SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-002860-24 T1

DANIEL THOMPSON and ELIZABETH THOMPSON, Plaintiffs-Respondents, v. GERALDINE JONES and RHYS JONES, Defendants-Appellants.	Civil Action On Appeal from: Judgment of the Superior Court of New Jersey Chancery Division Cumberland County Docket No.: CUM-C-21-21 Sat Below: Hon. Robert G. Malestein, P.J.Ch.

AMENDED BRIEF OF DEFENDANTS-APPELLANTS GERALDINE JONES and RHYS JONES

JULY 23, 2025

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PRELIMINARY STATEMENT

This matter involves a contentious boundary dispute between two adjacent property owners that arose as a result of Defendants-Appellants Geraldine Jones and Rhys Jones (the "Joneses") purchase from Maurice River Township ("Township") in 2021 of a long-abandoned property at 187 High Street, Leesburg, N.J. ("187 High Street" or "Lot 2") then owned by the Township after its foreclosure of a tax lien on the property. Prior to then, there was no evidence of any boundary dispute between the owners of the two lots during the 145 years since the properties were separated by Josiah Carlisle in 1876. The dispute has gone through two trials and a prior appeal without the court interpreting the deeds for the 2 lots. As set forth herein, the historic deeds, starting with the 1876 deeds that separated the properties, should have been interpreted by the court as a matter of law to set the boundary line by the metes and bounds descriptions therein.

The matter was commenced by Daniel Thompson and Elizabeth Thompson (the "Thompsons") who relied upon their 1999 deed for their property at 189 High Street, Leesburg, N.J. ("189 High Street" or "Lot 1"), a 1999 survey by William Reale deceased, and a 2021 Survey by Guy DeFabrites which allegedly confirmed their claim to a boundary 3 feet from the Jones' house based upon survey markers installed by Reale. The Joneses provided a 2021 survey by Joseph Feldman who concluded, based upon his review of the deeds for these and area lots and onsite

investigation, that the survey markers were misplaced by 5.88 feet and the boundary line was closer to Olive Street and further from the Joneses' house.

In the first trial, Honorable Robert P. Becker, Jr. Ch. set the boundary line based upon the 1999 Thompson Deed as interpreted by the DeFabrites Survey and disregarded the Feldman Survey without allowing an adjournment for the Joneses to have an expert testify and before disclosure to the court that DeFabrites had withdrawn his survey as inaccurate. Upon appeal, the Appellate Division vacated the trial court order and remanded the matter for a new trial with experts to testify.

In the second trial subject to this appeal, Honorable Robert Malestein, P.J., Ch. relied upon the tax map survey and several other surveys of non-testifying experts submitted by Plaintiffs and the conclusory testimony by Plaintiffs' expert (Noon) as to the many surveys' similarity or dissimilarity - not on their accuracy - to set the boundary line, instead of construing the deeds. The trial court disregarded the testimony, survey, and expert report of Defendants' expert (Feldman) because the court concluded that other persons had sought to silence Plaintiffs' surveyor (DeFabrites) who had expressly withdrawn his survey as inaccurate and refused to testify when subpoenaed by the Joneses citing his Fifth Amendment rights. The trial was unduly complicated, unduly lengthy and confused resulting in an unjust and erroneous Order and an irrational Opinion

setting the boundary line contrary to the historic deeds and contrary to the competent, relevant, and reasonably credible evidence.

The Defendants-Appellants Joneses submit that the trial court erred by: issuing an Order and an Opinion not based upon its interpretation of the deeds, as a matter of law; issuing an internally inconsistent Order with provisions not supporting by any finding of fact; improperly allowing into evidence and relying upon hearsay surveys, including the Reale and DeFabrites surveys, that were not validated by the surveyor who prepared them or any testifying expert, were hearsay conclusory net opinions, and were not reliable; allowing Thompsons' expert to testify despite him performing no expert investigation or analysis, offering only a conclusory net opinion about the similarities of various surveys, and failing to comply with the case management order; disregarding the testimony of Feldman, the Joneses' expert, and the survey he prepared, based upon matters not related to his credibility; and issuing an Order and an Opinion not supported by competent, relevant, and credible admissible evidence.

PROCEDURAL HISTORY[1]

This matter was originally filed by the Plaintiffs-Respondents, Daniel and Elizabeth Thompson, to establish a boundary line between their property at 189

[1]Reference to the transcripts are as follows:
1T September 10, 2024 Trial
2T-Septemebr 11, 2024 Trial
3T December 19, 2024 Trial
4T April 25, 2025 Motion for Reconsideration Argument

High Street, Leesburg, NJ (Block 280, Lot 1) and the adjacent property owned by Geraldine and Rhys Jones at 187 High Street, Leesburg, NJ (Block 280, Lot 2). An Order to Show Cause seeking Temporary Restraints was filed by Plaintiffs-Respondents on September 2, 2021 (Da30). Temporary Restraints were granted on that date. (Da54). Plaintiffs-Respondents also filed a Verified Complaint to permanently establish the boundary line on that date (Da35) referencing and relying upon a February 19, 1999 Bargain and Sale Deed for Plaintiffs-Respondents' purchase of the property (Da73), a May 20, 2021 survey of a Mr. DeFabrites (Da72) that allegedly confirmed the Reale Survey dated January 14, 1999 (Da21). Appellants-Defendants Rhys and Geraldine Jones filed an Answer and Separate Defenses to the Order to Show Cause and Verified Complaint. (Da06) and subsequently provided a survey prepared by Mr. Joseph Feldman (Da61) showing a different property boundary line.

In the First trial, after the trial court denied the Joneses' motions for Summary Judgment, for an adjournment to produce an expert for trial, and other matters described in the first appeal, Judge Becker entered an Order setting the boundary based upon the 1999 Thompson Deed but concluding, based upon the DeFabrites survey, that such boundary line was "approximately three feet" from the Joneses' home at 187 High Street. After the Joneses' subsequent motions were denied, they filed an appeal; and the Appellate Division (Dkt. A-3655-21), by

decision dated November 9, 2023, vacated the trial court order and remanded for a new trial to have the benefit of expert witnesses and directed the trial court to promptly conduct a case management conference regarding the experts.

For the second trial after remand, Judge Malestein conducted a case management conference on June 4, 2024 and entered a Case Management Order scheduling the trial for September 10 and 11, and requiring, among other things that "any expert report must be exchanged within 45 days of this order". (Da52). The Joneses delivered the Feldman expert report with details and analysis to Plaintiffs on June 28, 2024. (Da55). The Thompsons delayed submitting Noon's expert's report until September 10, 2024- after the first day of trial. (Da58).

The trial was held on September 10, 11, and December 19, 2024. The Thompsons submitted 50 exhibits, including 10 historic deeds, 6 surveys, the prior trial transcript, and multiple pictures, called 6 witnesses, including 3 neighbors and their expert Noon who performed no survey and no onsite inspection, but reviewed the surveys, accepting all at face value, opining as to their general similarity, and did not testify as to their accuracy. The Joneses offered 11 exhibits and called 4 witnesses, including Joseph Feldman (their surveyor expert) who testified about his inspection, survey and conclusions and Guy DeFabrites (the Thompsons' surveyor) who refused to testify citing his Fifth Amendment right against self-incrimination. (3T:79-12 to 87-24). Defendants objected to the testimony of Plaintiffs' expert

Noon (1T:180-1 to 186-25; 2T:3-19 to 6-25), to the admission *en masse* of Plaintiffs' exhibits, differing the right to object until after all testimony had been heard (1T38-6; 2T7-7), and to admission of the survey of a non-testifying surveyor (2T:9-12). The trial court indicated its intent to accept into evidence all authenticated documents and take judicial notice of many (1T:38-8 to 23) and, on December 19, 2024, admitted into evidence all of Plaintiffs' exhibits without requesting objections and all of Defendants exhibits. (3T114-11).

After submission by the parties of written closing arguments, Judge Malestein issued an Order dated March 7, 2025 setting the boundary line "as set forth in the survey performed by Reale Associates", directing that the fence, as erected by the Thompsons, "stand at the pleasure of Plaintiffs and shall not be disturbed by Defendants", and awarding to Plaintiffs "full rights of ownership over the lands in dispute". ("Order", Da01). The court simultaneously issued a decision ("Opinion" or "Op." Da02) finding "that the property line is as described in the Reale, Fralinger, and Tax map surveys as presented to the Court" (Op. 19- Da20); that against the backdrop of "efforts to silence Mr. DeFabrites" "it was impossible to place any weight on the opinion of Mr. Feldman" or "to find that the property markers found by Mr. Feldman exist, are accurate, or were misplaced" (Op. 17-Da18) and "that when one stacks the possessory period of the Thompsons with

their predecessor in interest, there has been the requisite period of time to establish adverse possession." (Op. 22-Da23).

On March 27, 2025 Defendants Pro Se filed a Motion for Reconsideration and Clarification (Da314) citing NJ Ct. Rule 1:7-4 and N.J. Ct. R. 4:49-2 to clarify and correct the internal inconsistencies and deficiencies in the Order and the Opinion, and to focus on the applicable deeds, the inadmissibility of Noon's net opinion, the absence of findings supporting the fence clause, and other errors. Plaintiffs filed an opposition on March 29, 2025; and Defendants, after retaining Gerald B. Sweeney, Esq., filed a Reply on April 10, 2025. Oral argument was held on April 25, 2025; and Judge Malestein issued an Order and a Bench Memorandum dated April 25, 2025 denying the Motion. (Da25). Defendants-Appellants filed their Notice of Appeal (Da342) on May 14, 2025.

STATEMENT OF FACTS

This matter was filed by the Thompsons on September 2, 2021 to establish a boundary line between their property 189 High Street, Leesburg, NJ (Block 280, lot 1) and the property of the Joneses at 187 High Street, Leesburg, NJ (Block 280, Lot 2). The litigation began shortly after the Thompsons began a contentious dispute initially objecting to alleged trespassing by the Joneses' renovation contractor in an area immediately adjacent to the Joneses house which the Joneses believed was their property, with the Thompsons calling the police on the

contractor then and, thereafter, on the Joneses repeatedly to allege trespassing and posting offensive signs directed at the Joneses. (Da252, 71;2T:202-10 to 203-12). The deeds and facts of this boundary dispute and this appeal are detailed below.

The Thompsons purchased Lot 1 and received title by a deed from Whildon to Thompsons dated February 19, 1999 (Da73) specifying the property as follows:

> "ALL that certain tract or parcel of land and premises, situated in the Township of Maurice River, County of Cumberland and State of New Jersey, bounded and described as follows:
>
> BEGINNING at an iron rod set in the intersection of the Southeasterly line of Olive Street (33.00' wide) with the Northeasterly line of High Street (49.50' wide);
>
> THENCE (1) along the Southeasterly line of Olive Street, North 43 degrees 00 minutes 00 seconds East, 224.02 feet to a point in the Southwesterly line of Middle Street (33.00' wide);
>
> THENCE (2) along the southwesterly line of Middle Street, South 48 degrees 28 minutes 26 seconds East, 48.80 feet to an iron rod set;
>
> THENCE (3) South 43 degrees 00 minutes 00 seconds West; 223.54 feet to an iron rod set in the Northeasterly line of High Street;
>
> THENCE (4) along the Northeasterly line of High Street, North 49 degrees 02 minutes 18 seconds West, 48.81 feet to an iron rod in the Southeasterly line of Olive Street and place of beginning."

The 1999 Thompson Deed states that: "The Property transferred by this deed is the same property acquired by Grantor by the deed: [identifying the 1997 Whildon Deed.]" indicating that it has the same boundaries as in the 1997 Wildon Deed.

The Joneses purchased their property at a tax sale auction and received title by a Quitclaim Deed dated January 4, 2021 from Maurice River Township to the Joneses (Da106) specifying the property as follows:

> "The property being conveyed, Block No. 280, Lot 2, was the subject on an *in-rem* foreclosure filed by the Township of Maurice River. Title to the property in question, Block No. 280, Lot 2, was conveyed to the Township of Maurice River, a Municipal Corporation of the State of New Jersey, by way of a Court Order dated June 26, 2020 under Docket No. F-016228-19. The property in question was owned by Victoria Stiles at the time of the final judgment on the *in-rem* foreclosure."

That deed transferred "whatever interest" the Grantor had in and to the property and with the property described as that conveyed to Maurice River Township by order (Final Judgment, Da111) dated June 26, 2020 and previously owned by Victoria Stiles as of the foreclosure. The property had been abandoned and unoccupied for years and the Township foreclosed upon it by Complaint In Rem filed 10/1/2019. The Final Judgment foreclosed on Tax Sale Certificate 17-00023 recorded on the property owned by Victoria Stiles pursuant to the Deed from Christopher Stiles to Victoria Stiles dated 10/27/2009 and recorded 10/28/2009 in Deed Book 4063, Page 8466 (the "2009 Stiles Deed") referenced in Schedule 1 (Da328) and barred all persons having an interest in the referenced lands from any right, title, or interest therein. As the Joneses Deed and Final Judgment referenced the 2009 Stiles Deed, the property transferred to the Joneses had the same boundaries as those in such 2009 deed. Ms. Jones testified that Denise Peterson of

Maurice River Township said the property boundaries were described by the 2009 Deed and sent a copy of the deed to Ms. Jones. (2T:198-16 to 199-11).

The historic deeds presented to the court dated back to December 26, 1876 when the two lots were first separated. The 12/26/1876 Deed from Josiah Carlisle to Almira Sharp and her son Josiah G. Sharp ("Josiah Deed", Da91) for 189 High Street describes the boundary line as intersecting the centerline of Middle Street 99 links[2] [65.34 feet] from the center of Olive Street with bearings "south forty three degrees west three chains and ninety six links [261.36 feet] to the centre of High Street." The 12/26/1876 Deed from Josiah Carlisle to Almira B. Sharp and her son Robert Sharp ("Robert Deed", Da 116) for 187 High Street describes the boundary line equivalently as intersecting the centerline of High Street "99 links [65.34 feet] south easterly from the centre of High and Olive streets and running from thence along the lot of Almira B. Sharp and Josiah E. Sharp, north forty three degrees east three chains and ninety six links [261.36 feet] to the centre of Middle Street". All deeds since 1876, except for the 1999 Thompson Deed and the 2021 Joneses Deed, identically describe the boundary line as intersecting High Street 65.34 feet (99

[2] The 1876 deeds use "links" (0.66 feet) and "chains" (100 links or 66 feet) to measure distances from the centerlines of the streets. 99 links is equal to 65.34 feet; and 3 chains and 96 links is 261.36 feet. Middle Street and Olive Street are 33 feet wide and the distance from their centerlines to their edges is 16.50 feet. High Street is 49.50 feet wide with the distance from centerline to edge of 24.75 feet. See Feldman Survey.

links) from the centerline of Olive Street with equivalent bearings south 43 degrees west or north 43 degrees east. The predecessor deeds show the property lines.

The 1997 Whildon Deed (Da77) for Lot 1 describes the property as:

> "BEGINNING at a stone corner in the center of High Street and Olive Street; thence along the center of Olive Street North forty-three degrees East three chains and ninety-eight links [261.36 feet] to the center of Middle Street; thence along said Middle Street fifty-one degrees and fifty minutes East ninety-nine links [65.34 feet] to a corner in the center of Middle Street; thence South forty-three degrees West three chains and ninety-six links to the center of High Street; thence North fifty degrees and ten minutes West ninety-nine links [65.34 feet] to the place of Beginning."

The 2009 Stiles Deed, recorded in the Cumberland County Clerks' Office as Instrument 35427 (Da328)[3] for lot 2 describes the property as:

> "BEGINNING at a stone corner in the middle of High Street, 99 links [65.34 feet] Eastwardly from the intersection of the middles of High and Olive Street; and running thence (1) along lot formerly belonging to Almira B. Sharp and Josiah C. Sharp, North 43 degrees East, 03 chains 96 links to the middle of Middle Street; thence (2) along the middle of said Middle Street, South 51 degrees 50 minutes East, 90 links [59.4 feet] to a corner of a lot set off to Samuel G. Carlisle (where he resided in it lifetime) in the Carlisle division; thence (3) along his line, South 42 degrees 30 minutes West. 03 chains 94 links [260 feet] to the middle of said High Street; thence (4) along the middle of said High Street, North 50 degrees 10 minutes West, 93 links [61.38 feet] from the beginning."

These immediate predecessor deeds equivalently describe the boundary line measured from the street centerlines as "South forty-three degrees West three

[3] The recorded 2009 Stiles Deed (Da 328) was referred to at trial by the experts Josph Feldman and Harold Noon and by others but no record of its admission has been found. Accordingly, the Joneses hereby request that the Court take judicial notice of this deed. It has the same metes and bounds as the as the 2006 Stiles Deed from Jason Stiles to Christopher Stiles for Lot 2 included as an exhibit with the Supplemental Exhibits (Da322) for the Motion for Reconsideration.

chains and ninety-six links to the center of High Street" for Lot 1 and "along lot formerly belonging to Almira B. Sharp and Josiah C. Sharp, North 43 degrees East, 03 chains 96 links to the middle of Middle Street" for lot 2 with the boundary line intersecting the High Street and the Middle Street centerlines 99 links [65.34 feet] from the Olive Street centerline. The 1999 Thompson Deed (Da73) describes the boundary line measured from the street sides and with iron rods added as beginning at the southwesterly line of Middle Street 48.80 feet from the Olive-Middle Street corner and running "South 43 degrees 00 minutes and 00 seconds West, 223.54 feet to an iron rod set in the Northeasterly line of High Street along the Southwesterly line of Middle Street" which it records as 48.81 feet from the beginning on High Street.

The six surveys admitted into evidence by the court to set the boundary line were the tax map survey dated September 1994, the Reale survey dated January 14, 1999, the Fralinger (DeFabrites) survey dated May 20, 2021, the DeFabrites overlay survey dated May 20, 2021, the Ewing Associates survey dated May 10, 2022, and the Feldman & Associates survey dated August 19, 2021.

STANDARD OF REVIEW

This case comes before the Appellate Division following a trial before Judge Malestein without a jury. The construction of deeds is a pure question of law to be decided de novo by the appellate court. *Hofer v. Carino*, 4 N.J. 244, 250 (1950).

The appellate court is not bound by the trial court's interpretation of the deeds or the legal consequences that flow from the deeds or established facts. *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan,* 140 N.J. 366, 378, (1995). When deciding the admissibility of documents and of expert testimony at trial, the standard is abuse of discretion. *Pomerantz Paper Corp., v. New Community Corp*., 207 N.J. 344, 371 (2011). A trial court's findings of fact, made after conclusion of the hearing, are entitled to deference when supported by adequate, substantial, and credible evidence. *Pheasant Bridge Corp v. Township of Warren*, 169 N.J. 282, 293 (2001), cert denied, 535 U.S. 1077 (2002) and should not be disturbed unless "they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." *Rova Farms Resort, Inc v. Investors Ins. Co*, 65 N.J. 474, 483 (1974)

LEGAL ARGUMENT

I. THE COURT ERRED BY FAILING TO INTERPRET OR ERRONEOUSLY INTERPRETING THE DEEDS TO SPECIFY THE BOUNDARY LINES. (Raised below in the pleadings Da42, during trial as the ultimate issue, and in the Motion for Reconsideration Da314 and 4T:4-2 to 6-2; 8-7, to 9-20, 15-14 to 21-16)

The trial court erred by failing to interpret or erroneously interpreting the applicable deeds as a matter of law to set the boundary line. Despite admission into evidence of the 1876 and subsequent deeds, the Opinion does not interpret the

deeds or indicate that the deeds were used to determine the boundary line but only relies upon the Reale, Fralinger (DeFabrites), and tax map surveys for its decision.

In New Jersey, ownership of real property is transferred by a deed, §46:3-13, with the metes and bounds description in the deeds interpreted by the court under the Recording Act, N.J.S.A. 46:26A-1 et seq, as matter of law. *H.K. v. State*, 184 N.J. 367, 382 (2005); *Branco v. Rodrigues*, 476 N.J. Super 110 (App Div. 2023). The construction of the deed, including identifying its boundaries, is a pure question of law to be decided by the court. *Hofer v. Carino,* supra, 4 N.J. at 250-251. Such construction is based upon the text of the deed using the metes and bounds description and information therein, unless there is an ambiguity. Id. See also *Stransky v. Monmouth Council of Girl Scouts, Inc*.. 393 N.J. Super. 599, 608 (App. Div. 2007). In construing a deed, the court must rely upon the "calls" hierarchy for intrinsic evidence identified in the deeds consisting of property survey monuments, markers, and points referenced in the deeds and, only if there is a latent deed ambiguity, the court may consider extrinsic evidence[4] consisting of reference points not stated in the deeds. *Hofer, supra,* 4. N.J. at 250-251*; Stransky, supra,* 393 N.J. Super. at 608. The line of a public street and the intersections of the centerlines of two public streets are treated as monuments with the highest

[4] The Opinion notes that the court relied upon extrinsic evidence, including old photographs and vague testimony of neighbors about prior hedges, fences, or parking, to determine the boundaries. (Op. 18,23- Da19, 24). That was improper as the deeds were not ambiguous.

hierarchy, unless their locations are in dispute. *Hofer*, supra at 4 N.J. at 248. Similarly, the land of the adjoining proprietor is deemed a monument. Id. In construing the deed, the court must determine the intent of the parties to the deed. *Boylan v. Borough of Point Pleasant Beach*, 410 N.J. Super 564, 569 (App. Div. 2009). On appeal, the Appellate Court has de novo review of the deed interpretation as a question of law. *Hofer*, supra at 4 N.J. at 25.

Interpreting deeds in this case should not have required special skills or expertise as the historic deeds used terminology, including measurements of "chains" and "links" that could be understood by a judge utilizing his or her common knowledge and experience and generally accepted definitions[5]. However, the trial court failed or did not attempt to interpret the Josiah, Whildon, or Thompsons deeds for Lot 1 or the Robert, Stiles, or Joneses deeds for Lot 2 to establish the boundary line between the two properties and did not mention in its Opinion interpreting or relying upon the deeds to set the boundary line but mentioned only reliance upon the Reale Survey, the DeFabrites Survey, and the tax map survey and allowed Plaintiffs' expert witness Noon to testify regarding the

[5] Judge Malestein, during oral argument of the Motion for Reconsideration oral argument, noted his unfamiliarity and discomfort with the historic chains and links terminology used in older deeds and stated that he wished somebody had described to him the metes and bounds of the properties.(4T:12-21 to 15-6)

similarity of the surveys and the tax map to the Reale Survey without noting Noon's failure to opine on the accuracy of any surveys relative to the deeds.

In this case, the metes and bounds legal descriptions in the recorded deeds for Lot 1 (1876 Josiah, 1997 Whildon, and 1999 Thompson deeds) and for Lot 2 (1876 Robert, 2009 Stiles, and 2021 Joneses deeds) clearly and unambiguously show the boundary line separating the lots as 65.34 feet from the centerline of High Street and Olive Street or 48.81 feet from the corner where the edge of Olive Street (33 feet wide and 16.5 feet from the centerline) intersects the edge of High Street with bearings from Middle Street to High Street of South 43 degrees West and with equivalent bearings from High Street to Middle Street of North 43 degrees East." There was no latent ambiguity in these Lot 1 deeds or their metes and bounds descriptions.

The Josiah 1876 deed and the 1997 Whildon deed for Lot 1 show the separating boundary line intersecting High Street 65.34 feet from the Olive Street centerline with bearings South 43 degrees West. The 1999 Thompson Deed shows Lot 1's width on High Street as 48.81 feet measured from the corner. As Olive Street was 33 feet wide with distance from its centerline to its road edge measured by Feldman as 16.52 feet, the 1999 Thompson Deed equates to a boundary on High Street 65.33 (16.52 + 48.81) feet from the Olive Street centerline. The 1999 Thompson deed describes the property as the same as that acquired by Grantor by

the 1997 Whildon Deed, and, therefore, has effectively the same metes and bounds as the 1997 Whildon Deed.

The deeds for Lot 2 equivalently record the location and bearings of the separating line. The 12/26/1876 Robert Deed (Da 116, supra at 9-10) and the 2009 Stiles Deed (Da328, supra at 10) for 187 High Street record the separating line as intersecting the centerline of High Street "99 links [65.34 feet]" from the centerlines of High and Olive Streets and running along the lot of Almira Sharp and Josiah Sharp with bearings North 43 degrees East to Middle Street. The Jones 2021 Deed (Da106, supra at 8) transferred "whatever interest" the Township Grantor had in and to the property with its boundaries described by the 2009 Stiles Deed. That "interest" was the same property with the same metes and bounds property description as the Town acquired from Victoria Stiles with the quality of a bargain and sale deed. N.J. Stat. § 46:5-3 (Quitclaim deed passes all the estate which the grantor could lawfully convey by deed of bargain and sale). *Palamarg v. Realty Co. v. Rehac, 80 N.J. 446,* 452 (N.J. 1979). The Joneses Deed (Da44) referenced the Final Judgment that conveyed the property previously owned by Victoria Stiles pursuant to the 2009 Stiles Deed and thereby transferred to the Joneses the property described by such deed.

In summary, the trial court erred by failing to interpret or erroneously interpreting as a matter of law the applicable recorded deeds to set the boundary

line. Together and separately, the deeds for Lot 1 and for Lot 2 specify the line as intersecting the centerlines of Middle Street and High Street 65.34 feet from the centerline of Olive Street with bearings South 43 degrees West from Middle Street. Such boundary line intersects the Northeasterly side of High Street 48.81 feet from the corner of Southeasterly line of Olive Street.

II. THE TRIAL COURT ERRED BY ADMITTING INTO EVIDENCE AND RELYING UPON SURVEYS OF NON-TESTIFYING EXPERTS AND BY DISREGARDING THE FELDMAN SURVEY (Raised below the accuracy and reliability of the surveys Da314; 2T:68-13 to 71-11, 76-9 to 78-17; 4T:17-2 to 19-9; admissibility raised below by Defendants objecting to survey of non-testifying surveyor (2T:9-12) and reserving right to object until after testimony but court stated it would admit all documents authenticated or by judicial notice (1T:37-23 to 38-23; 2T:7-3, 9-1 to 11-5)

The trial court erred by admitting into evidence and relying upon in its decision the following survey diagrams or documents prepared by non-testifying surveyor experts: the survey prepared by William Reale of Reale Associates dated January 14, 1999 ("Reale Survey"), the survey prepared by Guy DeFabrites of Fralinger Engineering ("DeFabrites Survey") dated May 20, 2021, and the survey prepared by Erik Valentin of Ewing Associates dated May 10, 2022 ("Ewing Survey"). Such survey documents were offered by Plaintiffs for the truth of the absent experts' opinions that were not supported by the preparer or a testifying expert and all, except the Reale survey, were withdrawn, not signed, or otherwise not validated. No expert testified how such survey documents were prepared or confirmed that such documents were accurate or consistent with the deeds or

subjected themselves to discovery or cross-examination. Each such survey was inadmissible hearsay that stated an inadmissible and unreliable net opinion. See *James v. Ruiz*, 440 N.J. Super 45, 70 (App. Div. 2015) (Error to allow reference to or introduction of an expert report of a non-testifying witness.); *Delesky v. Tasty Baking Co*., 175 N.J. Super 513, 520 (App. Div. 1980) (Deceased expert's report was an inadmissible net opinion because it only showed conclusions and the deceased expert was not subject to cross-examination).

1. The Reale Survey Was Inadmissible and Unreliable to Describe the Boundary Line between Lot 1 and Lot 2.

The Reale Survey, used by the court to determine the boundary, was a hearsay document that stated an inadmissible net expert opinion as it was not authenticated, explained, or claimed to be accurate and the facts supporting it were not disclosed. Reale did not testify as he was deceased; and no expert testified how his survey had been prepared or that it was properly prepared, accurate or consistent with the Lot 1 deeds or that the iron rods depicted on the survey had been accurately installed. Such survey offered for the truth of the absent expert's opinion was inadmissible hearsay stating an inadmissible net opinion of a non-testifying expert. *Delesky v. Tasty Baking Co*., supra, 175 N.J. Super at 520; *James v. Ruiz*, supra, 440 N.J. Super at 70.

The Reale Survey shows the boundary line with bearings S 43° 00' 00" W extending from a point on Middle Street 48.80 feet from the Middle and High Street

corner to a point intersecting High Street 48.81 feet from the corner of High and Olive Streets and with survey markers on High Street depicted as "set" by him on the corner of Olive and High Street and 48.81 feet from the corner. It also shows the property as having an area of 10,915.86 sq. ft.. However, it lacked credibility and clarity as it was awkwardly drawn with structures placed in the road, bore an unusual disclaimer[6], did not show any structures on the adjacent Lot 2, and its deficiencies lead to the property dispute in this litigation. Surveyor Feldman testified that the Reale Survey did not refer to the information used to prepare the survey and was inaccurate based upon the recorded deeds and the survey markers depicted as set were misplaced (2T:68-13 to 69-18;70-7-20; 76-9 to 78-17) with such survey markers location its only substantive bad points (2T:68-12); and Plaintiffs' surveyor DeFabrites in an email message questioned its accuracy and how Reale "arrived at his property line as it doesn't match the older deeds." (Da258).

2. The DeFabrites Survey Was an Inadmissible Hearsay Net Opinion That Inaccurately Described the Boundary Line and Was Unreliable as it Had Been Withdrawn by the Surveyor As Inaccurate.

The DeFabrites Survey (Da72), relied upon by the court for the boundary and the fence clauses of its Order, was expressly withdrawn by DeFabrites as inaccurate,

[6] The disclaimer states that "BUILDING OFFSET DISTANCES ARE FOR THE PURPOSE OF CHECKING ZONING AND DEED RESTRICTION ONLY. NO LIABILITY WILL BE ACCEPTED IF DISTANCES ARE USED FOR ANY OTHER PURPOSE." That indicates the survey was prepared for zoning purposes, likely to show that the property substantially complied with the minimum lot width requirements of the applicable zoning laws.

and was inadmissible as hearsay and as a "net opinion" not explained, or claimed to be accurate by DeFabrites or any testifying expert witness and the facts and analysis supporting it were not disclosed. See *James v. Ruiz*, supra; *Delesky v. Tasty Baking Co*., supra. It was not credible as Feldman testified it was not accurate (2T:69 to 71-6) and DeFabrites expressly admitted in email messages that he overlooked certain deeds and that his survey was inaccurate and should never have gone out, and that he agreed with the Feldman Survey which was accurate (Da258). In his August 27, 2021 email (Da257), DeFabrites stated: "Mrs. Jones, I have revised my survey 3 weeks ago…. I told Mr. Thompson about it. . . . They are not my corners, they are Reales Corners." In his September 8, 2021 email (Da258), DeFabrites admitted:

> "HI MRS. JONES, you don't need another survey. Since this is a property line dispute and I did the Thompsons survey I can't do yours, it would be a conflict. You have Mr. Feldmans survey which is correct. I revised my survey awhile ago once I got the older deeds which were hard to get because you have to make appointments to get in the court house because of covid. Both surveys agree, My first survey should have never gone out, it was drawn incorrectly. It did not show the former deed lines compared to the Reale survey line like I wanted it to. The Reale survey was done in 1999 and the Thompsons believed that was right and thought that was there property since 1999. I don't know how Reale arrived at his property line it doesn't match the older deeds. Your deed is only a Block, Lot deed has no bearings and distances so in order to get bearings and distances you have to go back to former deeds. Not making excuses just some of the problems."

The Thompsons admitted that DeFabrites told Mrs. Thompson his survey had "issues" (1T:53-1 to 54-7; 56-15); that he "overlooked an important deed" (1T:66-15 to 19); that he sent her the revised or overlay survey (1T: 75-19 to 76-24); Da 115); and that on

August 27, 2021 he or Fralinger "contacts us to say that they (Fralinger) made a mistake, overlooked an important old deed, etc." (Da269). DeFabrites prepared a revised overlay survey diagram (Da115, Da305) showing in green the boundaries specified in the 1997 Whildon to Whildon Deed (the deed immediately preceding the 1999 Thompson Deed) for Lot 1 that materially differ from the boundaries shown in his first survey when such deed was overlooked **and** that the Reale installed iron bars on High Street were misplaced by 5.88 feet, thus confirming the accuracy of the Feldman Survey and his testimony. When subpoenaed by Defendants to testify as to these facts, DeFabrites refused citing his Fifth Amendment against self-incrimination. (3T: 79-21 to 80-25). DeFabrites' revised diagram ("Overlay DeFabrites Survey") (admitted 3T:87-9 to 88-2) confirms the inaccuracy of his initial opinion and the accuracy of Feldman's.

Despite noting that DeFabrites stated in writing that his initial survey was not accurate and that Feldman's survey was correct and that DeFabrites refused to testify citing the Fifth Amendment (Op. 13-14-Da15-16), the trial court, without competent supporting evidence, expressly relied upon the initial hearsay DeFabrites survey document as confirming the Reale Survey to set the boundary line and to approve the stockade fence improperly installed by the Thompsons on Lot 2. That was a manifest error.

3. The Ewing Survey Was An Inadmissible Net Opinion That Inaccurately Described the Boundary Line and Was Unreliable.

Ewing Associates did not perform any land surveying services and did not complete or deliver to the Joneses any original survey document, but Mr. Ewing told Mrs. Jones that he could not do it because Mrs. Thompson warned him he would have to testify in court about it and he told her he just copied another survey. (2T: 211-1 to 212-15). The Ewing Survey submitted by Plaintiffs (Da 46) was not signed and not validated by expert testimony. Noon, Plaintiffs' expert witness, testified that Ewing appeared to have prepared the survey based upon the tax map believing that the property transferred had only been described by the tax map. (2T:10-13 to 11-19; 43-18). Defendants objected to its admission but were overruled. (2T:9-1 to 10-13). The original survey was not presented; it was not authenticated, explained, or claimed to be accurate; and the facts supporting its preparation were not disclosed. Such document was inadmissible as hearsay and as a "net opinion". See *James v. Ruiz*, supra; *Delesky v. Tasty Baking Co*., supra. Due to the lack of signature, it lacked the attestation "that the licensee takes professional responsibility for the document based upon accepted standards of practice" (N.J. Admin Code § 13:40-8-1(a) & (c)). It was an abuse of discretion to allow it into evidence and was a manifest error for the court to rely upon it.

4. The Tax Map Did Not Define the Boundaries of the Lots.

The Tax Map # 28 (Da104), also relied upon by Plaintiffs and their expert Noon, should not have been admitted into evidence to show the boundary between the two lots

as it was not relevant. Defendants Quitclaim Deed referenced Block 280, Lot 2 and contained no metes and bounds. However, the Joneses received title to the same property described in the metes and bounds of the 2009 Stiles Deed referenced in the Foreclosure Judgment. The tax map was not relevant, as modern deeds include a tax map reference, without such reference intended to show boundaries. The tax map was not validated by expert testimony as Noon, testified he did not prepare or revise that section of the map. (2T: 37-14). There was no testimony regarding the specific documents or sources of information relied upon to prepare the section of the tax map applicable to the Block 280, Lots 1 and 2. Tax Map # 28 was inadmissible as hearsay and as a "net opinion". See *James v. Ruiz*, supra,; *Delesky v. Tasty Baking Co*., supra. The tax map for Lot 1 is inaccurate and directly conflicts with the 1999 Thompson Deed and in the Reale Survey, erroneously showing Lot 1 with width of 55 feet along High Street-6+ feet wider than the 48.81 feet shown in the 1999 Thompson Deed and in the Reale Survey- and an area (assuming 55 feet on High Street and 48.80 on Middle Street) of approximately 12,585.75 sq. ft.-substantially larger than the 10,915.86 sq. ft. shown in the Reale Survey and the 1999 Thompson Deed. The tax map for Lot 2 is also erroneous showing a width of 55 feet on High Street instead of 61.38 feet shown in the 2009 Stiles Deed and the Feldman Survey. Accordingly, the trial court abused its discretion by admitting the tax map into evidence; and the trial court's reliance upon it erred as a matter of law and was a manifest fact-finding error.

5. The Feldman Survey Accurately Shows the Boundaries.

The only valid and admissible survey document was the Feldman survey prepared by Joseph Feldman, who testified on Defendants' behalf at trial. His survey was supported by competent expert testimony and his expert report. The Feldman Survey Diagram for Lot 2 (Da105), offered at trial by Defendants and properly authenticated and validated and Joseph Feldman's accompanying Expert Report (Da42) and his testimony, was admitted into evidence. That survey and his expert report shows the boundary line between the lots intersects High Street (D) 48.81 feet from the corner of Olive Street and High Street (A) and has bearings N 43 degrees E to its intersection with Middle Street (B)[7]. It also adds important boundary-related details by showing structures on both lots. Most importantly, the Feldman Survey, his Expert Report, and his testimony, show the **discrepancies between the markers depicted on Reale Survey and their actual installation based upon his onsite investigation of the two lots.** They show that the iron rod # 103 (depicted on the Reale Survey as A-P.O.B. at the corner) and the iron rod # 104 (depicted as D at the boundary 48.81 feet from the corner) were **not** found by Feldman or by any other surveyors at the locations identified in the Reale Survey and in the Lot 1 deeds. The Feldman Survey (Da246), his Expert Report (Da55),

[7] The Feldman survey shows the width of Lot 1 along High Street and Middle Street of 48.81 feet and boundary line bearings consistent with the Reale survey but records the error in the placement of Reale survey markers.

and his testimony revealed the following discrepancies discovered by his onsite investigation between the deeds and the Reale Survey: 1) rebar # 103, as found, was not at the High and Olive Streets corner which should have been 16.52 feet east of the centerline for the 33 foot wide street as depicted in the Reale Survey; 2) rebar # 104, as found, was 5.88 feet east of the boundary line on Lot 2; 3) the boundary line bearings from rebar # 111 to rebar # 104 were found to be S 41 degrees 27' 48" West (not South 43 degrees West as specified in the deeds); and 4) the wood stockade fence was installed 5.7 feet east of the boundary line encroaching onto Lot 2. (2T:63-16 to 25; 68-12 to 69-23). The trial erred by disregarding Feldman's documents for irrational reasons. (Infra, at 30-32).

III. THE COURT ERRED BY ALLOWING AND RELYING UPON TESTIMONY OF PLAINTIFFS' EXPERT; BY DISREGARDING THE TESTIMONY AND SURVEY OF DEFENDANTS' EXPERT; AND BY FINDINGS ABOUT EXPERTS NOT SUPPORTED BY EVIDENCE (Raised below admissibility and reliability of Plaintiffs' Expert at 1T:180-1; 2T:3-19 to 6-25; Motion for Reconsideration Da314; and 4T:6-3 to 7-13)

The trial court should not have needed an expert to interpret the deeds as a matter of law. However, the multiple surveys submitted by Plaintiffs and admitted into evidence by the court caused confusion; and Judge Malestein, who was not familiar or comfortable with the terminology in older deeds, such as links and chains (4T:14-15 to 15-6), sought to resolve the boundary dispute by relying upon the surveys and experts, per the Appellate Court remand. However, the court erred by allowing Noon to

testify and by relying upon his conclusory opinion, by discounting Feldman's expert testimony and reports, and by disregarding the compelling evidence.

1. The Court Abused its Discretion by Allowing Plaintiffs' Expert to Testify and Erred by Relying Upon His Inadmissible Net Opinion.

The court abused its discretion by rejecting Defendants' objection to Noon testifying and allowing Noon to testify (1T:180-1;2T:3- 19 to 6-25). Plaintiffs' expert, Harold E. Noon, prepared an uninformative and conclusory summary report providing a net opinion (dated September 10, 2024) (2T:3-19 to 4-21; 6-1) which he delivered after the trial began, acknowledging that he did not inspect but only drove by the properties, took "every surveyor's work at face value", and concluding that "the Reale, Fralinger (DeFabrites), and Ewing surveys agree with each other, and all also agree with the tax map" and that the Feldman Survey differs from the other survey (Da58; 2T:13-13 to 17-7). Noon's summary report was delivered to Defendants' attorney belatedly on September 10, 2024 after the first day of trial. That violated the Case Management Order and deprived Defendants of time to evaluate it and conduct discovery, and the summary report did not state the facts he relied upon for his conclusion that they were similar, did not state whether or which surveys were correct or incorrect, did not state whether any conformed to or were inconsistent with the deeds, and effectively disclosed that the opinion he would provide at trial was based only upon a visual observation

of the survey diagrams and tax map and not upon any expert measurements or evaluation of their accurate depiction of the deeds metes and bounds descriptions.

Noon's testimony confirmed his report that that he had not performed any expert land survey services or analysis evaluation and could not provide an expert opinion useful in interpreting the surveys or the deeds or setting the boundary. He admitted that he did not go to the property but only drove past it (2T:30-18-25); that he did not conduct any survey measurements or onsite investigation of the properties (2T:31-1-3); that he did not know what Reale did to prepare his survey (2T:32- 5-9); that he did not talk to DeFabrites to determine what he did (2T:33-21); that the Reale Survey and the DeFabrites Survey "generally are in – or were in agreement" (2T:14-12); that the tax map[8], the Reale Survey, and the DeFabrites Survey were the same (2T:13 to 15-22); that there was a "discrepancy in his [Feldman's] work versus the other three surveyors" (Id.); and he had no opinion which survey was accurate (2T:43-10 to 20; 45-10). He did **not** identify the specific differences or discrepancies in the various surveys, did not identify the specific facts he relied upon, and did not testify that "discrepancies" were errors or that there were any errors in the Feldman Survey. He did not testify that the Reale

[8] The tax map is referenced in the later deeds but is not part of the property's legal description and does not show line bearings or locations except by approximate or scaled distances. The Maurice river tax map # 28 shows Lot 1 with width 55 on High Street or about 6 feet wider than the 48.81 feet shown in all Lot 1 deeds and in the Reale Survey.

Survey or the DeFabrites Survey was accurate, properly prepared, or met professional standards; he did not state the factual basis for his opinion that the Reale Survey and the Fralinger Survey were "generally in agreement" or that the Feldman Survey differed from those surveys; and he did not identify the facts, survey markers or measurements he relied upon.

The Court abused its discretion first by allowing Noon to testify despite Plaintiffs' failure to timely deliver the expert report in accordance with the period specified in the Court's Case Management Order and second by failing to review the report to ascertain whether his testimony was helpful in resolving disputed matter. That prejudiced Defendants; and it was an abuse of discretion to allow Noon to testify. *Pomerantz Paper Corp., v. New Community Corp,* 207 N.J. 304, 370 (2011); *Bender v. Adelson*, 187 N.J. 411, 430 (2006). While Noon may have been competent by training, education, and experience as an expert, his summary report showed that he could not assist in setting the boundaries and that there was no proper foundation for his opinion as it was not based upon facts within his knowledge or facts admitted in evidence. *Stanley Co. v. Hercules Powder Co*., 16 N.J. 295, 305 (1954). Noon's summary report acknowledged that he had not conducted an onsite inspection that was necessary to determine if the survey markers installed by Reale or shown on the Real Survey were properly placed and would not provide expert testimony as to the accuracy or inaccuracy of the

surveys compared to the applicable deeds or the material differences in the surveys or in the conclusions or determinations made by Defendants' expert Feldman. The older deeds could and should have been interpreted by the court by reviewing the plain English texts and relying upon readily available and known measurements for "chains" and "links" used therein and would have been inadmissible if the subject could be readily understood by the court utilizing common knowledge and experience. *Boland v. Dolan*, 140 N.J. 174, 189 (1995); *State v. Harvey*, 121 N.J. 407, 426-27 (1990). Here, however, the court deemed experts needed principally due to the confusion caused by the multiple surveys.

Third, the trial Court erred by relying upon Noon's vague and conclusory testimony which provided only a net conclusory opinion without facts or analysis. Noon provided no facts or expert analysis during his testimony or in his report. Noon's testimony was an inadmissible net opinion and should not have been admitted or relied upon by the court. *Davis v. Brickman Landscaping, Ltd.,* 219 N.J. 395, 410 (2014) (Court erred by admitting and relying upon expert testimony that lacks a factual foundation or a standard about which the expert testifies). See also *Pomerantz Paper Corp.* v. *New Cmty. Corp.,* 207 N.J. 344, 372 (2011*)*; *Townsend v. Pierre,* 221 N.J. 36, 53-54 (2015); *Dwyer v. Ford Motor Co*., 36 N.J. 487, 494-495 (1962) (Absence of explanation of opinion and facts relied upon rendered testimony an inadmissible net opinion); *DeLesky,* supra, 175 N. J. Super

at 520; N.J. Rule of Evidence 703. His testimony concluding which surveys were similar or dissimilar, did not give the why and wherefore or the surveying standard he measured or evaluated the surveys against, and was inadmissible. The fundamental disputed expert related fact issues were about the placement of the iron rods depicted on the Reale Survey as at the street corner and at the property boundary on High Street and the accuracy of the surveys relative to the deeds. But Noon was not competent to testify and did not testify about either issue.

Finally, Noon's testimony should have been rejected as inaccurate as he falsely testified that: 1) the Reale Survey and the Tax map were generally the same (which a simple comparison would refute); 2) the boundaries of the tax lien foreclosed property were those in the tax map (2T:24-14 to 25-9); and the 2009 Stiles Deed was not in the Joneses "chain of title". (2T: 23-9).

2. The Court Erred by Irrationally and Erroneously Disregarding the Testimony and Survey of Defendants' Expert Witness (Feldman) Due to Matters Not Related to Such Expert's Expertise, Competency, or Credibility.

Defendants' expert, Joseph Feldman, was a qualified, knowledgeable, and experienced surveyor expert who performed all the land surveying tasks necessary and appropriate to render an expert opinion regarding the boundaries. Mr. Feldman testified that he obtained the deeds for Lot 1 and Lot 2 from the County courthouse and conducted onsite investigation, measurement, and surveying of both lots and of area survey monuments. (2T:59-8 to 63-15). He testified he reviewed the

applicable deeds for both Lots 1 and 2 and was onsite for five to six hours conducting measurements and evaluation. Id. His field work resulted in his determination that the markers on High Street laid by Reale or moved were incorrect with a discrepancy of 5.88 feet. (2T:64-16 to 66-5). He timely prepared an expert report (Da55) that included: i) a detailed survey diagram and ii) a letter with detailed measurements, facts, analysis, and conclusions, which report was delivered to Plaintiffs' counsel on June 28. 2025. He prepared and signed a survey document (Da105). He testified that he based his conclusions on the survey points found and the recorded deeds (2T:68-22); that he looked to other survey markers to validate his conclusion (2T:61-18 to 69-23); that the frontage of Lot 1 was "48.8 feet" (2T:84-20 to 87-5); that the two survey rebars (iron bars) found on High Street were misplaced (2T:70-7-20); and the fence installed by the Thompsons was 5.7 feet over the boundary line and the house offset was 8.9 feet from the boundary (2T:50-16 to 51-15). Feldman set forth facts in his Survey and Expert Report that were not contradicted by anyone. He also testified that the Joneses were not present when he conducted his onsite inspection (2T:61-16) and never testified that his opinions had been influenced by the Joneses.

The trial court, although admitting into evidence Feldman's testimony and expert report, rejected Feldman's opinion as not credible due to matters not related to his testimony or services or anything he said or did. Rather, the court in its

Opinion cites "efforts to silence Mr. DeFabrites who held an opinion that the original Reale Survey was accurate", the testimony that "Ewing, another surveyor, returned the money to Mrs. Jones and advised her that he did not want to get involved and did not want to testify" (Op 17-Da18). The trial court expressly declined to find that that Feldman "was involved in some type of nefarious plot" but concluded that "with the efforts made to influence the professionals, it is impossible for this court to find that the property markers found by Mr. Feldman exist, are accurate, or were misplaced." Id. The court's rejection of Feldman's testimony, Survey and Expert Report due to efforts of others is manifestly unsupported there was no testimony that Mr. Feldman's findings about the misplacement of the survey markers were inaccurate; that DeFabrites' admissions of error were not genuine or accepted by him; and that his Overlay Survey depicting the improper marker placements based upon the 1997 Whildon Deed were not accurate.

DeFabrites did not testify that he had been "harassed" by the Jones or that Defendants tried to silence him and never stated he agreed with the Reale Survey (Op. 16-17-Da17-18). Defendants sought DeFabrites' testimony at trial and subpoenaed him. The efforts to silence DeFabrites in evidence were made by Plaintiffs and their attorneys, who instructed DeFabrites not to talk to Defendants, made the baseless request that the court warn DeFabrites that his testimony would

be self-incriminating (3T:76-17 to 78-18), challenged his reputation asserting that he was an "extremely unreliable witness" (Appellate Court Decision dated 12/09/2023 at pg. 12). The compelling evidence is that Plaintiffs (not Defendants) intimidated DeFabrites from testifying in support of Defendants' defenses.

The trial courts' factual finding that DeFabrites' held the opinion that the "original Reale survey was accurate" is not based upon any testimony by DeFabrites or other first-hand testimony but relies upon speculation or inadmissible hearsay belied by his email messages (Da257,258) and other credible documents admitted into evidence. (supra, 20-21). The court's reliance upon the hearsay testimony by Mrs. Thompson that DeFabrites said his survey was "rock solid" (Op. 16-Da17) was erroneous as DeFabrites never made that assertion after he received the Feldman Survey causing him to change his opinion. (1T:60-7). There was no evidence that the Jones interfered with DeFabrites or any other surveyor testifying or their survey. The only credible evidence was that Plaintiffs' attorney requested the court warn DeFabrites about self-incrimination to intimidate him. DeFabrites' email messages to Mrs. Jones acknowledged that his survey was inaccurate, that he agreed with the Feldman survey which he opined was accurate, and that he questioned the Reale survey noting "he could not understand how Reale made his measurements". (Da258). No competent evidence warrants a conclusion DeFabrites' admissions were false and that he believed his initial survey was accurate.

The credibility for an expert should focus on his/her expertise and experience, efforts to investigate, and the facts obtained to provide a competent opinion, and the expert's statement of the why's and wherefores for his/her opinion. But credibility of a testifying expert cannot depend upon hearsay statements about how a non-testifying expert was treated by others. The trial court's findings about Feldman's credibility were irrational, contrary to the facts, without supporting evidence, clearly erroneous, and they shock the conscious and call into question the independence and objectivity of the trial court.

3. The Undisputed Evidence was the Iron Rods Were Misplaced on High Street and the Feldman Survey was Accurate.

There were two material facts in dispute regarding the boundary line location for which expert testimony was useful- 1) the accuracy of the placement along High Street of the iron rod survey markers referenced in the 1999 Thompson Deed and in the Reale Survey and 2) which surveys were accurate. The 1999 Thompson Deed Schedule C Land Description describes the rods at the "BEGINNING at an iron rod ["P.O.B. Rod'] set in the intersection of the Southeasterly line of Olive Street (33.00' wide") with the Northeasterly line of High Street (49.50' wide), with the "iron rod ["Boundary Point Rod"] set in the Northeasterly line of High Street" from the intersection of the boundary line running from an iron rod on the Southwesterly line of Middle Street 48.80 feet from the street corner. The Reale Survey, used to prepare Schedule C, depicts the

P.O.B. Rod (BEGINNING) at the intersection of the Southeasterly line of Olive Street (33.00' wide") with the Northeasterly line of High Street (49.50' wide) and the Boundary Point Rod 48.81 feet from the P.O.B.. As Olive Street is 33.00 feet wide, the P.O.B. is one-half the distance to the centerline-about 16.5 feet.

Mr. Feldman testified that, based upon his onsite inspection, that the markers on High Street were misplaced by about 6 feet (supra at page 32-33); and the Feldman Survey and in the Feldman Expert Report (Id.) depicted the markers on High Street- the P.O.B. Rod (#103) and the Boundary Point Rod (#104) as misplaced. The Feldman documents showed 1) where the P.O.B. and Boundary Point iron rods should have been installed based upon the prior deeds; 2) where the iron rods were actually found on High Street; and 3) concluded that the Boundary Point Rod (#104) had been misplaced by 5.88 feet. (Da55). He also testified that the Reale Survey was inaccurate. DeFabrites acknowledged in his email messages to Mrs. Jones and in his messages to the Thompsons that his original survey was inaccurate and the Feldman Survey was accurate and his Overlay Survey, with lines showing the property lines set by the predecessor Whildon 1997 Deed, confirmed the misplacement of the markers by 5.88 feet. (Da 115). Mr. Noon did not testify the rods were accurately placed and declined to express any opinion which survey was accurate. (supra, at 27).

No witness disputed or questioned the accuracy of Mr. Feldman's findings or testimony about the locations where these two iron rods were found or his findings that such locations were erroneous and contrary to the deeds. No one testified that these iron rods had been properly installed along High Street consistent with the deeds. Mr. Feldman's testimony, his expert reports, and the DeFabrites Overlay Survey provided compelling and uncontradicted evidence of the proper deed-specified locations for the P.O.B. and the Boundary Point 48.81 feet from the P.O.B. and of the misplacement of the two iron rods on High Street.

The court's refusal "to find that the property markers found by Mr. Feldman exist, are accurate, or were misplaced" is manifestly unsupported and erroneous and inconsistent with the competent, relevant, and reasonably credible evidence demonstrating that the iron rods on High Street were misplaced. The iron rods exist on High Street; and they were misplaced. The trial court's erroneous factual finding regarding the survey rods further undermines its conclusion "that the property line is as described in the Reale, Fralinger, and Tax map surveys" and shows that its boundary line findings were manifestly unsupported and inconsistent with the competent, relevant, and reasonably credible evidence.

IV. THE COURT'S ADVERSE POSSESSION FINDINGS ARE MANIFESTLY UNSUPPORTED (Raised below in pleadings Da42, at trial as an ultimate issue, and in the Motion for Reconsideration Da314)

The Order, like the appealed Order from Judge Becker, did not set the boundary line based upon adverse possession. However, the court's finding that "when one stacks the possessory period of the Thompson's with their predecessor in interest, there has been the requisite period of time to establish adverse possession." (Op. 22-Da23), is manifestly unsupported by and inconsistent with the competent, relevant, and reasonably credible evidence as to offend the interests of justice. The court did not identify the specific evidence it relied upon to "stack" the Thompsons' ownership period (22 years) to achieve the required 30 continuous uninterrupted from their immediate predecessors. There was no credible evidence of years continuous and uninterrupted actual possession of the disputed property required by N.J.S.A. §2A:14-30, particularly as to the immediately preceding 8 years. Possession is adverse if claimant's use is "under a claim of right, pursued with an intent to claim against the true owner in such circumstances of notoriety that the owner will be aware of the fact and alerted to the resist the acquisition of the right by the claimant before the period of adverse possession has elapsed." *Predham v. Holfester*, 32 N.J. Super 419, 424 (App Div. 1954).

As set forth herein, such finding was not supported by the cursory and minimal evidence alluded to and the evidence introduced was insufficient to satisfy Plaintiffs' burden of proving that the Thompsons and the immediately prior owners' possession of the disputed land had been adverse, hostile, open and

notorious, exclusive, continuous, and uninterrupted for the required 30-years statutory period. The minimal and sparse evidence apparently relied upon by the court consisted of: i) arial pictures **in the 1940s** showing vehicles (with unknown ownership, duration, and authority to remain in the area) in the area between the two houses (Da 60;1T:12-18 to 13-10); ii) testimony of Plaintiffs' lay witnesses (Dayton & Carrara[9]) that Mrs. Butawitz **in the 1970s** parked her car in the area between the two properties when she conducted her sub shop on Lot 1 then and they recalled seeing a line of bushes where the Thompsons installed their stockade fence **in 2021** (1T:84-1 to 86-18, 95-17 to 97-22); and iii) Brucker, who testified that he placed the fence in 2021 where the survey property markers had been placed, apparently by DeFabrites. (1T: 113-1 to 114-12). Such vague evidence cannot prove continuous uninterrupted thirty-year exclusive adverse possession.

The pictures of cars parked in the area in the 1940s or later were not accompanied by the testimony of anyone that such parking use was exclusive, under any claim of right, more than occasional, or not expressly permitted by the owner of Lot 2. Mrs. Butawitz and Mrs. Whildon, the Lot 1 owners prior to the Thompsons, were deceased and did not testify. No witness testified that Mrs.

[9] Ms. Carrara obviously had reasons to testify biased against the Defendants as she was a friend of the Thompsons, had claimed Dr. Jones assaulted her with a pepper spray, and had recused herself from deliberating when the variance was requested by the Thompson's for a fence based upon the unsigned and subsequently withdrawn as erroneous DeFabrites survey.

Butawitz parked her car or otherwise occupied the area in the 1990s. Carrera testified that Mrs. Butawitz moved from 187 High Street years before her death in 1997. (1T:102-13). Mrs. Whildon died in 2017; and no witness testified that she, while Executrix from 1997 to 1999, parked her car or otherwise occupied the area under a claim of right before she sold the property to the Thompsons. No witness testified that they, Mrs. Butawitz, or Mrs. Whildon reviewed the deeds or knew where the deeds specified the boundary line between the two properties. No witness testified that Mrs. Butawitz or Mrs. Whildon knowingly parked over the boundary line onto Lot 2 or that did so with or under a claim of right to such area. Mrs. Butawitz died in 1997; and her use of the area was abandoned or ended after the 1970s when her sub shop closed and clearly when she moved years before her death in 1997 (with well less than 30 consecutive, continuous years of exclusive use). Plaintiffs did not prove the alleged continuous uninterrupted adverse possession by competent and credible testimony before the Thompsons acquired the property in 1999; and the evidence was that it was clearly lost at least four years before the Thompsons' acquisition of their property.

The Reale Survey, drawn in 1999, does not show or depict a driveway in the disputed area but it depicts a driveway off of Olive Street. No survey, except the withdrawn and discredited DeFabrites Survey, shows a driveway in that area. No

visible fence or hedges were in the area when the Joneses purchased Lot 2 as shown by the pictures. The removal of a fence or hedges suggests abandonment.

In summary, no one testified to continuous, uninterrupted, open, and exclusive possession or occupancy of the disputed area under a claim of right by the consecutive Lot 1 owners for 30 consecutive years before or after the Thompsons acquired Lot 1. Consequently, the trial court's finding that the Thompsons' alleged adverse possession could be stacked or combined with the immediately prior owners alleged adverse possession to satisfy the thirty-year period is manifestly unsupported by the evidence.

V. THE EQUITIES FAVOR DEFENDANTS (Raised below in pleadings Da42 and during trial)

Plaintiffs' actions and claims throughout this litigation and treatment of Defendants have been inequitable, outrageous, in bad faith, and ultimately fraudulent and additionally warrant denial by the court of the equitable relief they sought. *Phoenix Pinelands Corp., v. Davidoff*, 467 N.J. Super 532, 589 (App. Div. 2021). The Thompsons initially submitted in their complaint derogatory matters about Geraldine Jones not relevant to the boundary line dispute with the apparent intent of affecting the court's objectivity; they relied upon the original DeFabrites survey after he informed them that his survey had issues, that he overlooked old deeds, and provided his Overlay Survey, and they continued to rely upon the original withdrawn survey after being informed by DeFabrites that the survey was

unreliable and inaccurate; they caused confusion, complexity, and distractions at trial by submitting inadmissible and unreliable surveys and other documents; they added to the confusion by selecting and calling an expert who did not perform any onsite inspection, did not timely disclose the expert's conclusory expert report, and gave only conclusory testimony; they intimidated or threatened their surveyor DeFabrites causing him to refuse to testify due to self-incrimination concerns in favor of the Joneses; they offered testimony of lay witnesses who the Thompsons should have known could not support their claim of continuous and uninterrupted thirty-years adverse possession; and they wasted the time of the court and the Joneses. Plaintiffs outside the courtroom directly interfered with the Joneses' efforts to improve, use, and enjoy their property at 187 High Street, first by interfering with their contractor on the day he commenced work to upgrade and repair their house (asserting that the contractor's ladder placed against the Joneses' house was on the Thompsons' property), called the police then and repeatedly thereafter alleging trespassing, harassed the Joneses, and posted offensive signs on the Thompsons' property directed at the Joneses.

CONCLUSION

For the reasons set forth above, Appellants-Defendants Geraldine and Rhys Jones respectfully request that the trial court's Order and Opinion be vacated; that this Court enter an Order precisely defining the boundary line as a matter of law as

specified on page 17 above or remand this matter to the trial court with the direction that it enter a corrected Order as specified above; and that this Court provide such other and further relief as is just and proper.

Dated: July 23, 2025

Respectfully submitted,

SWEENEY LEV LLC

BY: /s/ Gerald B. Sweeney, Esq.
Gerald B. Sweeney, Esquire

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-002860-24 T1

	:	CIVIL ACTION
DANIEL THOMPSON and ELIZABETH THOMPSON, Plaintiffs/Respondents,	:	On Appeal from: Judgment of the Superior Court of New Jersey
v.	:	Chancery Division Cumberland County
GERALDINE JONES and RHYS JONES, Defendants/Appellants	:	Docket No.: CUM-C-21-21
	:	Sat Below: Hon. Robert G. Malestein, P.J.Ch.

RESPONDENTS' BRIEF (AMENDED) OF PLAINTIFFS-RESPONDENTS DANIEL THOMPSON and ELIZABETH THOMPSON

September 4, 2025

Submitted by:

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PRELIMINARY STATEMENT

The Trial Court's conduct and rulings speak for themselves. The Trial Court was fully aware ahead of time that Its decision was going to be appealed, and acted with appropriately deliberate measure. A Court of Equity has wide discretion, and this appeal consists merely of the Appellants' dissatisfaction with the Court's findings.

Respondents are at a loss to convey to the Appellate Division exactly how ridiculous the Appellants' claims are. Appellants would blow into town from Montclair, 130 miles to the north, and have the Court upend a sleepy little neighborhood down by the Delaware Bay that has coexisted quietly for well over a hundred years, to deprive the Respondents of their driveway. Appellants don't need the Respondents' land, less than 1,000 square feet assessed at less than $1,000. The reason they have brought this appeal is to show the locals who is boss. The Appellants are from north Jersey, and Mr. Jones is a doctor, and they aren't going to let the yokels tell them the score. This dispute has been before the land use board, and the municipal Court, and the Superior Court Civil Chancery Division, and the Civil Law Division, and the Criminal Division, and now the Appellate Division, besides which the Joneses are currently maintaining a *pro se* federal action against the

Respondents and members of the New Jersey State Police over some imagined conspiracy. The transcript does not begin to do justice to the performance through which the Trial Judge and Respondents were forced to sit. The Appellants rave, and they fantasize, and when all else fails they lie, and they expect south Jersey not to dare call them on it.

Plaintiffs/Respondents thus begin where they ended at trial: Defendants/Appellants have no possible claim to the disputed property.

Appellants' expert, Mr. Feldman, admitted that according to the municipal tax map, the disputed area is part of Respondents' property. Nothing else matters. The Joneses did not take title to the disputed area because they bought their lot from the Township, and the Township had acquired their lot by tax foreclosure, and the Township can't take land in a tax foreclosure unless the tax on that land has not been paid, and the Plaintiffs had paid the tax assessed to them which included the disputed area, and so the Township had no standing to take the disputed land, and so the Township could not possibly have conveyed the disputed land to the Joneses, and so the Joneses cannot possibly have any claim to the disputed land. The rest is just noise. Even if to any extent the Appellate Division might find error, such is merely harmless error, because it cannot change the result.

This is a non-dispute. Everybody knew exactly where the property line was, for a hundred years or more, and there were visible surveyor monuments at both ends when Appellants bought their lot. Appellants are trying to litigate their lie into existence.

Defendants/Appellants have had their day in Court, twice now, and have produced no witnesses except their own testimony - based on zero firsthand knowledge predating their purchase of the property in 2021 - and a bumbling old man who signed a survey on which his representation of "North" was 13 degrees off and who admitted that he had based his entire survey on a "random" bearing of his own choosing.

The Trial Judge gave the Appellants' claims a full airing, exercising great personal patience, even beyond the point of unfairness to the Respondents. Appellants' claims have fallen entirely short, in all forums. This appeal is just one more attempt to "throw money at it" and rewrite reality.

PROCEDURAL HISTORY

Plaintiff/Respondent defers to Defendants' version of procedural history, minus the embedded factual arguments. The dates and procedural events appear accurate.

Plaintiffs/Respondents originally filed an Order To Show Cause and Verified Complaint (Da30) to quiet title on September 2, 2021, and the said Order issued the same day (Da54).

After trial by Judge Becker, the Court Ordered Judgment for Plaintiffs/Respondents on April 11, 2022 (Pa14).

After a successful appeal by Defendants and re-trial *de novo* by Judge Malestein, the Court Ordered Judgment for Plaintiffs/Respondents on March 11, 2025 (Da01).

Reconsideration (Da314) was denied, and this appeal ensued.

PLAINTIFFS' RESPONSE TO DEFENDANTS' STATEMENT OF FACTS

Respondents dispute a number of assertions in Plaintiffs' Statement Of Facts. For instance, Appellants allege that "the Thompsons began a contentious dispute"; Respondents note that the Joneses began the said dispute, by trespassing.

Appellants go on to refer to "an area immediately adjacent to the Joneses house which the Joneses believed was their property". At the time referenced, the Joneses had no good faith belief that the disputed area was their property. They came up with that idea later.

Respondents do strongly agree with Appellants that the 2021 deed into the Appellants transferred "whatever interest" the Grantor had, the Grantor being the Township of Maurice River, Cumberland County.

The land granted from the Township to the Joneses did come into the foreclosed party Victoria Stiles by the stated 2009 deed, but the Township did not and could not have foreclosed on the entirety of the land described in the 2009 deed, because some of that land, the disputed area, was being taxed to the Thompsons and the tax thereon was being paid, thus the land foreclosed upon and quitclaimed to the Joneses did <u>not</u> have the same boundaries as the 2009 deed into Victoria Stiles.

Mrs. Jones' testimony as to what Denise Peterson said is hearsay and not competent evidence.

Plaintiffs/Respondents further object to Appellants' addition of annotations to certain items of evidence, e.g. Da260, which were inserted after trial.

PLAINTIFFS' RESPONSE TO APPELLANTS' LEGAL ARGUMENT

Plaintiff/Respondent does not dispute Defendants' assertions of law. No doubt the cases cited say what they are quoted as saying. Rather, Plaintiff disputes Defendants' assertion that these citations have any relevance to the facts of the case at bar.

I. Allegation of Trial Court's Failure to Interpret the Deeds

Appellant argues, "The trial court erred by failing to interpret or erroneously interpreting the applicable deeds as a matter of law to set the boundary line."

Per Mr. DeFabrites' augmented survey drawing (Da115) and Mr. Noon (2T16a:22-24), or in the alternative, the Court may choose to take judicial notice of this objective and easily verifiable mathematical fact: the metes and bounds of the 2009 deed into Stiles do not "close". The end of the last call does not direct to the point of beginning of the first call, failing to form a polygon. The 2009 deed is thus facially defective, and not deserving of any weight in the Court's deliberations, as are all prior deeds of identical legal description, dating back to 1876. It further constitutes a "latent deed ambiguity", per *Hofer v. Carino,* 4 N.J. 244 at 250-251, opening the door for extrinsic evidence.

The surveys depict the legal descriptions given in the deeds. Thus, interpreting the surveys is interpreting the deeds. The experts, particularly Mr. Noon (2T13:15), reviewed the deeds. Thus, listening to the experts is interpreting the deeds.

As Appellants noted, the Court is to determine the intent of the parties. The Court did exactly that, examining evidence that spoke to the way the respective owners and their predecessors had lived on the land, including historical aerial photographs and testimony of long-time residents of the neighborhood.

It turns out that surveying is less than 100% science (2T232:18-19), and to a significant degree is also art. A surveyor considers the available evidence, and gives an *opinion* of how best to enact the intent expressed in the deeds, even in the face of conflicting evidence, which is quite common. As Mr. Noon pointed out (2T16a:13-20), in a "metes and bounds" state such as New Jersey, extrinsic evidence matters, especially what you can see. The Joneses could plainly see the Reale monuments, before they purchased the house, since Mr. Thompson stated that he maintained the area (1T144:13-25).

II. Allegation of Trial Court's Reliance on Surveys of Non-Testifying Experts

Mr. Reale, who prepared the 1999 survey, is deceased (1T51-14). Under N.J.R.E. 804(a)(4), the Judge is entitled to consider his survey. The Appellants had adequate means to challenge this evidence, and did.

The Court appropriately weighed Mr. DeFabrites original survey versus his later alleged emails to Mrs. Jones, and in fact found, to the Appellants' credit, that his opinion had gone '...from "rock solid" to something less.' (Da17)

At 3T80, line 20, surveyor Guy DeFabrites states that he never visited the site. The Appellants are arguing out of both sides of their mouths, in that they simultaneously allege that Mr. DeFabrites' opinion shifted to support them. Taking all the evidence at face value, Mr. DeFabrites would have constituted an ambivalent witness at best, having apparently expressed two contradictory opinions. Respondents' counsel argued at closing that given his apparent waffling, Mr. DeFabrites should best be ignored in his entirety, leaving the Court to consider only Reale, Feldman, Ewing, and the tax map (Pa01). Mr. DeFabrites alleged email to Mrs. Jones (Da282), conceding to her every demand, is at its core merely a plea for her to leave him alone, as the Court recognized.

Had the Appellants actually wished Mr. DeFabrites to testify, they may have done well to refrain from accusing him of crimes beforehand. At 2T172-174 Rhys Jones describes seeing Fralinger's workers dig up and remove a surveyor's monument (although Reale had reported nothing in that location). At 2T206-212, Geraldine Jones describes Fralinger's activities, and at 2T212:1 and 2T227:14, she accuses Mr. DeFabrites of "fraud". At 2T221:6-8 she accuses him of moving the property line. (At 3T77:2-5 and 3T78:13-15, the Trial Judge fails to remember any of this testimony.)

Mr. Noon, eminently qualified to read a survey, assisted the Court in grasping the facts of the case, which is the manifest purpose of an expert (N.J.R.E. 702).

The Trial Court correctly considered and factored in all of the issues now complained of by Appellants, but none of it amounts to a credible challenge to the corners placed by Reale in 1999.

III. Allegation of Trial Court's Reliance On Plaintiff's Expert

Plaintiffs' expert Mr. Noon was identified to the Court and Appellants in open court, months before the trial. Mr. Noon gave his method for arriving at his opinion at 2T13:15-22. His testimony was not a net opinion. Mr. Feldman got to hear his testimony, before his own.

Plaintiffs' agree with Appellants that when the trier of fact is a Chancery Judge who regularly hears property cases, an expert may not be necessary. However, it's an odd claim to come from Appellants, whose request for an expert resulted in success on their first appeal.

The Trial Court, using Its discretion, elected to hear what Mr. Noon had to offer, and ultimately gave his testimony appropriate weight in the context of all of the evidence given. It is not clear that the Trial Court relied to any significant degree upon Mr. Noon's testimony, in any case. As Appellants note, Mr. Noon did not give an opinion as to the correct situs of the disputed property line - so what are they complaining about?

Mr. Noon testified that the tax map agrees with Reale and Ewing as to the location of the disputed line (2T10-11). Feldman (2T136-8) acknowledged the same. Mr. Noon correctly testified that the foreclosed land corresponded to the tax map and not the 2009 Stiles deed.

IV. Allegation re Trial Court's Adverse Possession Finding

Appellants' assertion that the record is inadequate to support the Trial Court's finding of adverse possession belies a basic misunderstanding of the law of adverse possession.

None of the Appellants' three witnesses had ever set foot in Leesburg until shortly before the Appellants' land purchase on January 4, 2021, and none of them gave any testimony as to conditions on the Plaintiffs' property prior to that, nor did Appellants put forth any evidence whatsoever addressing that question.

Plaintiffs produced aerial photographs from 1940 forward, testimony from longtime residents of the neighborhood, and their own personal knowledge from over 30 years in Leesburg to support their claim of adverse possession. All of it was uncontroverted. Appellants had zero.

Plaintiffs and their predecessors paid taxes on the disputed land, since at least February 18, 1991 (the date on the current tax map - Da104). They maintained it, as Mr. Thompson testified (1T144:13-25). They confronted trespassers, such as Mrs. Jones' contractor, and asserted their property rights. There is more than sufficient evidence to support the Trial Court's finding.

V. Allegation that Equities Favor Appellants

In what universe do the equities favor the Appellants!? The Appellants have wrought constant misery - and extremely burdensome expense - upon the Thompsons for over 4 years, with no end in sight, with their ridiculous antics. The Thompsons just want to use their driveway, as they did peacefully for 22 years before the Jones family crashed the scene. The Thompsons appropriately called the police because they are terrified of the Appellants and needed protection.

The municipal land use board granted the Thompsons the extraordinary relief of allowing construction of the fence exactly on the property line, with no setback. The various municipal court charges resulted in Mrs. Jones pleading guilty, and all charges levied against the Thompsons by the Joneses dropped. The Superior Court Criminal charges resulted in a guilty plea by Mrs. Jones for assaulting an officer. The Thompsons have now won the Chancery case at trial twice. The various assertions made by the Appellants to suggest equities in their favor have all been debunked by the Trial Court. The Joneses' *pro se* Civil Division case, removed to federal court, has already had one defendant dismissed as it plods along, borne of their fantasies.

Suffice it to say that the record contradicts Appellants' assertions.

RESPONDENTS' FACTUAL ARGUMENT

I. Appellants Produced No Reliable Witnesses

Geraldine Jones lies.

At 1T127, lines 3-10, Elizabeth Thompson testifies that Geraldine Jones, in response to Mr. Thompson asking the contractor if he had insurance on May 3, 2021, claimed that New Jersey has a "10-foot rule" for the right of a contractor to trespass. The point is not whether or not she actually believed this. The point is that today she would have us believe that she already knew that the disputed land was hers, before she bought the property. The truth is that on May 3, 2021, when this whole dispute started, she did not have any such belief.

In the video Da231 (Appellants' zip drive), Appellants' contractor stands in the disputed triangle and very pointedly admits, "I'm on your property!" Mrs. Jones, well within earshot, did not elect to correct him, because on May 3, 2021, she did not think he was wrong.

At 3T68:15, Mrs. Jones asserts that there is no video showing her on the Thompsons' property. In Da233, another video supplied to the Court by the Appellants on a zip drive, Mrs. Jones can be seen on the Thompsons' property, knocking their security camera from its mount on the Thompsons' house and stomping it into the ground. When

confronted on cross-examination, the only thing Mrs. Jones could come up with was to claim it was a doctored video. (3T66-67)

She claims to have a master's degree in music, but could not answer the simple question, "How many sharps in the key of B?"

Rhys Jones lies.

At 2T177:15-18, he is asked if he ever saw tire tracks in the Thompsons' driveway; he said no. The driveway, in the form of two very well worn ruts, is visible in the picture taken May 3, 2021 (Da252). The Joneses tried to push the narrative that the Thompsons never used that side of the house for a driveway until after the dispute arose. As numerous pictures in evidence prove, this is laughably false.

Rhys Jones testified that he watched through a window as Fralinger's crew dug up an old surveyor monument and removed it from the center of the Thompsons' driveway. Da253 purports to show Fralinger's shovel, as if the 4-inch hole in the foreground had been left by removal of a 30-inch concrete surveyor's monument.

Rhys Jones said that when we see him helping his mother dig Reale's monument out of the ground (Da232, Appellants' zip drive), they really just hit it by accident (2T188:1-15) and didn't remove it. The video shows them very purposefully digging out the monument.

Even beyond their palpable dishonesty, the Appellants live in a fantasy world. For example, Mr. Thompson is a contractor. Before he started digging fence posts, he prudently called the utility hotline and got a markout. Da245 shows the yellow flag placed by the utility contractor to warn him of the location of the Joneses' gas line. In the Joneses' minds, however, they have concocted a whole ridiculous story wherein Mrs. Thompson called the gas company and impersonated Mrs. Jones and talked them into moving the gas line. They never got around to saying how they knew this, but they probably actually believe it.

Mr. Feldman was not reliable.

The two 1876 deeds that created the two lots both specify a bearing of South 43 degrees West (or North 43 degrees East) for the boundary line between them. Everyone more or less agrees that Reale's rear corner monument on Middle Street is correct. So, the remaining question is, what direction is S 43º W? If you stand on the Middle Street monument and point S 43º W toward High Street, or more importantly where magnetic S 43º W was in 1876, does that yield a line that runs through the middle of the Thompsons' driveway as Feldman claims, or one that hugs the Joneses' house as Reale claims? Mr. Reale was a licensed surveyor who set his monuments in modern times where they

have remained continuously visible, and his survey is entitled to a presumption as competent evidence, which Mr. Feldman did not damage in the least at trial. Mr. Feldman cannot and did not say that Reale's line is not S 43º W, because Feldman made it clear that he doesn't know or care where S 43º W is or was. Feldman simply picked a line to start with and assumed it was correct, and worked backward from that (2T127), as if property rights are just part of a jigsaw puzzle that can be plugged in wherever they seem to fit the best. Mr. Feldman had a long argument with the Court starting at 2T120, during which he asserted vehemently that it doesn't matter where S 43º W is or was, and that if we hold the consensus rear corner and push the front of the Thompson property down the street 5.88 feet, the shape of the polygon will not change. This is idiotic, since the only other possibility is that the front boundary of the relocated lot will no longer align with the street.

Mr. Feldman's placement of the bearing S 43º W differs from Mr. Reale's by 4.85 degrees (per the Law of Cosines). When asked if it were possible that Mr. Reale had looked up the angle of declination for 1876 and sited S 43º W accordingly, Mr. Feldman responded "Absolutely not." However, he was unable to support that conclusion at all. He

admitted that he doesn't really know where S 43º W, and if he doesn't know where it is, he cannot say that Reale's placement of it is incorrect.

At 2T111:3-4, Mr. Feldman testified that he didn't review the deed by which his clients took title. At 2T144-145, Mr. Feldman admitted without the least hint of embarrassment or irony that the depiction of "North" on the survey he signed and presented to the Court was just an approximation, and the fact that it is 13 degrees off doesn't matter.

The Trial Court digested all of this, and rightly found that Mr. Feldman, while no doubt a gentleman, was not a reliable witness.

II. Appellants Have No Claim to the Disputed Land

Appellants' expert, Mr. Feldman, testified that a municipal tax map is the best source of information about what the township is taxing and to whom (2T136:22-25). At 2T137:7, Mr. Feldman was asked to draw a depiction of the disputed area on a copy of the tax map. This resulted in Plaintiffs' Exhibit P-50 (Da243), with the disputed triangle delineated by his pencil line through the Thompsons' property, Block 280 Lot 1. The Township taxes the designated owner for each piece land according to the tax map dimensions, right down to the square inch. Mr. Feldman admitted that the disputed land is being taxed to the Thompsons.

At 1T39:4, Mrs. Thompson gave the uncontroverted testimony that the Thompsons have always paid the taxes assessed to them, which obviously includes taxes assessed to the disputed triangle which is part of their property on the tax map.

It was further established by Mr. Feldman's testimony that the Jones property had been acquired by the Township via tax foreclosure (2T110:1-4).

N.J.S.A 54:5-104.34(b) requires that *in rem* foreclosure can only occur if "All or any portion of the general land taxes levied and assessed against the land for 21 months...remains unpaid". The land taxes levied and assessed against the disputed triangle never went unpaid.

Therefore, the Township could not and did not take the disputed area via the said foreclosure. Therefore, the Township could not and did not convey the disputed area to the Appellants via the January 4, 2021, quitclaim deed, and the Appellants have no possible claim to the disputed land.

Plaintiffs pointed these facts out to the Trial Court in their written summation (Pa01), but the Court took no notice thereof in Its written opinion (Da02).

CONCLUSION

The panel is directed to Da252, a still photo from the Respondents' security system captured May 3, 2021, which clearly frames the "dispute". The black line represents the Appellants' claim of where the line should be. The slat fence on the left sits more or less on the actual property line, as noted on the 1999 Reale survey (Da71). The bundle of material under the ladder is also more or less on the line. The resolution of the picture is not sufficient to show it, but the front corner monument set by Reale is plainly visible to the naked eye, to the left of Respondents' driveway and just to the right of Appellants' front porch. Appellants had no trouble seeing it when they dug it out of the ground (Da232, video provided by Appellants on zip drive).

Mr. Thompson was confronted with exactly this scene. He was not rude; he didn't tell the man to get off of his property. He was all in favor of the Joneses fixing up their house, as he's the one who has to look at it. Cognizant of the risks as a contractor himself, he simply asked the man on the ladder, "Do you have insurance?" (The man did not.)

Thus began over 4 years of lunacy.

Appellants later asserted, the picture notwithstanding, that there was no driveway between the houses and that the Respondents only

began parking there after May 3, 2021, in an attempt to establish the driveway. The fact is that the driveway, and the property line, pre-date the age of the automobile. Everybody understood that for well over a hundred years, including the Joneses. Her initial response to Mr. Thompson's inquiry was to assert that under New Jersey law, a contractor has a right to trespass in order to make repairs. She later changed to, "Every property in New Jersey must have a minimum side setback of 10 feet." It was months before she started pushing the "Your markers are wrong and we own the property" schtick.

The record shows that Judge Malestein was fair to the Defendants at every turn, even indulgent at times. They got their day in Court, and then some. It takes chutzpah for them to now claim that they were the ones who got the short end of the stick, after they elected to put forward no case at trial beyond their own testimony and a surveyor who didn't even review their deed. Plaintiffs did the work, digging out the old deeds, producing historic aerial photographs and their own photographs, bringing witnesses who had lived their whole lives in the neighborhood. The trial Court did its job, reviewing the evidence placed before it by the litigants and ruling thereupon. The trial Court was persuaded because Plaintiffs proffered a superior case and demonstrated superior title. The

Defendants did not put forth a prima facie showing that Plaintiffs' assertion of the property line was wrong. Furthermore, the Trial Court found that the Plaintiffs and their predecessors in title had accomplished adverse possession of the disputed area, by over 30 years of dominion. Finally, Plaintiffs have conclusively proven that Appellants cannot possibly have title to the disputed land.

Appellants are not before the Court in good faith. They had nothing. They still have nothing. Still, they got a full bite at the apple - two, in fact. Now suddenly they are angry, again, and have decided to throw even more money at it and make ridiculous and inflammatory accusations, but the case has already been decided, and decided correctly, on the basis of the evidence put before the trial Court by both sides. It is thus prayed that the panel leave the verdict undisturbed.

By: /s/*Terance J. Bennett*
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Attorney for Plaintiffs/Respondents
Dated: September 4, 2025

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DANIEL THOMPSON and ELIZABETH THOMPSON, Plaintiffs-Respondents, v. GERALDINE JONES and RHYS JONES, Defendants-Appellants.	Civil Action On Appeal from: Judgment of the Superior Court of New Jersey Chancery Division Cumberland County Docket No.: CUM-C-21-21 Sat Below: Hon. Robert G. Malestein, P.J.Ch.

REPLY BRIEF OF DEFENDANTS-APPELLANTS GERALDINE JONES and RHYS JONES

SEPTEMBER 15, 2025

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REPLY BRIEF

Defendants-Appellants Geraldine Jones and Rhys Jones (the "Joneses" or "Appellants"), by their attorneys, submit this Reply Brief to reply to the Amended Brief ("Res. Brf") of Plaintiffs-Respondents Daniel Thompson and Elizabeth Thompson (the "Thompsons" or "Respondents") responding to the Joneses' Amended Brief ("App. Brf.). Respondents expressly concede the Joneses' statements of law and effectively concede, by failing to contest, most Joneses' Statement of Facts and Legal Arguments. Significantly, Respondents abandon Guy DeFabrites, their surveyor whose inaccurate survey they and the trial court relied upon, and expressly request he "be ignored in his entirety"; and effectively abandon Harold Noon, their expert witness whose net opinion they and the court relied upon, by their lukewarm, conclusory assertion, without citing facts, that he did not provide a "net opinion". Respondents' principal argument - that the trial court's "conduct and rulings speak for themselves" (Res. Brf. 1) - is contrary to the facts and law. Their new argument- that the Stiles property foreclosed upon by Maurice River Township did not include the disputed area on such property as the Township had no standing to take such disputed area (Res. Brf. 2) - was not addressed by the trial court or in a cross-appeal by Respondents and is baseless. As detailed below, Respondents' bare bones opposition concedes Appellants' arguments and requires that the trial court Order and its Opinion be vacated.

STATEMENT OF FACTS

Respondents concede the Joneses' Statement of Facts, disputing only (Res. Brf. 5-6) that i) the Thompsons started the dispute; ii) the Township foreclosed on and transferred to the Joneses the property described in the 2009 Stiles Deed (App. Brf. 9-10); and iii) Ms. Jones' testimony that Township Municipal Clerk Peterson sent her the 2009 Stiles Deed and said its boundaries describe the property transferred to the Joneses, arguing it was inadmissible which the Joneses contest. Appellants deny all newly added fact assertions by Respondents.

LEGAL ARGUMENT

I. THE COURT ERRED BY FAILING TO INTERPRET OR ERRONEOUSLY INTERPRETING THE DEEDS TO SPECIFY THE BOUNDARY LINES.

Respondents concede that ownership of real property is transferred by a deed, with the deeds interpreted by the court as matter of law, using the metes and bounds description and information therein, unless there is a latent deed ambiguity (App. Brf. 14) and that the 2021 Joneses Deed transferred to the Joneses "whatever interest" Maurice River Township ("Township") had in and to the property (Res. Brf. 5). They also assert - raising a new fact dispute - that the 2009 Stiles Deed "fails to close" and argue such alleged deficiency justifies the trial court's reliance upon evidence extrinsic to the deed for its interpretation. (Res. Brf. 7).

Their argument and fact assertions are without any record citation, not explained, not relevant, and contrary to the documentary record. The 2009 Stiles Deed and the Feldman Survey show Lot 2 as 59.4 feet wide along Middle Street and 61.38 feet wide along High Street and depict Lot 2 as a closed polygon. The last clauses (#4) in the Lot 2 deeds – the 2009 Stiles Deed, the 2006 Stiles Deed (Da 322), and 1876 Robert Deed (Da 116) - show the line along High Street returning to the "beginning" from the point where Lot 2' s boundary line with Lots 3 and 4.01 intersects with High Street. Most importantly, the boundary line between the lots detailed in the 1997 Whildon Deed is equivalent to that in the 2009 Stiles Deed and in all predecessor deeds for both lots (App. Brf. 11-12); and the trial court never considered, relied upon, or interpreted the 2009 Stiles Deed.

Respondents acknowledge that intent should be considered in interpreting a deed but erroneously assert that intent can be ascertained from evidence extrinsic to the deed about how others lived on or used the land (Resp. Brf. 8). The parties' intent must be derived from the deed's text and evidence intrinsic to the deed. The 1999 Thompson Deed states that the property transferred "is the same property acquired by Grantor by the [1997 Whildon Deed.]", indicating the parties' intent that the 1999 Thompson deed have the same boundaries as in the predecessor 1997 Whildon Deed. (App. Brf. 8). Similarly, the 2021 Joneses Deed (App. Brf. 9), refers to the Final Judgment of Foreclosure expressly identifying the 2009 Stiles

Deed, states the "property in question was owned by Victoria Stiles at the time of the final judgment on the *in-rem* foreclosure", which indicates the parties' intent that the property conveyed have the same boundaries as the 2009 Stiles Deed.

Respondents incredibly argue that the trial judge did not need to review directly and interpret the deeds but could rely upon the interpretation of the expert surveyors and their surveys to set the deeds' boundaries. (Resp. Brf. 8). That is fallacious as the trial court's duty is to interpret, as a matter of law, the applicable deeds- the primary and best evidence- which clearly requires that the deeds be examined carefully and evaluated by the court. However, the Order and the Opinion are devoid of any interpretation of deeds (App. Brf. 15 -16) due to the judge's unfamiliarity and discomfort with the terminology in the predecessor deeds (App. Brf. 10, n4) and must be vacated.

II. THE TRIAL COURT ERRED BY ADMITTING INTO EVIDENCE AND RELYING UPON SURVEYS OF NON-TESTIFYING EXPERTS AND BY DISREGARDING THE FELDMAN SURVEY

Respondents concede, by failing to contest, Appellants' arguments that the surveys of non-testifying witnesses offered for the truth of the facts and expert opinions therein are both hearsay and net opinions (App. Brf 13). As to the Reale Survey, Respondents argue it should not be barred as hearsay because Reale was deceased with the unavailability exception to the hearsay rule applicable, but they failed to oppose Appellants' argument that such survey was an inadmissible net

opinion, and, therefore, effectively concede its inadmissibility. They also concede, by failing to oppose, Appellants' facts and arguments (App. Brf. 19-20) that: no expert testified how the Reale survey had been prepared or that it was properly prepared, accurate or consistent with the Lot 1 deeds or the facts supporting it as no one knew what he did or why; and the survey was deemed unreliable and questionable by Appellants' expert surveyor Feldman, who testified that the Reale survey markers were misplaced, and by Respondents' prior surveyor DeFabrites, who questioned how Reale "arrived at his property line as it doesn't match the older deeds" and in his Overlay diagram showing the boundaries of Lot 1 in the predecessor 1997 Whildon Deed at a different location from those in the Reale Survey. The Reale Survey's unusual disclaimer also undermines its reliability, and its deficiencies lead to this dispute. The "presumption" of competency claimed by Respondents (Res. Brf. 17) does not exist.

As to the DeFabrites' original survey, Respondents abandon it arguing that "DeFabrites should best be ignored in his entirety" (Res. Brf 9) and concede, by not opposing, Appellants' arguments (App. Brf. 20-22) that such survey was inadmissible hearsay stating an inadmissible net opinion; that his email messages acknowledged the inaccuracy and errors of his original survey and the accuracy of the Feldman survey; and that his Overlay survey shows the property lines of the predecessor 1997 Whildon Deed **5.88 feet closer to the Olive Street centerline**

than shown in DeFabrites' original survey. Respondents discard DeFabrites' original survey, which they relied upon throughout this lawsuit to show the boundary line and to obtain Township fence installation approval; and they intimidated him by their trial motion to warn him of the risks of testifying on behalf of Appellants. Respondents also effectively concede Appellants' facts and arguments (Ap. Brf. 20 -22) that DeFabrites informed the Thompsons that his original survey could not be relied upon as he had "made a mistake, overlooked an important old deed, etc."; and he provided his Overlay survey showing in green the boundary of Lot 1 set by the predecessor 1997 Whildon Deed.

Respondents, by failing to oppose, similarly concede Appellants' arguments that trial court erred 1) by admitting into evidence and relying upon a) the Ewing Survey which was inadmissible as unauthenticated, hearsay, net opinion that lacked attestation (App. Brf. 22-23); and b) the Tax Map which was inadmissible as not relevant to the two lots' boundaries, hearsay stating a "net opinion", and inaccurate as it directly and materially conflicts with the 1999 Thompson Deed, the Reale Survey, and the Feldman Survey showing Lot 1's width dimensions along High Street (App. Brf. 23-24); and 3) by disregarding the Feldman Survey, which was the only valid and admissible survey document. (App. Brf. 25-26). The Order must be vacated as it expressly relied upon the inadmissible and erroneous Reale Survey for its boundary clause and implicitly relied upon the inadmissible, erroneous, and

withdrawn DeFabrites Survey for its fence clause, without any findings of fact, which survey the Thompsons had relied upon for Township fence approval.

III. THE COURT ERRED BY ALLOWING AND RELYING UPON TESTIMONY OF PLAINTIFFS' EXPERT; BY DISREGARDING THE TESTIMONY AND SURVEY OF DEFENDANTS' EXPERT; AND BY FINDINGS ABOUT EXPERTS NOT SUPPORTED BY EVIDENCE.

In response to Appellants' argument that the court abused its discretion by allowing Harold Noon to testify (App. Brf. 27-31), Respondents argue, in conclusory manner without citing any references in the record, that "it is not clear that the court relied in any significant degree upon Noon's testimony.."; and expressly concede that " Noon did not give an opinion as to the correct situs of the disputed property line …" (Res. Brf 11), the core issue to be decided by the court.

Appellants' and Respondents' briefs together confirm that Noon should never been allowed to testify and that his summary conclusions about the similarity or dissimilarity of the surveys (including tax map) should not have been considered by the trial court as they likely caused confusion. Notably, Respondents do not contest that Noon's expert report was provided untimely after the trial began in violation of the Case Management Order, acknowledged that he only drove by and did not conduct any survey measurements on the properties, accepted all surveys taking "every surveyor's work at face value", and stated his opinions about the surveys and tax map in a summary and conclusory form without facts, analysis., or identification of their differences, did not conclude that any surveys were correct or

incorrect, and, most importantly, did not state whether any surveys were consistent or inconsistent with the applicable deeds for Lot 1 or for Lot 2. Respondents effectively concede that Noon did not know what Reale or DeFabrites did to prepare their surveys, and had and expressed no opinion which survey was accurate and which inaccurate. They also concede Appellants' argument that Noon's testimony was inaccurate in material respects and unreliable, particularly that the Reale Survey and the Tax map were "generally" the same which a simple comparison of the two documents shows is false; and that the 2009 Stiles Deed was not in the "chain of title" for Lot 2. Noon's testimony was clearly an inadmissible net opinion and the trial court's allowing him to testify and relying on his testimony was a clear abuse of discretion.

As to Defendants' expert, Joseph Feldman, Respondents do not contest Appellants facts and arguments (App. Brf. 31-35) that Feldman was a qualified, knowledgeable, and experienced surveyor expert who performed all the land surveying tasks necessary and appropriate to render an expert opinion regarding the boundaries. They do not contest that the court's rejection of Feldman's testimony and reports because of efforts by others to "silence" DeFabrites' testimony about the Reale Survey or his DeFabrites original survey is manifestly unsupported by any testimony or evidence in the record. As noted by Appellant (App. Brf. 33-34) and not contested by Respondents, the efforts to prevent

DeFabrites from testifying were not done by Feldman but were principally undertaken by Respondents' baseless and threatening trial motion for the court warn DeFabrites that his testimony would be self-incriminating. Nor is there any factual basis for the court's conclusion Respondents' assertion (Resp. Brf. 9) that DeFabrites email messages acknowledging his errors were simply "a plea for her to leave him alone.." DeFabrites' opinion changed after he received the Feldman Survey and the previously unavailable 1977 Whildon Deed, which new information caused him to change his opinion, and prepare the Overlay Survey.

Finally, Respondents do not contest Appellants' arguments (App. Brf. 31-35) that the court's findings about Feldman's credibility were irrational, contrary to the facts, and clearly erroneous, and also call into question the independence and objectivity of the trial court. Feldman's credibility had to be determined by his expertise, experience, investigation, and statements of the why's and wherefores of his opinion and not on how another past expert was allegedly treated by someone else.

IV. THE COURT'S ADVERSE POSSESSION FINDINGS ARE MANIFESTLY UNSUPPORTED

Respondents similarly do not contest Appellants detailed statement of facts and argument that Respondents failed to satisfy their burden of proving by credible evidence 30 continuous uninterrupted years of notorious actual possession of the disputed property (App. Brf. 37-41), but argue, in a conclusory manner without supporting facts, that only they had knowledge about the history or conditions of

Lot 2 before Appellants purchased it; that their photographs and testimony "support their adverse possession claim"; and they paid taxes on Lot 1, which they claim also apply to the disputed property on Lot 2. (Res. Brf. 12). Respondents evidence at trial was grossly inadequate to prove adverse possession and their brief fails to identify any facts that could arguably overcome Appellants' arguments that Respondents failed to prove adverse, hostile, open and notorious, exclusive, continuous, and uninterrupted possession for the required 30 -years statutory period; and Appellants arguments should be deemed conceded.

V. THE EQUITIES FAVOR DEFENDANTS

Respondents do not contest Appellants identification of egregious, unconscionable, harmful, and fraudulent conduct and statements by Respondents (App. Brf. 41-42), but argue that the Joneses caused the dispute by trespassing on the disputed property located on Lot 2 and interfering with their new use of the disputed property as a driveway; and assert for the first time that they called in the police "because they were terrified of the Appellants and needed protections". They falsely describe various the proceedings arising from the many Thompsons' trespass complaints, including the false assertion that Mrs. Jones' plead guilty to "assaulting an officer" (Res. Brf. 13). However, Respondents provided no citations to the record and did not contest Appellants' statements, which they concede.

VI. RESPONDENTS' FACTUAL ARGUMENTS ARE BASELESS

Appellants expressly object to and contest the facts and arguments newly asserted by Respondents: 1) that Appellants produced no reliable witnesses; and 2) that Appellants have no claim to the disputed land. Respondents' assertions that Geraldine Jones and her son Rhys Jones, Jr., who testified as fact witnesses, were not credible witnesses are without factual bases and are not relevant. As to Mrs. Jones, Respondents cite statements allegedly made by Mrs. Jones about a contractor's legal rights, the existence of videos, and the number of sharps in the key of B, and her failure to respond to her contractor's statement during a confrontation by the Thompsons. (Res. Brf. 15-16). As to Mr. Jones Jr., they cite his statements whether he saw tire tracks between the two houses, observed Fralinger's (DeFabrites') crew digging up a monument (with no record reference), and about digging near a marker, which was not removed. All incidents cited by Respondents involve the ancillary matters not relevant to the core issues of the litigation or this appeal-the boundary line between the 2 lots or to these witnesses' credibility. Appellants deny that Mrs. Jones or Mr. Jones Jr. lied and note that none of these incidents described were mentioned by the court in its Opinion. Most importantly, the core issue regarding the boundary line required the court's interpretation of the deeds as a matter of law and these witnesses' credibility was not relevant to such issue.

Appellants emphatically deny that Mr. Feldman was not reliable and refer this Court to App. Brf. 25, 26, 31 to 37 and pages 8-9 hereof. Respondents' negative assertions about Feldman (e.g., that he did not know or care where the boundary line began) are baseless and inconsistent with the record. Feldman testified that the orientation of the boundary line is S. 43 degrees W. from the marker on Middle Street (#111) (which marker location all parties accept as substantially accurate) and to the line's intersection with High Street and that locating the boundary line consistent with the deed bearings on High Street 5.88 feet closer to the Olive Street centerline consistent with the 1997 Whildon Deed would only rotate the diagram for Lot 1 but would not affect its shape or size. (2T:121-15 to 125-18; Da 55-57). DeFabrites' Overlay diagram also illustrates this. Feldman testified to the differences from the boundary line bearings depicted in Reale Survey (S. 43 degrees W.) and the bearings he found (S. 41 degrees, 27', 48'' W.) by onsite measurements from Middle Street rod (#111) to High Street rod (#104) (2T:126-2 to 128-20). As to the deeds reviewed, Feldman testified he may have reviewed the 2021 Jones Deed; however, he reviewed the Lot 2 deed prior to the Township foreclosure (the 2009 Stiles Deed), which had metes and bounds and would be the same as the foreclosure deed. (2T:111-1 to 112-15).

Respondents' new argument-that Appellants have no rights to the disputed land as the Township had no standing to foreclose on it- was never addressed by

the court below (as they acknowledge Res. Brf. 19) and is not the subject of any cross-appeal. Therefore, this new issue is not properly before this Court. Most importantly, the Final Judgment of Foreclosure for Lot 2 expressly "barred all persons having an interest in the referenced lands from any right, title, or interest therein" (App. Brf. 9-10) and clearly bars Respondents' claim.

CONCLUSION

Appellants-Defendants respectfully request that the trial court's Order and Opinion be vacated; that this Court enter an Order precisely defining the boundary line between the two lots, as a matter of law, consistent with the prior deeds, or remand this to the trial court with the direction that a corrected Order be entered; and that this Court provide such other and further relief as is just and proper.

Dated: September 15, 2025

Respectfully submitted,

SWEENEY LEV LLC

BY: /s/ Gerald B. Sweeney, Esq.
Gerald B. Sweeney, Esquire