would like to rely upon the language of *R. O. A. Motors v. Taylor*, 220 Ga. 122, 127, etc., the fact that the Appellee failed to diligently pursue the conclusion of this case [*viz.*, the Permanent Injunction] in a timely manner rests solely with the Plaintiff Nations, not the Cochran or Paine Defendants. The election to satisfy voluntarily and early the monetary portion of the jury verdict was at the

election of the Paines. Action or inaction by another Party should not work to deny the Cochrans of their due process and equal protection or legal and equitable remedies.

Justice dictates that the Judgment and Orders of the Trial Court be reversed and the case remanded to Cobb County together with instructions that this case be transferred to the Superior Court of Paulding County, wherein the land is located, and the matter be re-tried before a Paulding County jury.

Respectfully submitted this 24TH day of March, 2009.

The McKee Firm

By: 

Ira K. McKee
Georgia State Bar # 494225
Attorney for the Appellants
William Terrell Cochran and
Charlene C. Cochran

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Marietta, GA 30060
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Fax: 1-800-323-1810

Attached: Certificates of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served all counsel of record and/or the opposing Party in the foregoing matter with a copy of the foregoing Reply Brief of Cochran Appellants by placing a copy of same, properly addressed, in the United States mail with adequate postage affixed thereto, to:

Russell D. King
Attorney for the Plaintiff Gregory Lance Nations
840 Roswell Street
Marietta, GA 30060

Michael S. Rosenthal, Esq.
Attorney for Lynne J. Paine and Charles M. Paine, Jr., Defendants
Wagner, Johnston & Rosenthal
5855 Sandy Springs Circle – Suite 300
Atlanta, GA 30328-4042

Done this 24TH day of March, 2009.

The McKee Firm

By: 

Ira K. McKee
Georgia State Bar # 494225
Attorney for the Appellants
William Terrell Cochran and
Charlene C. Cochran

140 Vann Street - Suite 420
Marietta, GA 30060
Tel.: 770-218-0104
Fax: 1-800-323-1810

RETURN RECORDED DEED TO:
STEPHEN L. JENKINS & ASSOCIATES, P.C.
3115 Roswell Road, Suite 101
Marietta, GA 30062

PAULDING COUNTY, GEORGIA
PAULDING COUNTY COURTS
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SYLVIA G. STRICKLAND,
CLERK

WARRANTY DEED

STATE OF GEORGIA

COUNTY OF COBB

This Indenture made this 26th day of April, in the year One Thousand Nine Hundred Ninety-Six, between JAMES BROWN DAVIS, JR., of the County of PAULDING, State of Georgia, as party or parties of the first part, hereinafter called Grantor, and WILLIAM TERRELL COCHRAN, CHARLENE C. COCHRAN, CHARLES M. PAINE, JR. and LYNNE J. PAINE, as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

This Deed is given subject to all zoning ordinances, easements and restrictions of record, if any.

PAULDING COUNTY, GA.
REAL ESTATE TRANSFER TAX
PAID \$ 4.50
DATE 5-17-96
Sylvia G. Strickland
CLERK SUPERIOR COURT

RECORDED 5-23 1996
SYLVIA G. STRICKLAND, CLERK
SUPERIOR COURT, PAULDING CO.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this day and year first above written.

Signed, sealed and delivered in the presence of:

S. BROWN

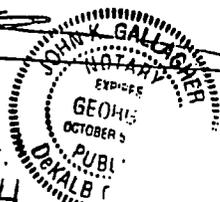
Joseph S. Brown
Witness

James Brown Davis Jr (Seal)
JAMES BROWN DAVIS, JR.

K. GALLAGHER,

[Signature]
Notary-Public

Exhibit A -
Cochran Reply Brief
(Seal)



PLAINTIFF'S EXHIBIT 4
PAGE 1 OF 2 PAGES BOOK 516 PAGE 065
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PLAINTIFF'S EXHIBIT
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See Discharge of Lien BK 1033 pg. 395
BOOK 1 PAGES 498-499
COURT INSTRUMENTS UNIT

GEORGIA PAULDING COUNTY
This is to certify that the within Warranty Deed is a true and correct copy as recorded in the office of the Clerk of Superior Court.
Book 516 Page 65
This 14th day of May 1996
Donald Huff
Clerk of Superior Court

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 858 and 893 of the 19th District, 3rd Section, Paulding County, Georgia, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at a point which is located at the northwest corner of Land Lot 858; running thence South 87 degrees 24 minutes 55 seconds East along the north line of said Land Lot 858, a distance of 388.08 feet to a point which is located on the south right-of-way of Zion Church Road (having a 40' right-of-way); running thence South 78 degrees 13 minutes 06 seconds East along said south right-of-way a distance of 37.70 feet to a point; running thence South 83 degrees 25 minutes 36 seconds East along the south right-of-way of said Zion Church Road a distance of 86.86 feet to a point; running thence South 87 degrees 16 minutes 32 seconds East along said south right-of-way a distance of 213.32 feet to a point; thence continuing South 87 degrees 16 minutes 32 seconds East along said south right-of-way a distance of 30.0 feet to a point which is the POINT OF BEGINNING; running thence South 87 degrees 16 minutes 32 seconds east along the south right-of-way of Zion Church Road a distance of 30.0 feet to a point; running thence South 02 degrees 59 minutes 15 seconds West a distance of 1,276.96 feet to a point; running thence South 73 degrees 20 minutes 16 seconds West a distance of 63.71 feet to a point; running thence South 02 degrees 59 minutes 15 seconds West a distance of 1,176.27 feet to a point; running thence North 86 degrees 38 minutes 39 seconds West a distance of 710.49 feet to a point; running thence North 03 degrees 20 minutes 16 seconds East a distance of 1,085.19 feet to a point; running thence South 86 degrees 39 minutes 44 seconds East a distance of 366.00 feet to a point; running thence North 73 degrees 20 minutes 16 seconds East a distance of 390.59 feet to a point; running thence North 02 degrees 59 minutes 15 seconds East a distance of 1,255.68 feet to a point which is located on the south right-of-way of Zion Church Road, which is the POINT OF BEGINNING. Said tract contains 19.00 acres and being described in accordance with a plat of survey prepared for Calvin Waddell by Robert J. Breedlove, G.R.L.S. #2228, dated February 21, 1986, revised March 20, 1987, as further revised September 2, 1987; said plat being incorporated herein and made a part hereof by reference thereto. Said tract also being the same tract as conveyed in that Corrective Warranty Deed dated March 31, 1989, from Calvin L. Waddell to James Brown Davis, III and Anita L. Davis, as Joint Tenants with Right of Survivorship, recorded April 14, 1989.

TOGETHER WITH AND SUBJECT TO: The Easements for Ingress and egress as described in Deed Book 163, Page 322 and in Deed Book 163, Page 334, aforesaid records.

BOOK 516 PAGE 066

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PLAINTIFF'S EXHIBIT 4
PAGE 2 OF 2 PAGES
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SURVEY FOR

WILLIAM T. COCHRAN & CHARLENE C. COCHRAN

PROPERTY IN LAND LOTS 858 & 893
19th DISTRICT, 3rd SECTION
PAULDING COUNTY, GEORGIA

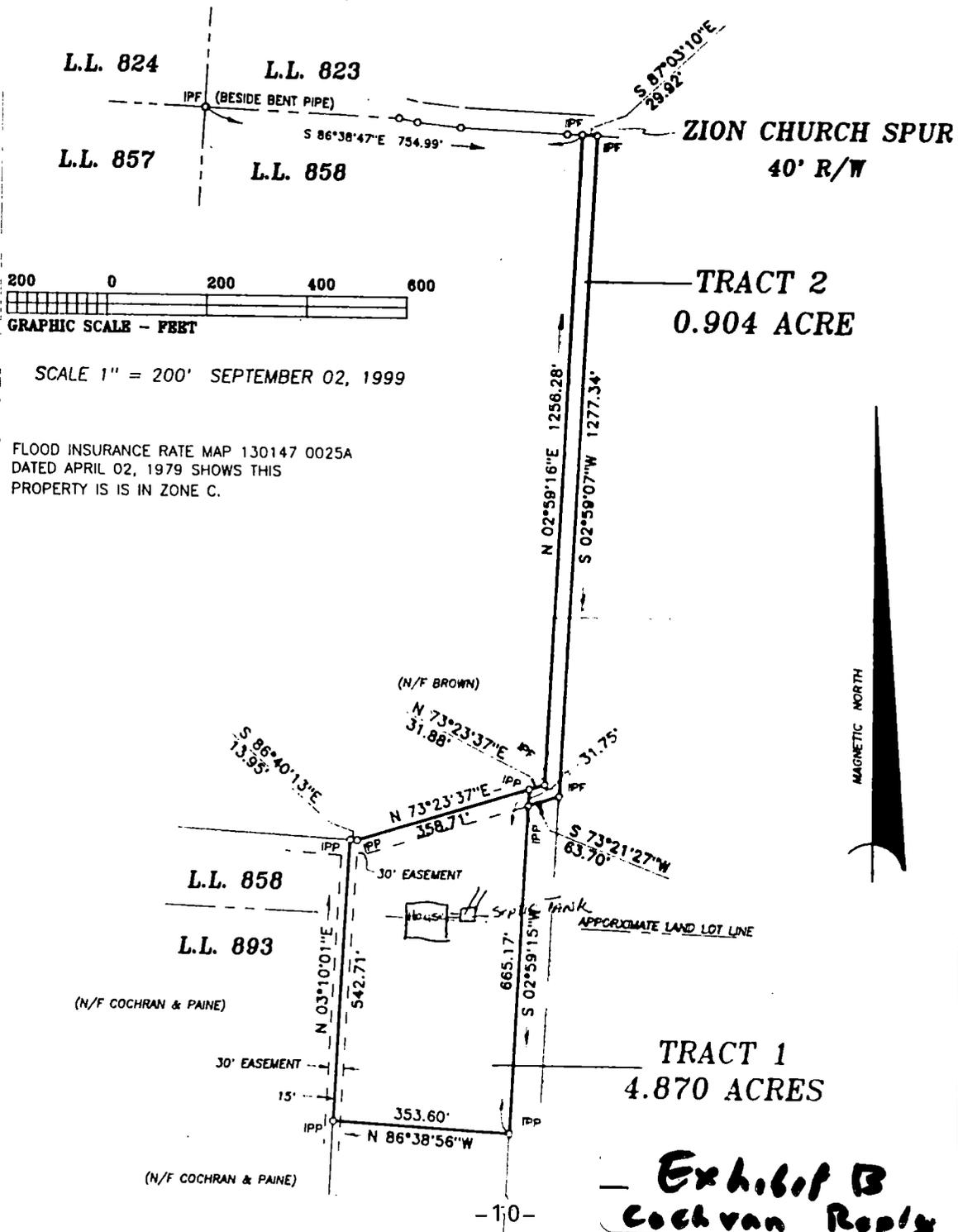
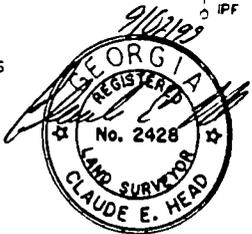


Exhibit B
Cochran Reply Brief

- NOTES
1. IPP INDICATES IRON PIN PLACED (1/2" RE-BAR)
 2. IPF INDICATES IRON PIN FOUND. (1/2" RE-BAR UNLESS OTHERWISE SHOWN.)
 3. TRAVERSE PRECISION: 1" IN 25,000' (UNADJUSTED)
 4. ANGULAR ERROR: 05"/SET-UP
 5. EQUIPMENT USED: TOPCON GTS-303
 6. TRAVERSE ADJUSTMENT: LEAST SQUARES
 7. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND HAS BEEN FOUND TO BE ACCURATE WITHIN 1' IN



HEAD, HATCH, & ASSOCIATES
LAND SURVEYORS
P.O. BOX 501
ROCKMART, GEORGIA 30153
770-684-0724
FILE: 1020-1

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WILLIAM T. R.
CLERK OF THE DISTRICT COURT