

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

MICHAEL R. PATIERNO and
DEBBIE C. PATIERNO, husband and
wife,

Plaintiffs/Appellants,

v.

KHALID and MASOODAH AHMED,
husband and wife,

Defendants/Respondents.

:
:
: Docket No. A-002163-23-T2
:
: CIVIL ACTION
:
: On Appeal From:
: Final Order After Trial
: Morris County, Chancery Division
: Docket No. MRS-C-117-21
:
: Sat Below:
: Hon. Stephan C. Hansbury, J.S.C.
:
: Date Submitted: September 24, 2024

REPLY LETTER BRIEF OF APPELLANTS

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III. PROCEDURAL HISTORY

The Appellants will rely upon the Procedural History set forth in their initial brief.

IV. STATEMENT OF FACTS

The Appellants will rely upon the Statement of Facts set forth in their initial brief.

V. LEGAL ARGUMENT

- A. The Respondents fail to address the key fact that the property descriptions in the deeds of the parties and neighbors do not change, and thus avoid discussing the consequences of the trial court's Final Order.

The Respondents ignore the key factual finding of the Boundary Commissioners' Report ("Report," Pa105) wherein they determined the recorded legal descriptions in the deeds of the parties and their neighbors to be accurate. See Report Pa108, 11.37-39. As the Respondents fail to address the significance of this fact, it is necessary to recount precisely what the Boundary Commissioners determined. The Surveying Commissioner, Richard F. Smith, Jr., P.S., found that the property descriptions of the Appellants (the "Patiernos") and the Respondents "line up and fit together perfectly" with their legal descriptions and the descriptions of the two other neighboring lots simultaneously created by a 1956 Subdivision (Lots 9 & 12). Report, Pa107, 1.30-Pa108, 1.39. The legal descriptions in these four deeds are "without conflicts between any angles or distances." Id. at Pa108, 1.38. Instead of dealing with the significance of this fact, the Respondents go on at length about the extent of the Boundary Commissioners' effort and the accuracy of the resulting survey. No one raised those issues before the trial court. The issues before the trial court were whether the Report should be set aside when

it affected parties not before the court, and could only be based upon circumstantial evidence.

The determination of the Boundary Commissioners that the deeds of the parties and their immediate neighbors contained accurate property descriptions has profound implications for the overall effect of the Report. The adjustment favored by the Boundary Commissioners based upon the 2005 survey (the “Worley Survey,” Pa144) of Lot 10, the Respondents’ property, necessarily requires an equal adjustment of the boundary line of the neighboring properties, both that of the Patiernos (Lot 11), their non-party neighbor to the south (Lot 12) and Lot 9 (north of Respondents) in order to agree with the property descriptions in their deeds. The Report clearly demonstrates the shift in property lines that it requires both in its text and as depicted by Exhibit I to the Report (Pa136). The descriptions in the deeds of all affected properties does not change. The square footage of the four lots remains the same. Their dimensions do not change. What changes is the location of the lots on the ground. See Report Pa108, ll.38-39.

As they all fit together, a change in the location of one line causes a change in all. The Respondents try to obscure this fact by personalizing their position: “Given the consequences of the Commissioners’ Report, i.e. the Patiernos loss of lands to the Ahmeds [Db2].” The Respondents need to read the Report. They will

see that the line of their property on the north side, and all four of the subdivision lots shift to the south.

In addition to affecting parties not properly before the trial court, this conclusion by the Boundary Commissioners has legal ramifications as their conclusion had to be based upon solely circumstantial evidence, as they readily admit. See Report Pa112, ll. 25-6; and 2T6, ll. 1-7.¹ No case law from any jurisdiction addresses a discrepancy of this type wherein the deeds and property descriptions have been found to be accurate and the property boundaries have long standing recognition by all owners dating back over 60 years (e. g., placement of houses and other structures in accord with municipal set back requirements, fences, retaining wall, shrubbery). The dispute before the trial court was a minor adjustment to the boundary line between Lots 10 and 11, a matter of a few feet or inches. The solution according to the Boundary Commissioners is to change the boundaries of six lots, two of which are not part of the original subdivision of Lots 9-12. See Court Order Pa95 and Report, Exhibit I, Pa136.

As the Respondents choose to ignore the actual conclusion of the Boundary

¹ Instead of addressing this fact, the Respondents engage in unsubstantiated hyperbole extolling “the overwhelming evidence indicating the precision and accuracy of the Commissioners’ Report [Db11].” Citation to the Report would clarify this issue for the Respondents.

Commissioners and its basis in circumstantial evidence, they fail to confront what the Boundary Commissioners actually did and the result. As the monument marker which was the basis for the 1956 subdivision could not be located, the Boundary Commissioners considered all of the surrounding properties surveyed in the 1960s and 1970s. See Report, Pa108, ll.26-30. Based upon that review of the surrounding properties, the Report concludes that the “Worley Survey for the Ahmed Property is in agreement . . . and that the filed maps [for the surrounding properties] disagrees significantly with the Sweeney Survey” of the Patiernos’ property, Lot 11. Report, Pa111, ll. 32-4. The Sweeney Survey served as the basis for the location of the property lines of the four subdivision lots prior to the trial court’s ruling.

The Report clarifies the significance of its factual finding when it criticizes the relatively recent 2017 survey for Lot 12, the Patiernos’ adjacent neighbor to the south. That survey was performed by Thomas G. Stearns, III., PE & LS (the “Stearns Survey”) which agrees with the Sweeney Survey of the Patierno’s property. See Stearns Survey, Pa145; l.T131, l.10-T132, l.7. See also, Report, Pa109. Noticeably, the Respondents fail to even identify Stearns as a witness who testified at trial (Db6). This betrays the Respondents’ mental block when it comes to the material facts. While the Report does not attach the Stearns Survey, Exhibit

I to the Report (Pa136) clearly shows the proposed boundary shift moving the Patiernos' southern boundary onto Lot 12 and moving its southern line well on to the property identified as Lot 13, contrary to the Stearns Survey. Stearns testified at trial about the shift required by the Report versus his survey. See 1T45, 1.5-T46, 1.21. As the Report is now recorded pursuant to the Final Order, any new accurate survey will cause a boundary line shift in all of the affected properties as demonstrated by Exhibit I to the Report (Pa136).

Adopting the Worley line causes the property line of the Respondents to shift within 5.6 feet of the Patierno's home. The Respondents give up commensurate footage on the north side of their property to Lot 9. The Patiernos pick up significant footage from Lot 12 leaving a very small gap between that line and the house on the property purchased based upon the Stearns Survey. As explained above, the Lot 12 line then shifts to encompass a stone wall hedge which now forms the boundary between Lots 12 and 13. Lot 13 not being part of the original 1956 subdivision. All of these lots form part of a typical residential street. See, e. g., Montville Tax Map, Pa102.

The accuracy of the Report's survey and the work behind has never been at issue. The problem is that its recommendation results in creating a larger problem than the one presented based upon circumstantial evidence. Does the evidence

justify the result? The result goes well beyond the scope of rectifying the single line in dispute “between the owners of adjoining land” as prescribed by N.J.S.A. 2A:28-1. For this reason, the Patiernos appeal from Final Order of the trial court as the Report is *ultra vires*. See Generally, City Council of Orange v. Edwards, 455 *N.J. Super.* 261, 270-71 (App. Div. 2018), cert. denied 237 *N.J.* 205 (2014). The Final Order of the trial court necessarily affects the neighboring properties owned by parties who did not have the opportunity to participate in any pre-trial or trial proceedings under N.J.S.A. 2A:28-1. The Final Order of the trial court creates a problem well beyond the problem for which Boundary Commissioners had statutory authority.

- B. The Respondents fail to explain the trial court’s deviation from the recommendation of the Boundary Commissioners’ Report.

The factual analysis provided above necessarily leads to the core legal issue on appeal as to whether the trial court under N.J.S.A. 2A:28-3 had the authority to consider remedies aside from the recommendation of the Boundary Commissioners’ Report. The Respondents correctly point to the fact that the trial court initially indicated that it planned to enforce the Report of the Boundary Commissioners (Db7). If the trial court had done that, then this appeal would not exist or would be markedly different. The trial court, however, did something

other than enforce the Report as written.

The Boundary Commissioners' Report expressly recommends "that permanent markers be set at the corners of the Subject Properties [the properties of the parties], and a map depicting their boundaries be recorded as consistent with the Worely Survey." Report Pa112., ll.30-32. This recommendation would, *inter alia*, result in recording the boundary shift of Lot 11 and onto Lot 12 described above. The shift from the Patiernos property onto Lot 12 would be manifest by the setting of "permanent markers." The recordation of a map depicting the boundaries of the parties would result in adjustments to the properties of their neighbors. The Respondents fail to address the consequences of this recommendation. Instead, they acknowledge that N.J.S.A. 2A:28-3 "does not provide for any substantive changes to the Commissioners' Report, nor does it provide for a partial adoption of the Report with respect to certain findings and a rejection as to other findings [Db12]." The Respondents make no effort to square this position with the Final Order which does exactly what the Respondents maintain it cannot do.

Moreover, the Respondents entirely fail to explain why the trial court did not follow the recommendation of the Report. The trial court understood that following the recommendation of the Report would immediately give rise to the

problems identified above, and it issued a Final Order providing for the recordation of the Report without following its recommendation. Although the trial court initially maintained that it had only the limited authority to accept or reject the Report, it decided to do something different than what the Report recommended in order to avoid the obvious impact of its findings. The Respondents do not touch this issue for fear of their logic being contaminated by it.

The Patiernos maintain that the trial court had authority under N.J.S.A. 2A:28-3 to consider a solution to the boundary dispute between the parties without being limited to accepting or rejecting the Boundary Commissioners' Report. The statute provides that "the issue shall be tried and determined as in other cases of a civil nature at law." The statute does not provide for any limitation on what remedies a court may consider if it decides to set aside a report from boundary commissioners.

Accordingly, the trial court should have considered the compromise line (the "Ludwig Line") proposed by the Patiernos. See Ludwig Line, Pa148. The fact that Eric M. Ludwig, PLS testified at trial demonstrates the belief of the Patiernos at the time that the trial court could consider the compromise Ludwig Line. No reason prevents such consideration in the context of the de novo review or the

fresh look indicated by N.J.S.A. 2A:28-3. The equities of a situation such as this “must be assessed in view of its particular facts and the magnitude of the threat to the Plaintiffs’ title and use of property.” Suser v. Wachovia Mortgage, FSB, 433 N.J. Super. 317, 326 fn. 4 (App. Div. 2013). Alternatives to the Report of the Boundary Commissioners could not be created until the Report was produced. A trial pursuant to N.J.S.A. 2A:28-3 provides the only opportunity for the consideration of alternative remedies. The failure of the trial court to consider the Ludwig Line due to a restrictive view of its authority under N.J.S.A. 2A:28-3 is an error that needs to be rectified.

- C. Post trial notice to neighbors and the remedy of more litigation does not provide an appropriate solution under N.J.S.A. 2A:28-1.

In addition to the problem now presented for the owners of the properties affected by the Report of the Boundary Commissioners, the procedure followed by the trial court should be reviewed. The Patiernos went to trial in the belief that the Report of the Boundary Commissioners had to be set aside as it affected parties not before the trial court, and that alternative remedies could be considered. In addition to presenting evidence for an alternative remedy, the Patiernos had Mr. Stearns testify in order to underscore the ultimate impact of the Report.

Although the trial court understood the consequences of adopting the

Report, it determined not to set aside the Report. See 2T3, ll.19-23; 2T5, l.13-2T6, l.2 & 2T10, ll.4-15. It introduced a procedural fudge in an attempt to retroactively justify the consequences of the Report. After trial, the court directed notice to be given to affected property owners (Pa95). The Respondents consider this novel approach to be satisfactory. No justification for it exists. The trial had taken place. Notice after trial did not adequately inform the affected neighbors of the consequences of the Boundary Commissioners' Report. When at the hearing subsequent to the trial the trial court made it clear that it was going to enforce the Worley Line but not follow the Report's recommendation, the Patiernos sought time to join the other owners which the trial court denied. See lT 179-80, & 2T 9-18. Whether such post-trial joinder would have been an appropriate remedy remains to be seen, but the failure to join the neighboring property owners in the litigation clearly leaves them affected by the recordation of the Report without having had due process. However well intentioned, the trial court's *post hoc* effort to make the Report and the affected neighbors fit together failed. The failure to follow the recommendation of the Report compounded that failure and created the untenable current situation wherein the boundary lines of all affected properties are unsettled.

This circumstance leaves the only current remedy to be further litigation

among the neighbors. The trial court and the Respondents appear to invite the aspect of further litigation as a solution to the problem created by their partial embrace of the Report coupled with the rejection of its recommendation. See Db22.² See also 2T14, ll.17-2T19, ll.7. The Patiernos consider further litigation to be the unacceptable result of failing to either set aside the Boundary Commissioners' Report or entering an order in accord with its recommendation.

VI. CONCLUSION

For the reasons stated above, the position of the trial court that it could only accept or reject the Report of the Boundary Commissioners without considering alternatives should be rejected. Once a party applies to set aside a report from boundary commissioners under N.J.S.A. 2A:28-3, a trial court has all of the authority it would normally have to adjudicate a dispute. The Report of the Boundary Commissioners should have been set aside due to the fact that it involves property rights of parties not before the trial court. The Final Order of the trial court is inconsistent with the position of the trial court on the scope of its authority. It fudged a remedy to avoid the consequences of the Report by kicking the can down the road to further litigation. See 2T15, ll.14-20 & 2T18, ll.20-22.

² The Respondents inexplicably veer off into a brief discussion of the requirements for a quiet title action which has no apparent relevance to the facts presented.

This case should be remanded for further proceedings to either resolve limited dispute between the parties or join other affected parties who could fully participate in a renewed process from the outset.

These positions are taken without prejudice to the Patiernos' position at trial that the trial court had the authority to adopt the Ludwig Line which would not affect any other lots. The Patiernos continue to maintain that the only final solution to this case is to either adopt the Ludwig Line, or to reject the Report of the Boundary Commissioners on the basis that its *ultra vires* nature affects parties not properly before the trial court.

RUBIN, EHRLICH, BUCKLEY &
PRZEKOP, P.C.

By: 

Dated: September 24, 2024

Robert L. Grundlock, Jr.

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Sat Below:
Hon. Stephan C. Hansbury, J.S.C.

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TRANSCRIPT KEY

1 T - November 13, 2023 Trial

2T - January 29, 2024 Post-Trial Hearing

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PRELIMINARY STATEMENT

This case concerns the resolution of a boundary dispute between adjoining landowners pursuant to the Application for and Appointment of Commissioners codified by N.J.S.A. 2A:28-1, et. seq. Plaintiffs filed a Complaint to appoint Boundary Commissioners pursuant to N.J.S.A. 2A:28-1, seeking to appoint three disinterested commissioners to fairly and impartially ascertain the true location of the boundary line separating the adjacent parcels identified as 50 Taylortown Road, Montville (Lot 11) and 52 Taylortown Road, Montville (Lot 10). (Pa55) (See Mountville Tax Map, Pa102).

The Boundary Commissioners' tremendous undertaking of nine months of physical field work, investigation of historical records and surveys, and preparation of mathematical surveying calculations, culminated in the Boundary Commissioners' Report and supporting documentation and exhibits. (Pa105). The Report sought to reconcile the survey obtained by the Patiernos for their purchase of Lot 10 in 1994 (the Donald P. Sweeny & Associates Survey referred to as the "Sweeney Survey") with the survey obtained by the Ahmeds in connection with their purchase of Lot 10 in 2005 (the G.L. Worley & Associates, LLC Survey referred to as the "Worley Survey"). (Pa105). The Commissioners compared these surveys with the historical deeds, surveys, and subdivision plats for the neighborhoods and concluded a 4.5-foot discrepancy existed between the Worley Survey and the

Sweeney Survey and that this discrepancy formed the Disputed Boundary Line. (Pa105).

Based upon the Boundary Commission's extensive nine-month investigation, the Commissioners affirmed "the Commission has concluded, to a reasonable degree of professional certainty, for the reasons set forth at length in this report, that the Worley Survey (Exhibit D) [Ahmed survey] properly identifies the true location of the Boundary Line Dispute, and the Sweeney Survey (Exhibit B) [Patierno survey] does not." (Pa105).

Given the consequences of the Commissioners' Report, i.e. the Patiernos loss of land to the Ahmeds, the Patiernos sought to set aside the Commissioners Report. The Trial Court held an initial Trial, in which both parties had the opportunity to fully present their case-in-chief through exhibits, evidence, and witness testimony. The Honorable Judge Hansbury delivered an extensive opinion on the record and thereafter ordered the Plaintiffs to serve the neighboring lots with notice of the litigation and Boundary Commissioners' Report. After notice was duly served upon the neighboring lots, the Trial Court reconvened the parties and entertained the submission of the non-parties to determine whether there were any objections to the entry of the Commissioners' Report. Upon the determination that the neighboring parties did not object to the entry of the Report as to the Patiernos and Ahmeds, Judge Hansbury ordered the entry and recordation of the Report.

In support of their Appeal, the Patiernos alleges that the Trial Court erred by (i) enforcing the Boundary Commissioners' Report which affected parties not before the Court; (ii) failing to order the affected parties to be joined as parties to the litigation; (iii) deciding to enforce the Report which significantly impacts the property rights of both parties and non-parties; and (iv) failing to consider an alternative presented by the Plaintiffs/Appellants.

Defendants-Respondents argue this Court must affirm the decision of the Trial Court to deem the Boundary Commissioners' Report final and conclusive as to the Patiernos and Ahmeds for the following reasons: (i) the Trial Court was constrained by the provisions of N.J.S.A. 2A:28 in resolving the subject boundary dispute; (ii) the Boundary Commissioners' Report is valid and enforceable as against the parties; (iii) the settlement boundary line proposed by the Plaintiffs is not a legally enforceable alternative to the Boundary Commissioners' Report; (iv) the Final Order solely impacts the parties to this litigation; (v) and the neighboring lots were provided with adequate notice and opportunity to object to the entry of the Boundary Commissioners' Report.

PROCEDURAL HISTORY

In the interest of judicial economy, the Defendants-Respondents hereby adopt the Procedural History only as outlined by the Plaintiffs-Appellants in their moving papers.

STATEMENT OF FACTS

The Defendants-Respondents supplement the Statement of Facts set forth in the Plaintiffs-Appellants brief with the following:

On October 7, 2021, the Patiernos filed a Complaint to Appoint Boundary Commissioners pursuant N.J.S.A. 2A:28-1, to resolve a dispute regarding the location of the shared boundary line that divides the residential real property located at 52 Taylortown Road, Montville, New Jersey (Tax Lot 10, Block 15.02) and 50 Taylortown Road, Montville, New Jersey (Tax Lot 11, block 15.02). (Pa1). On December 21, 2021, Plaintiffs submitted a Motion for Appointment of Boundary Commissioners pursuant to N.J.S.A. 2A:28-1 for the purposes of resolving the boundary dispute between the Plaintiffs and Defendants. On January 25, 2022, the Honorable Stuart A. Minkowitz, A.J.S.C., granted the Plaintiff's application and appointed three boundary line commissioners to serve in the Action, including a surveyor, Richard F. Smith, Jr ("Smith"), and two attorneys, Stephen McNally, Esq. ("McNally") and Jamie L. Katz Sussner, Esq. ("Sussner") (Smith, McNally, and Sussner are collectively referred to as the "Commissioners"). (Pa55). The Court's Order appointed the Commissioners to "render a report to the best of their judgment ascertaining the true location of the boundary line dispute between the parties in this matter" and provided that the Commissioners "shall have all of the powers granted pursuant to N.J.S.A. 2A:28-2." (Pa55). The Order also compelled each of the

Commissioners to “take and subscribe to an oath that each of them shall act fairly and impartially and to the best of their judgment” in ascertaining the true location of the boundary line between the subject properties. (Pa55). The Order required the Commissioners to file their Boundary Commission Report by March 11, 2022. (Pa55).

On May 4, 2022, the Commissioners filed a letter with the Court indicating the Commissioners were unable to meet the March 11, 2022, deadline due to the “substantial difficulties” presented by the case, including but not limited to the complications in locating and acquiring surveys for the surrounding lots, and the inability in locating the monuments which were required to be set by the original surveys. (Da1). Based upon the issues raised in the Commissioners’ letter, the Court extended the date by which the Commissioners were to issue their Report until June 15, 2022.

Thereafter, on June 13, 2022, and then on July 18, 2022, the Commissioners wrote to the Court requesting another two extensions. The Commissioners annexed a “Preliminary Boundary Line Commission Report on Patierno v. Ahmed, Docket #C-117-21” to the July 18, 2022, adjournment request, detailing the difficulties and complexities presented by the subject boundary dispute. (Da3). An additional adjournment request was submitted on October 28, 2022, requesting the Court set November 1, 2022, as the deadline by which the Commissioners submit their

ultimate report. In accordance with this request, the Commissioners filed their November 1, 2022, Boundary Commissioners Report. (Pa57). The Report includes a culmination of the extensive undertakings of the Commissioners over the course of their nine-month investigation, comprised of eight pages of substantive description and explanation of the inquiry and nine supporting Exhibits.

On November 10, 2022, the Patiernos filed a letter objection to the Boundary Commissioners' Report, indicating they sought to set the Report aside as provided for in N.J.S.A. 2A:28-3. (Pa91). The objection requested the Court schedule a conference setting a trial date and addressing any pretrial issues and also included a brief description of the Patiernos' concerns related to the Report and its conclusions. (Pa91).

In anticipation of trial, Plaintiffs submitted a Pre-Trial Brief on June 22, 2023, and Defendants submitted their Pre-Trial materials on July 24, 2023. The Honorable Stephan C. Hansbury conducted a full trial on November 14, 2022. The following witnesses were called during trial: Mr. Richard Smith, Mr. Keith Ludwig, Mr. Khalid Ahmed, and Mr. Michael Patierno. The following exhibits were presented during the course of the trial: P-1 Montville Tax Map, P-3 Boundary Commissioners' Report, P-4 Patierno Deed, P-5 Sweeney Survey, P-6 Ahmed Deed, P-7 Worley Survey, P-8 Stearns Survey (Lot 12), P-9 Photographs of the disputed boundary line, P-10 Ludwig Line and Accompanying Certification, P-12 Montville

Notice of Violations to Ahmeds. At the conclusion of trial on November 14, 2022, Judge Hansbury raised issues as to indispensable parties who have not been notified of this proceeding specifically the owners of the neighboring Tax Lots, including Lots 9, 12, 13 and 16 as depicted in the Commissioners' Survey dated September 22, 2022. The Court entered an Order requiring Plaintiff's counsel to submit a copy of the subject Order and a copy of the Commissioners' report to the above-stated owners of the subject lots. (Pa95). The Court required "any of the above parties who wish to contest the merits of said report" to file with the Court a notice of objection and basis for same by January 12, 2024. (Pa95). Judge Hansbury indicated that absent objection to the merits of the Boundary Commissioners' Report by the other potentially affected parties in the neighboring lots, the Report of the Commissioners would be enforced. (Pa95).

Plaintiff's counsel duly notified the surrounding Lot owners as directed by the Court's November 14, 2023, Order, providing the Court's Order, the Preliminary Report of the Commission and the supporting exhibits and surveys. Thereafter, two letters were submitted to the Court: on December 18, 2023, Ms. Diana Powell McGovern, Esq. submitted a letter on behalf of Mr. Charles Rosencranz, owner of 48 Taylortown Road, Block 15.2, Lot 12, Montville, New Jersey and on January 9, 2024 Mr. Louis I. Karp, Esq. submitted a letter on behalf of Peter and Grace

Marshall, trustees, owners of 46 Taylortown Road, Block 15.2, Lot 13, Montville, New Jersey. (Da6) (Da10).

On January 29, 2024, the Court reconvened the parties and the answering neighbors. The Court considered the December 18, 2023, and January 9, 2024, Letters submitted by Mr. Ronsencranz and Mr. and Mrs. Marshall, and allowed counsel for the neighbors to present any objections to an entry of the Boundary Commissioners' report on the record. (Da6) (Da10). After determining there were no objections to the entry of a Final Order as between the Patiernos and the Ahmeds, the Court delivered its opinion, and provided the Plaintiffs an opportunity to submit a revised Order to the Court for entry. On February 8, 2024, Judge Hansbury signed a Final Order directing the following:

1. The November 1, 2022, Report prepared by the Boundary Commissioners is final as it relates to the boundary lines between Lots 10 and 11 as set forth on the G.L. Worley & Associates, LLC survey of the Ahmed Property dated 21 September 16, 2005.
2. This Order may be recorded with the Morris County Clerk with a copy of the Report attached to this Order.

(Pa96).

The Order further read, "IT IS FURTHER ORDERED that this shall be FINAL ORDER in this matter, and shall be circulated to all parties, including the neighboring Lot owners." (Pa96). In accordance with the Court's Final Order,

counsel for Plaintiffs and counsel for Defendants duly recorded the Order with the Morris County Clerk, annexing a copy of the Boundary Commissioners' Report.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT WAS CONSTRAINED BY THE PROVISIONS OF N.J.S.A. 2A:28, IN RESOLVING THE SUBJECT BOUNDARY DISPUTE.

N.J.S.A. 2A:28-1 is the sole New Jersey authority concerning the resolution of boundary disputes between owners of adjoining properties, and as such, the Trial Court was constrained by the relevant provisions in its ultimate review of the Boundary Commissioners' Report. N.J.S.A. 2A:28-1 reads: "the Superior Court may, on application of either owner on notice to the other, appoint three disinterested commissioners, one of whom shall be a practical surveyor, who shall fix, ascertain and regulate such lines." N.J.S.A. 2A:28-1. Plaintiffs moved pursuant to this statute, in their filing of the October 7, 2021, Complaint and the subsequent December 21, 2021, Motion to Appoint Boundary Commissioners. (Pa1). The Court's resulting January 25, 2022, Order, appointed the three subject boundary commissioners pursuant to this statute and bestowed the relevant duties, responsibilities, and powers as set forth in the subject statute. (Pa55). As to the issue of notice, the statute specifically provides that only the owners of the two adjoining properties be notified of the application and the Court's consideration of Boundary Commissioners. See

N.J.S.A. 2A:28-1. Both necessary parties, the Patiernos and Ahmeds, were adequately notified, consistent with this procedural requirement.

As to the responsibilities of the Commissioners subject to their appointment,

N.J.S.A. 2A:28-2 provides:

Before entering upon their duties the commissioners shall take and subscribe an oath that they and each of them will fairly and impartially and to the best of their judgment ascertain the true location of the lines in dispute. The commissioners may enter upon any lands for the purpose of ascertaining and deciding the location of the disputed lines, and they shall have power to examine witnesses under oath and to inquire fully into the questions in dispute. The commissioners shall file a report thereof with the court within such time as the court shall prescribe and, unless otherwise ordered by the court, the report shall be final and conclusive against all of the parties and their heirs and assigns.

N.J.S.A. 2A:28-2.

Pursuant to this provision, the Commissioners undertook the assignment, dedicating over nine months of review of surveys, history and subdivisions plats of the neighborhood; physical examination of the subject properties and boundary markers throughout the neighborhood, and inspection and reconciliation of the mathematical evidence used to create the underlying surveys. The nine months of field work, survey review, and investigation culminated in the Boundary Commissioners' Report, a Report which was adjudged to be "final and conclusive against all of the parties and their heirs and assigns" as provided for in statute.

N.J.S.A. 2A:28-2.

Despite the overwhelming evidence indicating the precision and accuracy of the Commissioners' Report, the Patiernos filed an objection pursuant to N.J.S.A. 2A:28-3, requesting the Court conduct a trial upon the issues. (Pa91). N.J.S.A. 2A:28-3 provides:

Either party to the dispute shall be afforded, by the court, a specified period of time within which to apply to set aside the report and, if any party so applies, the court shall hear the matter in a summary manner with a jury, if a jury be demanded, or without a jury, if no jury be demanded, and the issue shall be tried and determined as in other cases of a civil nature at law, in said court.

N.J.S.A. 2A:28-3.

In accordance with the Patiernos' timely objection and request for trial, the Trial Court conducted a trial, on November 14, 2023, allowing both parties to submit their case in chief through the presentation of witnesses, evidence, and testimony. The Court was constrained by the statutory limitations with respect to its ultimate ruling, as the statute specifically allows an objection solely in the realm of "set[ting] aside the report." N.J.S.A. 2A:28-3. By application of N.J.S.A. 2A:28, the appointment of the Commissioners was a final order as to the remedy for resolution of the subject boundary dispute. The statute directs that "the commissioners shall file a report thereof with the court within such time as the court shall prescribe and, unless otherwise ordered by the court, the report shall be *final and conclusive against all of the parties and their heirs and assigns*." N.J.S.A. 2A:28-2. The language of the

statute, specifically the use of the word “shall” and establishing the report as “final and conclusive” establishes the presumption of irrevocability with respect to the Report of the Commissioners. N.J.S.A. 2A:28-2. The statute also provides the sole authority with respect to review of the Commissioners’ Report, as N.J.S.A. 2A:28-3 provides that a party may apply to “set aside the report.” The statute does not provide for any substantive changes to the Commissioners’ Report, nor does it provide for a partial adoption of the Report with respect to certain findings and a rejection as to other findings. Thereby, the Trial Court was constrained with respect to its ultimate rulings upon the Commissioners’ Report, given it had the discretion only to either accept the Commissioners’ Report as final and conclusive as to all parties to the suit, or completely set the report aside.

POINT II

THE TRIAL COURT PROPERLY UPHELD THE BOUNDARY COMMISSIONERS’ REPORT.

The Trial Court properly upheld the Boundary Commissioners’ Report and ultimate conclusions, given the scientific certainty of the Commissioners’ Report and Plaintiff-Appellants failure to establish any substantive issues or material inaccuracies within the Report or accompanying Surveys.

The Boundary Commissioners’ Report was a culmination of nine months of professional surveying, investigation, research, and review performed by three professionals in the field, whom ultimately determined the Worley survey correctly

established the disputed boundary line. The Commissioners undertook an extensive feat, performing research and review of deeds, surveys, history and subdivision plats of the entire neighborhood, and subdivision plats for contiguous neighborhoods dating back to the 1950s and 1960s. The Commissioners also duly examined the Ahmed and Patierno properties and boundary markers throughout the neighborhoods on numerous occasions throughout the investigation. Given the complexities presented by the instant case, the Commissioners requested numerous extensions for the deadline to file their Report, demonstrating their dedication and commitment to the project, as well as their refusal to “rush” the issuance of the Report prior to properly confirming their conclusions.

The Commissioners submitted a preliminary report to the Trial Court dated July 18, 2022, six months in the investigation, informing the Court that their exhaustive review of the evidence “discovered mathematical flaws within the maps and deeds” that needed to be reconciled. (Da3). In particular, the Commissioners informed the Trial Court:

Mr. Smith returned to analysis to make the best fit of the evidence that was found. Deeds for the balance of the 33 lots within Block 15.2 were acquired and analyzed for geometric accuracy and references to historical evidence. Some of the deeds were traced to origins that predated the minor and major subdivisions. Any deeds that could be corrected were. All the deeds were assembled into a matrix that included all of Block 15.2.

. . . .

Once the fieldwork was completed Mr. Smith began his analysis which involved applying the mathematics of the surveying profession to the available data. Unfortunately, with the flaws in the deeds and the unavailability of so many monuments, mathematics became incredibly complicated. Persistence revealed the best fit of the evidence recovered within the corrected Filed Maps. Mr. Smith is confident that he has resolved the location of the filed maps in relation to the Litigants properties. This is one aspect of the analysis.

...

That notwithstanding, Mr. Smith has pieced together a large part of the surveying puzzle involved in this matter and expects that he will be able to issue a report within 45 days.

(Da3).

Thereafter, on November 1, 2022, the Boundary Commissioners issued their Boundary Commissioners Report. (Pa57). The Commissioners concluded that, “For the reasons set forth at length below, the Commissioners have reached the conclusion, to a reasonable degree of scientific certainty, that the Worley Survey (defined and discussed below) accurately delineates the true location of the parties’ boundary line that is the subject of this dispute, in accordance with N.J.S.A. 2A-28-2 and the January 25, 2022, Order.” (Pa57).

After undertaking their field work, reviewing historical records and preparing calculations, the Commissioners stated, “Based on the foregoing, the Commission has concluded, to a reasonable degree of professional certainty, for the reasons set forth at length in this report, that the Worley Survey (Exhibit D) [Ahmed survey]

properly identifies the true location of the Boundary Line Dispute, and the Sweeney Survey (Exhibit B) [Patierno survey] does not.” (Pa57).

The Plaintiffs-Appellants had the opportunity to present substantive issues with the conclusions and findings presented within the Commissioners’ Report during the trial conducted on November 14, 2023. More specifically, the Plaintiff-Appellant had the opportunity to both cross-examine the Boundary Commission Surveyor, Mr. Richard Smith, as well as present evidence and testimony through their own witness and surveyor, Mr. Keith Ludwig. Plaintiff-Appellants were unable to establish any deficiency within the Boundary Commission’s Report, or any specific failure upon the Commission to issue a fair and impartial determination of the boundary line as gleaned from the nine-month investigation. In fact, Mr. Ludwig testified to the validity of the surveying methods performed and described by Mr. Smith and reviewed by Ms. Katz Sussner and Mr. McNally. Plaintiffs-Appellants also had the opportunity to call an expert witness, or professional surveyor as a rebuttal witness to the testimony and surveying methods presented and attested to by Mr. Smith. Plaintiffs-Appellants failed to either adequately raise issues as to any possible surveying or mathematical deficiencies in the Commissioners’ Report or utilize its witnesses/ potential witnesses to dispute Mr. Smith’s professional expertise, credentials, or surveying methods as applied to the Report.

Plaintiff-Appellants failed to present any evidence or testimony to the Trial Court which would undermine the validity or accuracy of the Boundary Commission's Report or ultimate determination that the Worley Survey properly identifies the true location of the Boundary Line Dispute. Thereby, the Trial Court did not have any independent basis on which to deny the Commission's Report as "final and conclusive as to all parties." N.J.S.A. 2A:28-2.

POINT III

THE TRIAL COURT DID NOT ERR IN REJECTING THE SETTLEMENT BOUNDARY LINE PROPOSED BY THE PLAINTIFFS.

The Trial Court considered and properly rejected the compromise boundary line as proposed by Mr. Eric Ludwig, given the survey was neither the product of reliable surveying methods nor was it prepared to ascertain the true boundary line between the subject properties. The Patiernos brought this suit to determine the factually correct boundary line between the subject properties, consistent with N.J.S.A. 2A:28-2's requirement that the Commissioners "ascertain the true location of the lines in dispute." N.J.S.A. 2A:28-2. Plaintiffs-Appellants called Mr. Eric Ludwig as a witness during the November 13, 2023, trial, to elicit testimony concerning a "proposed" boundary line and survey prepared by Mr. Ludwig. See Testimony of Eric M. Ludwig, PLS, 1 T8, 1.22-19, 1.6. Mr. Ludwig had prepared the underlying survey in an attempt to reconcile the inherent issues between the Worley Survey and the Sweeney Survey, by proposing a certain repositioning of the

disputed boundary line. (Pa148). This Ludwig survey sought not to ascertain the “true” boundary line, but to provide a compromise to the parties in lieu of determining the mathematically accurate boundary line. Mr. Ludwig’s survey was presented to the Defendants-Respondents as an alternative to the adoption of the Boundary Commissioners’ Report. Mr. Ludwig’s survey and proposed boundary line is neither the product of mathematical or scientific methods or conclusions, nor is it the product of extensive investigation, research, review and comparison of relevant deeds, surveys, historical markers, and land records. Mr. Ludwig’s survey is simply a settlement proposal masked as a “survey”. Given the Ludwig survey is a proposed settlement, the Defendants had the legal right to reject the proposal, especially in light of the appointment of the Boundary Commissioners and the issuance of the Boundary Commissioners’ Report.

Plaintiffs-Appellants further fail to offer any authority to justify the adoption of a settlement proposal, without the consent of the Defendants-Respondents. There is no legal basis presented by the Plaintiffs-Appellants either in their Appellate Brief or in supplemental case law, which establishes a Court’s ability to require the adoption of a proposed boundary line, affecting real property and title in interest, against the consent of the Defendants. Furthermore, the context of an objection to the Boundary Commissioners’ Report pursuant to N.J.S.A. 2A:28-3 is limited to an application to “set aside the report” to which “the issue shall be tried and determined

as in other cases of a civil nature at law, in said court.” N.J.S.A. 2A:28-3. There is no statutory authority which allows a Court to forcibly impose a settlement line which directly contravenes the findings and surveys as set forth in the Boundary Commissioners’ Report.

Plaintiffs-Appellants further argue the Trial Court failed to consider Mr. Ludwig’s proposed boundary line as a viable alternative to the adoption of the Boundary Commissioners’ Report. This assertion is blatantly false and attempts to mislead this Court to believe that Plaintiffs and Mr. Ludwig were barred from introducing either testimony or evidence concerning the proposed boundary line. Both the Trial Transcript and Appellant’s Appendix demonstrate that Mr. Ludwig’s testimony was presented at trial and his survey and accompanying certification were entered into evidence as P-10. (Pa148). The Trial Court addressed the survey and considered the testimony and introduction of the evidence despite the objection by the undersigned to bar any testimony from Mr. Ludwig and further bar the introduction of his survey. The Court denied the undersigned’s objections and motions, considered Mr. Ludwig’s testimony and survey, and then determined it was an inappropriate “alternative” given the context of the subject trial was to determine the validity of the Boundary Commissioners’ Report and/or ascertain the true location of the disputed boundary line. Thereby, the Court adequately considered the presentation of Mr. Ludwig’s testimony and Survey, but properly rejected same

given the survey was not the product of reliable scientific surveying methods or research and did not attempt to resolve the underlying dispute as to the “true” location of the property line. There is no basis to overturn the Trial Court’s order given the Court entertained testimony from Mr. Ludwig and accepted Mr. Ludwig’s survey into evidence and considered same before ruling it was an inappropriate alternative to the Boundary Commissioners’ Report.

POINT IV

THE TRIAL COURT’S ULTIMATE ORDER SOLELY IMPACTS THE PARTIES TO THIS LITIGATION.

The Trial Court’s February 8, 2024, is a Final Order only as to the Patiernos and Ahmeds and does not implicate the surrounding Lots or Lot owners. (Pa96).

N.J.S.A. 2A:28-2 only considers an action to resolve the disputed boundary line between two neighboring properties and does not contemplate a reorganization of an entire neighborhood. The statute provides the remedy for ascertaining the true boundary line between disputing neighbors and solely contemplates appointing Boundary Commissioners to resolve the discrepancy which formed the Disputed Boundary Line. The statute requires notice only as to the owners of the properties containing the contested boundary line, stating Boundary Commissioners may be appointed “on application of either owner on notice to the other.” N.J.S.A. 2A:28-2. Considering the notice requirement only extends to the two disputing neighbors, the statute clearly only contemplates that the Report of the Boundary Commissioners

affects the subject owners and their properties. Further, the Complaint brought by the Plaintiffs pursuant to the statute, solely sought to “ascertain the true boundary line” between the Patierno and Ahmed properties, more specifically analyze the 4.5-foot discrepancy that existed between the Worley Survey and the Sweeney Survey which formed the Disputed Boundary Line. (Pa1). Thereby, pursuant to both the statutory authority and the Plaintiffs’ Complaint, the instant litigation is limited with respect to the Patierno and Ahmed properties, and does not extend to nor affect the sounding properties.

The Plaintiffs-Appellants claim that the Boundary Commissioners’ Report does in fact affect the surrounding Lots because the Report “must be met with an equal adjustment in the boundary line of adjacent properties.” Based upon this claim, the Plaintiffs-Appellants further argue that the Boundary Commissioners’ Report affects non-parties to the suit, i.e. the surrounding Lot owners who failed to be joined as “necessary” parties in the Trial Court litigation. These assertions are based on Plaintiffs-Appellants misinterpretation of the Boundary Commissioners’ Report and the Trial Court’s Final Order, as well as an inappropriate assertion of third-party rights by the Plaintiffs.

The Boundary Commissioners’ report would only affect neighboring properties and potentially cloud neighbors’ title if the report concretely impacted all downward property lines by 4.5 feet the same as it impacted the Ahmed-Patierno

property line. However, the Boundary Commissioners' Report does not necessitate this "domino effect". While the Plaintiffs sought a determination from the Trial Court that the Report did in fact necessitate a modification to all surrounding Lots and property lines, the Court rejected this claim. The Court analyzed the Boundary Commissioners' Report as well as the underlying statutory authority and determined the Report neither necessitates nor has the authority to impact sounding Lots. The Report is only "final" as to the parties to the lawsuit, i.e. the Patiernos and Ahmeds, and thereby only implicates the Patierno and Ahmed properties in the ultimate determination of the proper placement of the disputed boundary line.

Furthermore, the Plaintiffs-Appellants do not have standing to unilaterally claim a cloud on neighbor's title for the benefit of their own legal position. Peaceable possession by the claimant is a jurisdictional prerequisite of an action affecting title to a property. N.J.S.A. 2A:62-1; Braue v. Fleck, 23 N.J. 1, 5, 127 A.2d 1 (1956); Persons v. Bergmann, 182 N.J.Super. 476, 479, 442 A.2d 647 (App.Div.1982). N.J.S.A. 2A:62-1 specifically provides that: "Any person in the peaceable possession of lands in this state and claiming ownership thereof, may, when his title thereto, or any part thereof, is denied or disputed...maintain an action in the superior court to settle the title to such lands and to clear up all doubts and disputes concerning the same." Plaintiffs-Appellants do not maintain either possession nor

title to the surrounding lots and thereby do not satisfy the standing requirement to assert any hypothetical title issues on behalf of their neighbors.

In the event that subsequent owners of neighboring properties seek to dispute the Boundary Commissions' Report or pursue claims of cloud on title, the owners retain the right to pursue an independent quiet title action. As such, subsequent property owners retain a remedy without one having to be fashioned now by the Appellate Division based on Plaintiffs-Appellants hypothetical claim of cloud-on-title to a neighbor's property, without either consent of the neighbors or standing to do so.

POINT V

THE TRIAL COURT'S ORDER COMPELLING SERVICE OF THE REPORT TO THE SURROUNDING LOT OWNERS SATISFIED NOTICE REQUIREMENTS.

The Trial Court properly ordered Plaintiffs' counsel to serve the surrounding lot owners with notice of the pending litigation and Boundary Commissioners' Report, and duly confirmed that the neighboring lots did not seek to participate in the litigation, prior to entering its final order. During the November 14, 2023, trial, Plaintiffs' counsel raised issues as to service of indispensable parties, i.e. service of the Boundary Commissioners' Report upon the surrounding Lot owners including the owners of tax lots 9, 12, 13 and 16. The Honorable Judge Hansbury shared

Plaintiffs' counsel's concerns, and in doing so, entered an Order dated November 14, 2023, ordering the following relief:

ORDERED that Plaintiffs' counsel shall send a copy of this order and a copy of the commissioner's report to the owners of tax lots 9, 12, 13 & 16 as depicted in the commissioner's survey dated September 22, 2022.

Counsel may also submit to said parties other evidence they feel is relevant.

Any of the parties who wish to contest the merits of said report shall file with the court notice of objection and basis of same by January 12, 2024, with a copy to the attorney for the parties noted above.

(Pa95).

In accordance with the Court's November 14, 2023, Order, Plaintiffs' counsel duly notified the surrounding Lot owners of the litigation, providing the Court's Order, the Preliminary Report of the Commission and the supporting exhibits and surveys. Thereafter, the Trial Court received submissions by counsel for two of the surrounding Lot owners. On December 18, 2023, Ms. Diana Powell McGovern, Esq. submitted a letter on behalf of Mr. Charles Rosencranz, owner of 48 Taylortown Road, Block 15.2, Lot 12, Montville, New Jersey. (Da6). Subsequently, on January 9, 2024, Mr. Louis I. Karp, Esq. submitted a letter on behalf of Peter and Grace Marshall, trustees, owners of 46 Taylortown Road, Block 15.2, Lot 13, Montville, New Jersey. (Da10).

Ms. Powell McGovern, Esq. provided an extensive description of the underlying issues, but ultimately stated that her client did not wish to intervene or

participate in the underlying litigation and did not object to the adoption of the Commissioners' Report as it related to the Patiernos and Ahmeds.

As no attempt to include the other property owners that are in the direct line of this potential border shift was done until after discovery and trial the change to these other boundary lines should be precluded. Moreover, Mr. Rosencranz and his other neighbors to the south were content with their property borders. This is an argument between the Ahmeds and the Patiernos that should not spill over onto their neighbors.

It is respectfully requested that no additional action be taken past enforcement of the decision of the Commissioners which is limited to the border between Ahmed and Patierno.

(Da6).

Thereafter, Mr. Karp, Esq's letter fully adopted the legal arguments and positions offered by Ms. Powell McGovern on behalf of Mr. Rosencranz. Mr. Karp's letter also confirmed his clients did not wish to intervene or participate in the underlying litigation and further did not object to the adoption of the Commissioners' Report as it related to the Patiernos and Ahmeds. The letter stated:

The case appears limited to plaintiff's demand that a boundary commission delineate the boundary between only Lots 10 and 11. As the boundary commission appears to have completed that task, there is really nothing left remaining to litigate, and particularly no reason to further involve any third party.

...

For these reasons, together with those offered by Mr. Rosencranz, which we adopt by reference in their entirety, the Court's apparent desire to "quiet title" as to third party properties and owners, for which issue has not yet been joined, is reason enough to allow the Court to disregard any further efforts to expand the pending dispute, which should be limited to the border delineation between the existing litigants, Ahmed and Patierno.

(Da10).

After notice was duly served upon the neighboring lots, the Trial Court reconvened the parties and entertained the submission of the non-parties to determine whether there were any objections to the entry of the Commissioners' Report. Judge Hansbury offered the opportunity for any of the responding neighboring parties to submit testimony or present argument to supplement the submission of the letters. Upon the determination that the neighboring parties did not object to the entry of the Report as to the Patiernos and Ahmeds, Judge Hansbury ordered the entry and recordation of the Boundary Commissioners' Report.

The Trial Court properly required notice to the surrounding lot owners prior to entry of its Final Order. The Court allowed the opportunity for the relevant neighboring non-parties to file an objection to the Boundary Commissioners' Report and dispute the merits of same, in order to properly consider any possible complaints or criticisms to the Report from the non-parties. The only two neighboring lots which submitted letters to the Court, both concretely established they did not share a desire to be added to the litigation, intervene at this juncture, or otherwise participate beyond the submission of their letters. The other non-answering parties were duly served with notice and copies of the relevant documentation and Report and failed to file any objections or submissions with the Court. Thereby, the surrounding lots deemed to be the only relevant non-parties to this litigation, were duly served with

notice of the Court's desire to declare the Boundary Commissioners' Report final and conclusive as to the Patiernos and Ahmeds. The Court did not err in subsequently entering the February 8, 2024, Order.

CONCLUSION

For all of the reasons set forth herein and in the interests of justice, the Ahmeds respectfully request that this Court affirm the Trial Court's November 13, 2023 ruling, November 14, 2023 Order, the Court's ruling on January 29, 2024 and the Final Order dated February 8, 2024, declaring the Boundary Commissioners Report final as it relates to the boundary lines between Lots 10 and 11 as set forth in the G.L. Worley & Associates, LLC survey of the Ahmed Property dates September 16, 2005.

Respectfully submitted,

MEYNER AND LANDIS LLP
Attorneys for Defendants-Respondents

By: Albert I. Telsey
Albert I. Telsey, Esq.

Dated: August 15, 2024

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

MICHAEL R. PATIERNO and
DEBBIE C. PATIERNO, husband and
wife,

Plaintiffs/Appellants,

v.

KHALID and MASOODAH AHMED,
husband and wife,

Defendants/Respondents.

:
:
: Docket No. A-002163-23-T2
:
: CIVIL ACTION
:
: On Appeal From:
: Final Order After Trial
: Morris County, Chancery Division
: Docket No. MRS-C-117-21
:
: Sat Below:
: Hon. Stephan C. Hansbury, J.S.C.
:
: Date Submitted: July 8, 2024

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III. TRANSCRIPT KEY

1T - November 13, 2023 Trial

2T - January 29, 2024 Post-Trial Hearing

IV. TABLE OF CITATIONS

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V. PRELIMINARY STATEMENT

This case raises unique issues under N.J.S.A. 2A: 28-1, et. seq. which provides for the resolution of real property boundary disputes between adjoining landowners by the appointment of Boundary Commissioners. As noted by the trial court, this Statute contains little guidance for its application and interpretive case law is lacking. See 1T174, ll. 1-6. The plaintiffs/appellants (the “Patiernos”) and defendants/respondents (the “Ahmeds”) had a boundary line dispute over the line which separates their adjacent parcels identified as 50 Taylortown Road in Mountville (“Lot 11”) and 52 Taylortown Road (“Lot 10”), respectively, (collectively, the “Properties”). See Mountville Tax Map, Pa102. After attempting unsuccessfully to mediate this boundary dispute, the Patiernos filed their Complaint to the appoint Boundary Commissioners pursuant to N.J.S.A. 2A:28-1 without objection from the Ahmeds (Pa55). The Boundary Commissioners proceeded to survey both Properties and other surrounding properties.

The significance of the Boundary Commissioners’ Report (Pa105) for this appeal is the determination that the descriptions of the Properties and two other lots subdivided at same time in 1956 (Lots 9 & 12) are accurate. The dimensions, size and deeds of the Properties and that of their neighbors do not change. As stated by the Boundary Commissioners, the problem is fixing these accurate

property descriptions on the ground. In this respect, the Boundary Commissioners found that the survey of Lot 11 along with prior surveys of the other lots in their residential subdivision dating back to the 1950's, including the initial 1956 subdivision, did not agree with the most recent surveys of Lot 10 and of the surrounding properties. Essentially, the Boundary Commissioners determined that the boundaries of these subdivided properties (Lots 9-12) had to be shifted from 2-4 feet to the south in order to be brought into agreement with the surrounding properties, although no affected property owner had complained about the location of any of the prior boundary lines to their properties, except the Ahmeds.

The Patiernos applied to set aside the Boundary Commissioners' Report under N.J.S.A. 2A:28-3. The Report placed the line between Lot 11 and Lot 10 so close to the Patiernos' house that it blocked access to the rear of their Property. See Photographs of Disputed Boundary, Pa146.

At trial, the Patiernos established the readily apparent problems with the Boundary Commissioners' Report, and proposed an alternative solution which would split the difference between the competing surveys of Lots 10 & 11. See Testimony of Eric M. Ludwig, PLS, 1T8, 1.22-19, 1.6. The trial court expressly stated that it could not consider the Patiernos' proposed line (the "Ludwig Line") absent an agreement between the parties. The trial court saw its authority under

N.J.S.A. 2A:28-3 to be limited to approval or rejection of the Report.

Rather than reject the Report due to the effects of its recommendations on the Patiernos and neighbors, the trial court directed the Patiernos to give notice to the affected four non-party property owners to determine if they wanted to voluntarily become involved in this matter at the post-trial juncture (Pa95). Two property owners responded to the notice, and they indicated that they did not want to become involved.

The trial court still had the problem that the Report affected property owners not before the court even though they had been given notice of this proceeding post-trial. The trial court's resolution of that problem was to rule in favor of the Ahmeds, but allow for the recording of the Boundary Commissioners' Report which would provide future notice of the defect in the historic property lines of the subdivision (Pa96).

This solution deviates from the recommendation of the Boundary Commissioners to record the correct location of the Properties. Nothing in the Report justifies the result reached by the trial court, and no evidence shows the Commissioners would support it. The Final Order is inconsistent with the Court's position on N.J.S.A. 2A:28-3 that the Boundary Commissioners must be accepted or rejected. The trial court deviated from the Report's recommendation.

VI. PROCEDURAL HISTORY

The Patiernos filed a Complaint to appoint Boundary Commissioners pursuant to N.J.S.A. 2A:28-1 on October 7, 2021 (Pa1). The Ahmeds filed an Answer (Pa48) on January 19, 2022, and did not oppose the entry of an Order appointing Boundary Commissioners on January 25, 2022 by the Honorable Stuart A. Minkowitz, A.J.S.C. (Pa55) The Boundary Commissioners submitted their Report on November 1, 2022 (Pa57) with a correction to Exhibit F of that Report on November 7, 2022 (Pa89). The Patiernos applied to set aside the Boundary Commissioners' Report in accordance with N.J.S.A. 2A:28-3 on November 10, 2022 (Pa91).

No pre-trial order was issued in the case, but Judge Minkowitz issued a consent case management order on May 3, 2023 which established pre-trial procedures (Pa93). The trial of this matter took place on November 13, 2023 presided over by the Honorable Stephan C. Hansbury, J.S.C.¹ At the conclusion of trial, the trial court ordered that notice be given to certain "indispensable parties who have not been notified of this proceeding" which order was entered on

¹ The trial transcript from November 13, 2023 has been designated as "1T." The transcript from the post-trial hearing on January 29, 2024 has been designated "2T."

November 14, 2023 by Judge Hansbury (Pa95). At a subsequent hearing on January 29, 2024, Judge Hansbury determined that the parties who had been given notice either had not appeared or had indicated that they did not want to be involved in the proceeding, and allowed the Patiernos an opportunity to object to the Ahmeds' proposed order (2T17, 1.5-19, 1.20). He also denied the Patiernos the opportunity to join additional affected parties (2T14, 1.2-17, 1.4) On February 8, 2024, Judge Hansbury entered a Final Order in this matter by entering the order previously provided by the Ahmeds and dispensing with objections filed by the Patiernos indicating that the his reasons had been stated on the record on January 29, 2024 (Pa96). The Patiernos filed a timely Notice of Appeal from the trial court's decision and Final Order on March 21, 2024 (Pa98).

VII. STATEMENT OF FACTS

A. Background

This dispute began over the removal of some dead trees on the Ahmeds' Property in 2018. They argued that the trees were on the Patiernos' Property. The Patiernos paid to remove the trees although they were determined to be on the Ahmeds' Property. See e. g., Pa2, ¶6, ¶4 & ¶17; Pa20-41; 2T80, 1.18-82, 1.5 & Pa149. The dispute over the boundary line between Lots 10 & 11 continued after an unsuccessful mediation in the context of a municipal court proceeding. Id. In

the midst of this dispute without any final resolution or change in descriptions of the Properties, the Ahmeds erected a board or board fence blocking access to the rear of Lot 11. See Photographs of Disputed Boundary, Pa146.

B. The Boundary Commission.

In an effort to fully resolve the dispute over the boundary line with the Ahmeds, the Patiernos instituted this legal action pursuant to N.J.S.A. 2A:28-1 (Pa1).² The trial court ordered the appointment of Boundary Commissioners without opposition from the Ahmeds. See Court Order, Pa55.

The Boundary Commissioners tendered their Report to the Court in November 2022. See Boundary Commissioners' Report, Pa105. The Patiernos applied to set aside the Report pursuant to N.J.S.A. 2A:28-3. That statute provides a fresh start stating that "the court shall hear the matter in a summary manner . . . and the issue shall be tried and determined as in other cases of a civil nature at law, in said court." This statute is at the heart of this case.

The Boundary Commissioners sought to reconcile the survey obtained by the Patiernos for their purchase of Lot 11 in 1994 (the "Sweeney Survey") with the survey obtained by the Ahmeds for their purchase of Lot 10 over a decade later in

² The plaintiff appellant Michael R. Patierno, died on June 6, 2024. His spouse, the plaintiff/appellant Debbie C. Patierno, is now the sole owner of Lot 11.

2005 (the “Worley Survey”). See Patierno Deed, Pa137 and Sweeney Survey, Pa140; and Ahmed Deed, Pa141 and Worley Survey, Pa144. The Report notes that the subdivision which created Lots 10 & 11 dates from 1956 and simultaneously created the adjacent lots 9 & 12 (Pa107 at ll.31-2).

Comparing the Sweeney and Worley Surveys, the Report found “a conflict between their placement of the boundary markers for each property” which produces a 4.5 ft. “discrepancy along the front” of the two lots bordering on Taylortown Road” and a “1.7 foot discrepancy to the rear.” See Report, pp.2, l.35-3, l.6 (Pa107-8). This discrepancy between the two Surveys constitutes the essence of the dispute.

In attempting to reconcile the Surveys, the surveying Commissioner, Richard F. Smith, Jr., P.S., found that all four lots (9-12) from the 1956 subdivision “line up and fit together perfectly” based upon the legal descriptions in deeds “without conflicts between any angles or distances.” Report, p.3, ll.37-38, Pa108. Accordingly, the Report concludes that, “The entire issue, then, is not a conflict among the legal descriptions, but rather where to place them on the ground.” Id. at ll.38-9. This conclusion has profound implications for the scope of the Report. Any adjustment in the disputed boundary line between Lots 10 & 11 must necessarily be met with an equal adjustment in the boundary line of adjacent

properties. According to Smith, the description of the Properties in the deeds into the Patiernos and Ahmeds does not change. The Properties' square footage remains the same. In other words, the dimensions of the Properties do not change. They just move on and off of the properties of their neighbors, and then their adjacent neighbors. This conclusion also has legal ramifications in addition to affecting parties not before the Court. Simply stated, no case law addresses a discrepancy of this type wherein the deeds and property descriptions have been found to be accurate and the property boundaries have long standing recognition (i. e., placement of houses and other structures in accord with municipal set back requirements, etc.). This dispute concerns a minor adjustment to the boundary between Lots 10 and 11. The solution according to the Boundary Commissioners is to change the boundaries of an additional four lots (Pa95a).

Smith could not locate the "single piece of physical evidence, a concrete monument" which was the basis for the 1956 subdivision. See Report p.3, ll.26-30, Pa108. Accordingly, Smith considered the surrounding properties surveyed in the 1960s and 1970s. Based upon that evidence, the Report concludes that the "Worley Survey for the Ahmed Property is in agreement . . . and that the filed Maps [for surrounding properties] disagree significantly with the Sweeney Survey." Report, p.6, ll.32-4, Pa111. In favoring the Worley Survey, the Report

cautiously states “that given the scarcity of available information, the Commissioners’ conclusion is based, in large part, on circumstantial evidence.” Report, p.7, ll.25-6, Pa112. This then presents the issue of whether the circumstantial evidence relied upon by Smith justifies adjusting the boundary lines of all the lots that would be affected by “correcting” the original subdivision lines with which the Sweeney Survey agrees.

In addition to the problem of structures having been placed on the Properties and other lots based on the lines reflected by the Sweeney Survey, Smith criticizes the relatively recent 2017 survey for Lot 12 (adjacent to Lot 11 to the south) performed by Thomas G. Stearns, III. PE & LS (the “Stearns Survey”) which agrees with the Sweeney Survey. See Stearns Survey, Pa145; 1T131, l.10-132, l.7. See also Report, Pa109. The Report does not attach the Stearns Survey, but clearly shows the proposed boundary shift moving the Lot 12 line well onto the present property identified as Lot 13, contra the Stearns Survey (denoted as the GB Engineering boundary on Exhibit G of the Report (Pa132)). Stearns testified at trial as to the shift required by the Report versus his survey. See 1T45, l.5-46, l.21. The next time one of these lots are surveyed, the surveyor will be confronted with the recorded trial court’s Final Order and Report. As things now stand, the Worley Survey line causing the boundary line shift for all four lots will have to be

accepted.

The penultimate exhibit to the Report (Exhibit I) readily demonstrates the problem with its conclusion (Pa136). The Ahmeds' property line shifts to within 5.6 feet of the Patiernos' home, but the Ahmeds in turn, give up commensurate footage on the side with Lot 9. Likewise, the Patiernos pick up significant footage from Lot 12 leaving a very small gap between that line and the house on that property recently purchased in 2017 based upon the Stearns Survey. As explained above, the Lot 12 line then shifts to encompass a stone wall and hedge which now forms the boundary between Lots 12 and 13. Lot 13 is not part of the original 1956 subdivision. Putting aside what these shifts do with regard to setback requirements, etc., none of these other parties were before the court, or participated in the N.J.S.A. 2A:28-1 proceedings. All of these lots form a part of a typical residential street. See, e. g., Mountville Tax Map, Pa102. Whether the Report is right or wrong, its recommendaion results in creating a larger problem, and goes well beyond the scope of rectifying the single boundary line in dispute "between the owners of adjoining lands" as prescribed by N.J.S.A. 2A:28-1.

The Report expressly "recommends that permanent markers be set at the corners of the Subject Properties, and a map depicting their boundaries be recorded consistent with the Worley Survey." Report, p.7, ll.30-32, Pa112.

This recommendation would cause, inter alia, the boundary shift from Lot 11 on to Lot 12 to be made manifest. In order to avoid this the trial court issued a Final Order providing for the recordation of the Report without following its recommendation. Although the trial court maintained that it had only the authority to accept or reject the Report, it did something different.

C. The Current Circumstance.

Previously, the disputed boundary did not involve any structures. During this dispute, the Ahmeds seized the opportunity to build a board-on-board fence on the Patiernos' side of the Sweeney line but within the Worley line. This spite fence pinches the southeast corner of the Patiernos' house obstructing access to their backyard. See Photographs (Pa146) (photos show Patierno's Lot 11 on the right and Ahmeds' Lot 10 on the left). The fact that this fence is within the Worley line shows the problem of simply incorporating that line as the boundary between Lots 10 & 11. The Worley line is unreasonably close to the Patiernos' house. Id. It bears repeating that the Ahmeds lived on Lot 10 for 13 years without disputing the boundary line with Lot 11. See 1T62, 1.24-63, 1.11.

To resolve this dispute at trial the Patiernos had another surveyor, Eric M. Ludwig, PLS, draw a boundary line between the Sweeney and Worley lines placing the spite fence on the Patiernos' property to allow its removal. See Ludwig

Line, Pa148. Ludwig testified at trial but the trial court completely discounted that testimony based upon its understanding that N.J.S.A. 2A:28-3 allows only a thumbs up or down decision on any report from Boundary Commissioners. See 2T5, l.10-6, l.10. The Final Order, however, is inconsistent with that understanding and impacts parties that did not participate in this case. The Patiernos maintain that the Ludwig line should have been considered as an equitable solution. It would have a minimal impact on the Patiernos and Ahmeds, and none at all on surrounding properties.³

VIII. LEGAL ARGUMENT

A. The trial court erred by failing to reject and deciding to enforce a Boundary Commissioners' Report which affected parties not before the court who did not have an opportunity to participate in the procedure prescribed by N.J.S.A. 2A:28-1, et seq. (1T 150, ll.4-7; 1T174 - 178; Pa95 & Pa96).

The Patiernos first turn to the issue of the effect of the Boundary Commissioners' Report on parties not before the trial court. Obviously, any reference to the Report demonstrates that it shifts the boundary lines of properties owned by individuals not before the Court, and not even part of the original 1956 subdivision of the four lots Nos. 9-12. See, e. g., Report, Pa136. The trial court

³ See Testimony of Eric Ludwig, PLS, 1T35, l.19-36, l.19 & T38, ll. 6-20.

recognized this fact and attempted to address it by requiring notice to be given to the owners of Lots 9, 12, 13 & 16 on the same street as the Patiernos and Ahmeds. See Pa95 & Pa103-4. The Patiernos maintain that post-trial notice did not inform the other property owners of their interests at stake, and does not provide them with an opportunity to fully participate in the process provided by N.J.S.A. 2A:28-1.⁴

The Patiernos presented an alternate resolution at trial which would not have affected any other parties before the trial court. The proposed Ludwig Line (Pa148) adjusts only the boundary line in dispute, and leaves all other boundary lines where they have always been in accord with the original subdivision and subsequent surveys. In failing to consider the Ludwig Line, the trial court rejected the one remedy that would resolve this dispute without involving non-parties. Consequently, one has to question why the trial court in its Final Order (Pa96) chose to impose the chaos which it said it wanted to avoid. See 2T5-17. It did so by failing to follow the Report's recommendation, as if to hide its consequences.

It must be emphasized that the Ahmeds will not gain any square footage by enforcing the Boundary Commissioners' Report. They will merely get a slice of the Patiernos' property while losing a commensurate amount of their property on

⁴ Alternatively, the Patiernos requested time to join these other parties when the trial court made clear that it planned to proceed to enter the Final Order over the Patiernos' objection. The trial court denied that request. See 2T9-18.

the north side. This negative impact upon the Patiernos appears to satisfy the Ahmeds regardless of the consequences for them or others.

The Patiernos proposed a compromise line in order to resolve this dispute once and for all. The Final Order can only lead to further extensive litigation over the adjustment of various property boundaries. The effect of the Report ensures the continuation of litigation.

No reason prevents consideration of a proposed compromise in the context of a *de novo* review or fresh look indicated by N.J.S.A. 28-3. The statutory system opens the door for alternative proposals to resolve a boundary dispute. The equities of a situation such as this “must be assessed in view of its particular facts and the magnitude of the threat to the plaintiff’s title and use of the property.”

Suser v. Wachovia Mortgage FSB, 433 N.J. Super. 317, 326 fn.4 (App. Div. 2013). Alternatives to the Report could not be created until the Report was produced. A trial pursuant to N.J.S.A. 2A:28-3 provides the only opportunity for consideration of alternative remedies to the one recommended by Boundary Commissioners under 2A:28-2. The failure of the trial court to consider the Ludwig line is an error that needs to be rectified.

B. The trial court erred by not ordering or allowing parties affected by the Boundary Commissioners’ Report and the court’s decision to enforce it to be joined as parties (1T179-80; 2T9-18 & Pa96).

The Patiernos consistently maintained that the impact of the Boundary Commissioners' Report on property owners not before the trial court required that the Report be "set aside" under N.J.S.A. 2A:28-3. When the trial court made it clear after giving post-trial notice to the other affected owners that it nonetheless planned to proceed, the Patiernos sought time to join the other owners which the trial court denied. Putting aside the problematic procedural posture of noticing or joining parties post-trial, the real problem is that the trial court failed to confront whether the scope of the Report rendered it ultra vires, as the Patiernos maintained.

N.J.S.A. 2A:28-1 expressly applies to a dispute arising "between the owners of adjoining lands." While the statute certainly extends to cover a dispute among multiple adjoining properties, there has to be a dispute at inception. In this case, no such dispute existed. The evidence adduced at trial demonstrated beyond question that the Boundary Commissioners exceed the scope of the issue before them. Their Report created a solution to a problem that had not previously existed. They issued an ultra vires Report. See Generally City Council of Orange v. Edwards, 455 N.J. Super. 261, 270-71 (App. Div. 2018), cert. denied 237 N.J. 205 (2019). However well intentioned, the trial court's post hoc efforts to make the Report and affected parties fit together failed. The failure to follow the

recommendation of the Report compounded that failure and created the untenable current situation where the boundary line of all affected properties, including the Properties, are unsettled.

C. The trial court erred in deciding to enforce a Boundary Commissioner's Report which significantly impacted the property rights of both parties and non-parties based solely upon circumstantial evidence (2T6, ll.1-7; Pa96).

The trial court gave short shrift to consideration of the sufficiency of evidence relied upon by the Boundary Commissioners. The Report explicitly states that all four lots (Nos. 9-12) from the original 1956 subdivision "lineup and fit together perfectly based upon their legal descriptions in their deeds without conflicts between any angles or distances." Report, p.3, ll.37-8, Pa 108. This finding makes this case unique. No New Jersey case law addresses an adjustment of boundary lines when the deeds and property description have been found to be accurate. The Report admits "that its conclusion is based, in large part, on circumstantial evidence." Report, p.7, lines ll. 25-6, Pa112. The Boundary Commissioners relied upon circumstantial evidence due to the fact that the monument upon which the Sweeney Survey is based could not be located. See Report, p.3, ll. 25-30, Pa108.

Consequently, the issue before the trial court was whether circumstantial evidence is sufficient to move the property lines of not only the Ahmeds and the

Patiernos but the property lines of their immediate neighbors, and consequently their neighbors in turn. The Report's circumstantial evidence relies upon the inability to locate the monument upon which Sweeney relied. Due to the passage of time, it can no longer be found. Without being able to locate the Sweeney monument, the issue is not whether the Report's calculations are correct but whether they are based on sufficient evidence to justify imposing the recommended result. Basically, according to the Report, the original subdivision lots fit together but somehow do not fit with lots subsequently created, although the only line ever in dispute is between Lots 10 & 11. How the pieces of this jigsaw puzzle created by the Report all fit together remains unresolved. The Report simply moves selected property boundaries around without regard to well over 50 years of utilization and prior surveys.

The Patiernos maintain that the Report of the Boundary Commissioners presents insufficient circumstantial evidence to accomplish the radical shift in property boundaries affecting them and the other parties not before the Court.

D. The trial court erred by limiting its consideration of the dispute between the parties to acceptance or rejection of the Boundary Commissioners' Report and failing to consider an alternative presented by the plaintiffs/appellants (2T5, l.10-6, l. 10 & Pa96).

In closing their discussion of the law applicable to this case, the Patiernos

briefly return to the fact that the parties resided as neighbors for over a decade without a boundary dispute. In a case where the property descriptions have been found to be accurate, “the prime consideration determining the meaning of basic title instruments is the intention of the parties.” Normach Associates, Inc. v. Baldessano, 40 N.J. 113, 125 (1963), cited by Stransky v. Monmouth Counsel of Girl Scouts, 93 N.J. Super. 599, 611 (App. Div. 2007). Certainly, the parties did not have any understanding that the boundaries of the properties which they had purchased and on which they resided were to be shifted off of and onto that of their neighbors in order to come to some sort of agreement with surrounding surveys.

Stated another way, the “disagreement” between the Worley and Sweeney Surveys noted by the Report of the Boundary Commissioners did not exist to the Ahmeds knowledge when they purchased Lot 10, and did not exist to the understanding of anyone other than the parties before the trial court until after the trial. The Boundary Commissioners in their understandable search for surveying accuracy overlooked the understanding of the parties and their neighbors. The trial court erred when it failed to appropriately adjust for this factor and set aside the Report. The compromise Ludwig Line provided a realistic basis for resolution of the dispute actually presented without creating the problems caused by the Report.

E. Standard of Review.

The trial of this matter did not involve a disputed issue of material fact. The Patiernos maintain that the issue for trial should have been the appropriate remedy for the boundary dispute between them and the Ahmeds. The trial court saw the issue for trial as being whether the Boundary Commissioners' Report contained surveying defects. In short the trial raised issues of the interpretation and applicability of N.J.S.A. 2A:28-3, along with the procedural issue of what to do about the affected non-parties.

Issues of statutory interpretation are reviewed de novo on appeal. See Kocanowski v. Township of Bridgewater, 237 N.J. 3, 9 (2019), citing State v. Fuqua, 234 N.J. 583, 591 (2018). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019). See also In re Ridge Field Park Bd. of Ed., 244 N.J. 1, 7 (2020). Accordingly, the review of the trial court's rulings and Final Order should be de novo.


IX. CONCLUSION

For the reasons stated above, the position of the trial court that it could only accept or reject the Report of the Boundary Commissioners without considering alternatives should be rejected. Once a party applied to set aside a report from the

Boundary Commissioners under N.J.S.A. 2A:28-3, a trial court has all of the authority it would normally have to adjudicate a dispute. The Report of the Boundary Commissioners should have been set aside due to the fact that it involves property rights of parties not before the trial court. The Final Order of the trial court is inconsistent with the position of the trial court on the scope of its authority. This case should be remanded for further proceedings to either resolve the dispute between the parties or join other affected parties who could fully participate in a renewed process from the outset.

Alternatively, the Boundary Commissioners' Report could be rejected with the Ahmeds and Patiernos being left to whatever further remedies may be available to them. These positions are taken without prejudice to the Patiernos' position at trial that the trial court had the authority to adopt the Ludwig Line proposed by the Patiernos which would not affect any other lots. The Patiernos maintain that the only real solution in this case is to either adopt the Ludwig Line, or to reject the Report of the Boundary Commissioners on the basis that its ultra vires nature affects parties not properly before the trial court.

RUBIN, EHRLICH, BUCKLEY &
PRZEKOP, P.C.

By: 
Robert L. Grundlock, Jr.

Dated: July 8, 2024