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STATE OF MICHIGAN

13TH JUDICIAL CIRCUIT COURT (GRAND TRAVERSE COUNTY)

CAP

GEORGE THOMAS,

Plaintiff,

Upper and
Lower Case

v

CAP

File No. 92-653289-CH

THE ESTATE OF MARLIN MITCHELL,

Defendant.

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EXCERPT OF PROCEEDING
MOCK JURY TRIAL

BEFORE THE HONORABLE WILLIAM J. JUSTICE, CIRCUIT JUDGE

Traverse City, Michigan - Monday, July 30, 1992

CAP

APPEARANCES:

CAP

Center
Text –
upper
lower
case

For the Plaintiff:

MS. BETTY ASHLAND (P12345)
82 Ionia Avenue, Northwest
Traverse City, Michigan 49999
(123) 456-9999

For the Defendant:

MS. JOAN NORMAN (P99999)
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NOTE:
Use (-) hyphen on per examples in manual and capitalize Examination.

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EXHIBITS:

IDENTIFIED

ADMITTED

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PX#1 Document Copy of Property Deed

12

13

5 spaces

Proportionate Spacing or tab

Center page #'s under both headings

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Carry-over – 15 Spaces

CAP

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Traverse City, Michigan

2

Monday, July 30, 1992 - 10:00 a.m.

3

THE COURT: This is in the matter of George Thomas versus The Estate of Marlin Mitchell. Now, on the other issue in this case, the non-jury issue, where do we stand with that? Do you think they have anything that we have not covered?

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MS. ASHLAND: I have offered that amendment.

8

THE COURT: Yes. That will be all of your documentary evidence, will it, Ms. Ashland?

9

10

MS. ASHLAND: I'll say yes with this reservation, that if they are allowed to go into their parol testimony, there may be other documentary evidence.

11

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13

THE COURT: Well, assuming that they are, what other evidence will there be?

14

15

MS ASHLAND: I presume counsel for the defendants will introduce the deed, and also, they may want to introduce the abstract of title.

16

17

18

THE COURT: Will there be any objection to those documents on that condition?

19

20

MS. NORMAN: No.

21

MS. ASHLAND: On the condition that they are allowed to go into that parol.

22

23

THE COURT: Any depositions to take for trial purposes?

24

25

MS. ASHLAND: None that we are aware of now, unless

1 something unforeseen happens between now and the time of
2 trial.

3 MS. NORMAN: Would you agree that if the title comes
4 into question in this case, that the abstract of title may be
5 an exhibit?

, or .

6 MS. ASHLAND: I'll not agree to make that -- I'll
7 not make an agreement right now. Wait, I don't want to make
8 that right now. We have found a couple of errors in there
9 already which we had to have cleared by National Trust and
10 Title.

11 THE COURT: Doesn't the statute say that an abstract
12 of title is admissible as evidence?

13 MS. ASHLAND: It's competent, yes.

14 THE COURT: Suppose I had to agree. Would you
15 object to that?

16 MS. ASHLAND: I'll agree that it's admissible on the
17 same condition as my other instruments were admissible. That
18 is, if parol testimony is gone into.

19 THE COURT: Yes. Is that satisfactory, Ms. Norman?

20 MS. NORMAN: Yes.

21 THE COURT: Now tell me, I said something about the
22 names, addresses, and telephone numbers in this. Of course,
23 that has no application here. This isn't Rockford, Salem,
24 Ralston, and Johnson City.

25 MS. NORMAN: Or Garfield.

1 THE COURT: Or Garfield. Is this a purchase money
2 mortgage?

3 MS. NORMAN: It is.

4 THE COURT: Would you say so, Ms. Ashland?

5 MS. ASHLAND: Yes.

6 THE COURT: What did you say in the pretrial
7 conference about the note being negotiated to the extent of a
8 security and something with respect to whether the law in this
9 state was to the affect that an assigned or negotiated note
10 carried its security? Is that in your brief?

11 MS. ASHLAND: No, sir. That was preliminary. We
12 already have made that amendment. I doubt if it has any
13 applicability here.

14 THE COURT: All right.

15 MS. ASHLAND: We haven't had a ruling on that
16 amendment.

17 THE COURT: The amendment was to the effect that the
18 mortgage, to the extent of the collateral security of
19 interest, had been assigned?

20 MS. ASHLAND: No, your Honor. Paragraph 3, we
21 substituted the words, "...and said mortgage, for which is
22 security by said mortgage."

23 THE COURT: Yes.

24 MS. ASHLAND: I offer those in substitution.

25 THE COURT: Yes. In paragraph 3, then, the

1 amendment to be made in the second line, "...said promissory
2 note which was and is secured by said mortgage"?

3 MS. ASHLAND: That is correct.

4 THE COURT: And that's agreeable to you, Ms. Norman?

5 MS. NORMAN: That's right.

6 THE COURT: Would you mind putting that in for me,
7 Ben, there?

8 MS. ASHLAND: Yes. We would like to request a date
9 for the trial on this matter.

10 THE COURT: Now, what would you say about that, Ms.
11 Norman?

12 MS. NORMAN: My answer is brief. This pretrial
13 brief and my answer will be in, and I'm not in a position at
14 this time to agree on any definite date. I don't want to
15 delay the matter because this matter has been on your docket
16 for quite a long time. However, there are a few other things
17 that must be looked into by the defendants.

18 MS. ASHLAND: We've got to get along with the
19 clients. This case has been dragging because of illness and
20 everything else and the demurrer. I'm not saying they were
21 not valid illnesses through the summer, but there is money and
22 property tied up here. We would be glad to give Ms. Norman
23 time to prepare a brief. I think we should have a definite
24 date for trial sometime, perhaps, after October 1st or October
25 15th, if that is agreeable. Our calendar is open on those

1 dates. We would like a date so we can tell our clients.

2 THE COURT: Well, what do you think, Ms. Norman?

3 MS. NORMAN: Well, sometime around the 18th or 19th
4 or 22nd or the 23rd would be about as soon as I could get at
5 it. I'm a long ways off.

6 THE COURT: Well, what do you say, Ms. Ashland?

7 MS. ASHLAND: I would like to try it sooner than
8 that. I know my clients are going to be hard to get along
9 with if I say three weeks. Any longer than three weeks and I
10 would have to object pretty strenuously.

11 THE COURT: Well, I'm thinking about this, too. You
12 have the docket here. The case is on the calendar, isn't it?

13 MS. ASHLAND: Yes, at issue I suppose.

14 THE COURT: Yes. Well, I won't put it on the trial
15 docket unless I have to put it on the trial docket. And
16 still, I want to be polite and delicate about it because I
17 know how these things can be.

18 Now, the second Monday that I come over, you're in
19 Traverse City on that day, Joan. Aren't you?

20 MS. ASHLAND: Yes.

21 THE COURT: Well, that would be the 7th or 10th --
22 be -- that would be 30 days past the original date.

23 MS. ASHLAND: Put it at the end of the week of the
24 second Monday and I think I could swing it. On the 11th,
25 that's the big football game between Traverse City and

1 Cadillac. My son is playing and I have to be there.

2 THE COURT: How many days would it take to try it?

3 MS. ASHLAND: If we started in the morning, we could
4 get it done in one day, couldn't we?

5 MS. NORMAN: It might spill over into two days.

6 THE COURT: If we said the 9th and 10th, would you
7 be home in time for your football game?

8 MS. ASLAND: If it comes off before the football
9 game.

10 THE COURT: Well, would you want it on the 8th or
11 9th?

12 MS. NORMAN: That would be agreeable with us.

13 MS. ASHLAND: The 9th or 10th is not a Saturday, is
14 it?

15 THE COURT: No.

16 MS. NORMAN: The 8th is a Tuesday.

17 THE COURT: The 9th is Wednesday and the 10th is
18 Thursday.

19 MS. NORMAN: Okay.

20 THE COURT: How does that impress you?

21 MS. NORMAN: I guess that's the best we can do.
22 That's all right.

23 THE COURT: Well, the 9th and 10th of October, then,
24 is when we'll hear the non-jury part of this case.

25 Are we ready for the jury then on the rest of this

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case?

MS. NORMAN: Yes, your Honor.

MS. ASHLAND: Yes, we are, your Honor.

THE COURT: Let's bring in the jury then. Bailiff,
please bring the jury in.

(At *:* a.m., jury entered the courtroom, all
present)

THE COURT: Good morning, ladies and gentlemen.
Call your next witness, Ms. Ashland.

MS. ASHLAND: Your Honor, at this time we would call
George Thomas to the stand.

THE COURT: Right up here, sir. If you would raise
your right hand. Do you solemnly swear to tell the truth, the
whole truth, and nothing but the truth, so help you, God?

MR. THOMAS: I do.

GEORGE THOMAS

(At *:* a.m., witness sworn and testified as
follows)

THE COURT: Have a seat right there, sir. Pull your
chair up nice and close to the microphone and speak right up
so that we can hear you.

THE WITNESS: Okay. I'll try.

DIRECT EXAMINATION

BY MS. ASHLAND:
Q. Mr. Thomas, you are the owner of a piece of land in question,

Parenthetical
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Q & A – Begin
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transcript
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Q & A – Carry-over –
5 spaces (1 Tab)

1 are you not?

2 A. Yes, I am.

3 Q. Is that where you live presently?

4 A. That's right.

5 Q. Can you give us an idea of how many years you have resided

6 there?

7 A. Well, more than 30 years, I know.

8 Q. What kind of dwelling do you have there?

9 A. A farmhouse.

10 Q. When was that farmhouse built?

11 A. About 15 to 17 years ago. There had been an old house on the

12 property when I got there, and we had lived in that for

13 several years before we built the new one.

14 Q. You and your wife?

15 A. Yes, and my children.

16 Q. How many children do you have?

17 A. We have four, but only one lives home with us now.

18 Q. Your other children are married and living away from home, I

19 take it? space on each side

20 A. Yes.

21 Q. Mr. Thomas, the dispute in case -- in this case involves the

22 ownership of this parcel of land, is that correct?

23 A. Yes, ma'am. two dashes

24 Q. How did you come to live on this piece of ground?

25 A. I bought it from the previous owner.

1 Q. Who was that?

2 A. Mr. Marlin Mitchell.

3 Q. When was that?

4 A. I don't know the exact date.

5 Q. Can you give us an approximation?

6 A. Well, it had to be over 30 years ago, as I said.

7 Q. Somewhere in the late '50s?

8 A. Probably.

9 Q. Was this your first involvement with this ground at that time?

10 A. Well, I helped Mr. Mitchell farm it.

11 Q. How many acres are we talking about?

12 A. Eighteen acres, altogether.

13 Q. Are all those acres devoted to the business of farming?

14 A. No. Some of the land is wooded.

15 Q. How many acres would you say is wooded?

16 A. About seven or eight acres. I'm just guesstimating, you know.

17 Q. Do you know whether any timbering operations were ever carried

18 on there?

19 A. Oh, yes. We had a lumber company come in and cut down one

20 stand of pines some years ago.

21 Q. About when was that, do you recall?

22 A. That was around 1970, I would say.

23 Q. What was your purpose in cutting down those trees?

24 A. Well, it was good quality timber and it brought a good price

25 and I needed some money at the time for my farming business.

1 Q. In short, it was a business proposition where you were able to
2 turn a profit and put those proceeds toward your farming
3 business, right?

4 A. That is correct.

5 Q. For how long had you owned that land at that time?

6 A. For about 15 years or so.

7 Q. Had anyone ever disputed your right to use the land as you
8 pleased?

9 A. Never. I had bought the ground from Mitchell. Got the deed
10 and everything.

11 Q. Was that deed ever recorded?

12 A. Not to my knowledge. No, sir.

13 Q. Where is that deed now?

14 A. Well, all I have is my copy.

15 Q. Okay, Mr. Thomas. Then I show you what has been marked as
16 Plaintiff's Exhibit 1 for identification. Can you explain
17 what that is?

18 A. That's my copy of the deed to my property.

19 (At **:** a.m., PX#1 identified)

20 BY MS. ASHLAND:

21 Q. Okay. And is that not a signed copy?

22 A. No, it -- it is not.

23 Q. Okay. What were the circumstances under which you came into
24 possession of the deed?

25 A. Well, I had worked for Marlin Mitchell for two or three years

1 on his farm, and we had talked a number of times about him
2 selling all of it or part of it to me. Finally, we agreed on
3 a price, and I bought the farm from him.

4 Q. Was there actually a signed instrument or deed transferring
5 ownership of the land to you from Mr. Mitchell?

6 A. Yes, ma'am. He and I both signed the document.

7 Q. Were there any witnesses present at the time?

8 A. No.

9 Q. Did you have a lawyer representing you in this transaction?

10 A. No, I didn't.

11 Q. And I assume Mr. Mitchell had no attorney there either, did
12 he?

13 A. No, he didn't either. We just agreed on the price he wanted
14 for it. And he signed the deed over to me. It was his land to
15 sell if he wanted to.

16 MS. ASHLAND: Your Honor, we would offer Plaintiff's
17 Exhibit Number 1 for admission at this time.

18 MS. NORMAN: We would oppose that, your Honor.
19 There has been no foundation laid to admit this exhibit, and I
20 don't see the relevance.

21 THE COURT: Overruled. The exhibit is admitted.

22 (At **:**, PX# 1 admitted)

23 MS. ASHLAND: Thank you, your Honor.

24 BY MS. ASHLAND:

25 Q. Did the consideration for the land include anything other than

1 the ground itself?

2 A. "Consideration." What do you mean?

3 Q. There was, at that time, a house on the property, although you
4 later built a new farmhouse; is that right? (Semicolon and period, are correct;

5 the key is consistency)

6 A. There was an old stone farmhouse, not very big, with a wooden
7 porch on the front. But it wasn't in very good condition.
8 Mr. Mitchell had lived there by himself for quite a while, and
9 the place had deteriorated over the years.

10 Q. He was a widower at the time you entered into the transaction
11 to buy his property, wasn't he?

12 A. Yes, he was, and the place wasn't kept up well at -- at all.

13 Q. Was there any equipment included in this arrangement, a
14 tractor, or other farm machinery?

15 A. There was a tractor, but it wasn't used much because whoever
16 Mr. Mitchell hired to farm his land usually brought their own
17 equipment.

18 Q. Is Mr. Mitchell alive today?

19 A. No, God rest his soul. He's been dead some eight to nine
20 years.

21 Q. After you acquired the farm, did you continue his practice of
22 hiring men and equipment to till the land?

23 A. Neighboring farmers, yes. We would work out an arrangement,
24 you know.

25 Q. Have you patronized his business establishment in that area of

1 Grand Traverse County all these years?

2 A. Yes, I have.

3 Q. Is it your belief that the businessmen with whom you deal
4 recognize you as the rightful owner of the land where you have
5 been living for some 30 years?

6 MS. NORMAN: Objection, your Honor. This is pure
7 speculation on the part of the witness. How can this witness
8 know what the businessmen were thinking?

9 THE COURT: Objection sustained. Move along.

10 MS. ASHLAND: Thank you, your Honor.

11 BY MS. ASHLAND:

12 Q. Sir, did anyone ever question you regarding the ownership of
13 this property?

14 A. Nobody ever questioned my title to the property. I have lived
15 on it, farmed it, raised my family on it, and never once
16 thought it wasn't properly mine.

17 Q. When the problem arose that gave rise to this suit, what did
18 you do, sir?

19 A. I couldn't understand what -- what the problem was. Then I
20 discovered the deed had never been recorded, and I could not
21 locate the original copy anywhere. So I decided I better get
22 a lawyer.

23 MS. ASHLAND: That's all the questions I have, your
24 Honor.

25 THE COURT: Cross-Examination, Ms. Norman?

1 MS. NORMAN: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MS. NORMAN:

4 Q. Mr. Thomas, do you know whether Mr. Mitchell ever had any
5 children?

6 A. I think he did, but I'm not sure because I never met any of
7 his children.

8 Q. Are you engaged in any business other than farming and related
9 activities, such as the timber cutting operations you
10 testified to earlier?

11 A. No, ma'am. But one year we did have a small circus with a big
12 top and all set up on one of my fields, and I was paid for
13 that.

14 Q. But you have had no income from any business enterprise,
15 except farming, basically; (or period) is that right?

16 A. Yes, ma'am. I have been a farmer all my life.

17 Q. That has been your sole livelihood?

18 A. Right.

19 Q. Do you have any investments of any kind?

20 A. No.

21 Q. Do you own any stocks or bonds?

22 A. No stocks and bonds, but I have several insurance policies.

23 Q. Do you receive any income or dividends from them?

24 A. No, they are life insurance policies.

25 Q. Has your wife ever held a full-time job since you have been

1 married?

2 A. Only the first few years of our marriage.

3 Q. In essence, you've been the sole support of the family?

4 A. Yes, I have.

5 MS. NORMAN: Thank you, Mr. Thomas. I have no
6 further questions.

7 THE COURT: Thank you, Ms. Norman.

8 Ms. Ashland, do you have any further questions?

9 MS. ASHLAND: No, your Honor.

10 THE COURT: May the witness be excused?

11 MS. ASHLAND: Yes, your Honor.

12 MS. NORMAN: He may, your Honor.

13 THE COURT: Thank you, Mr. Thomas. You may step
14 down.

15 (At **:** a.m., witness excused)

16 MS. ASHLAND: I have no further witnesses, your
17 Honor.

18 MS. NORMAN: Nor have I, your Honor.

19 THE COURT: Okay. The proofs are closed at this
20 time then. Ladies and gentlemen of the jury, I want to give
21 you a couple of instructions at this time.

22 The burden rests upon the plaintiff of proving all
23 the material allegations of the complaint by a preponderance
24 of the evidence. What is meant by a preponderance of the
25 evidence is the greater weight of the evidence, the greater

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force with which the evidence on one side of the other appeals to your minds. If the party having the burden, in this case, has satisfied you of the truth of his or her contention in that regard, he or she has sustained such issue by a preponderance of the evidence. If the evidence is evenly balanced for and against any particular fact at issue, then your finding upon such fact should be against the party having the burden of proof in that regard, since he or she has failed to prove the same by a preponderance of the evidence.

If you believe from the evidence that any witness has testified falsely, intending thereby to deceive you or mislead you as to any material fact or facts in this case, then you have the right to disbelieve the testimony of such witness, except insofar as the testimony is corroborated by other credible testimony.

Now, at this time, you may be excused to begin your deliberations.

The court is in recess pending a verdict in this case by the jury. Thank you all.

(At **:** a.m., jury excused)

(At **:** a.m., court recessed for deliberation)

I certify that that this transcript, consisting of 19 pages, is a complete, true, and correct record of the videotape of the proceedings George Thomas v The Estate of Marlin Mitchell and testimony taken in this case as recorded on Monday, July 30, 1992.

Date: _____

Ima Reporter, CER ****

Court/Firm

Street Address

City, State, Zip

1 { 1st line, 15}Lansing, Michigan

2 Friday, April 1, 2016 - 8:00 a.m.

3 { 1st line, 15}THE COURT:{2 spaces after the colon}Can I have your
4 {H-5}appearances, please?

5 MR. SMITH: John Smith for the People.

6 MS. BROWN: Sally Brown for Mr. Johnson.

7 THE COURT: Call your first witness, Mr. Smith.

8 MR. SMITH: We would call Susan Clark.

9 THE COURT: Raise your right hand, please. Do you
10 swear to tell the truth, the whole truth, and nothing but the
11 truth?

12 MS. CLARK: I do.

13 {name is centered} SUSAN CLARK

14 {Parenthetical is 15}(At 8:01 a.m., called by Mr. Smith and sworn by the
15 {Hanging is 15 }Court, testified as follows)

16 THE COURT: You can just sit right there. Please
17 keep your voice up.

18 THE WITNESS: Thank you, Your Honor. I will.

19 {exam is centered} DIRECT EXAMINATION

20 BY MR. SMITH: {Q&A at Left Margin. Tab after the Q and A. Hanging indent is still 5}

21 Q.{5}When did you -- you said you left the building eventually. Was
22 {H-5}it light out or dark?

23 A. It was dark.

24 MR. SMITH: Your Honor, that's all the questions I
25 have.