

ORIGINAL

IN THE SUPREME COURT OF OHIO

ZENO F. WASSERMAN and
EMMA R. WASSERMAN
2002 State Route 635
Burgoon, OH 43407,

Case No. 13-0737

and

On Appeal from the Court of
Appeals of Ohio Sixth Appellate
District, Sandusky County
Case No. S-12-008

ZENO F. WASSERMAN and
EMMA R. WASSERMAN, Trustees
2002 State Route 635
Burgoon, OH 43407,
Plaintiffs -Appellees

v.

SANDRA L. COPSEY, et al.,
Defendants-Appellants

Memorandum in Response

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I. **EXPLANATION AS TO WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST**

This appeal is not of public or great general interest because it presents no new or novel legal precedent which needs to be examined by this Court. The trial court's merger of the purchase agreement into the deed and refusal to consider the purchase agreement and certain parol evidence proffered by the Appellees from the time prior to the signing of the deed is in accord with established legal precedent. The lower appellate court affirmed the trial court's holding by referencing the same legal precedent. There is no new or novel legal precedent used by either the trial court or the lower appellate court which would make this appeal of public or great general interest.

The legal precedent cited by both the trial court and the lower appellate court to exclude the evidence in this case was *Parahoo v. Mancini*, 10th Dist. No. 97APE08-1071, 1998 WL 180539 (Apr. 14, 1998). The portion of the opinion of *Parahoo* cited by both the trial and lower appellate court is this Court's decision in *Fuller v. Drenberg*, 3 Ohio St. 2d 109, 111, 209 N.E. 2d 417 (1965).

In *Fuller* this Court held, "Appellees' reliance upon the contract is unavailing because the contract was merged into the deed when the deed was delivered and accepted without qualification, and, therefore, no cause of action upon the prior agreement thereafter existed." *Fuller v. Drenberg*, 3 Ohio St. 2d 109, 111, 209 N.E. 2d 417 (1965). Ohio courts have consistently relied upon *Fuller* in applying the doctrine of merger to similar cases. See *Osborne, Inc. v. Medina Supply Co.*, 9th Dist. Nos. 2918-M, 2926-M, 1999 WL 1260865 (Dec. 22, 1999).

This case follows a 1988 auction land sale when Appellants sold to Appellees farm land described in the warranty deed as a parcel of land of equal width off the east side of the southwest quarter of Section 31, Jackson Township, Sandusky County, Ohio, containing 75 acres therein. The warranty deed was prepared and delivered by the then serving attorney for the Appellants and was accepted by the Appellees without any qualification.

In applying the legal precedent of *Fuller*, and after a four day trial where evidence was presented by both parties as to the intent of the parties at the time of the signing of the deed, the trial court held that the purchase agreement was merged into the deed, that the deed was unambiguous on its face, that the deed was prepared by the seller against whom any ambiguities must be construed, and that there was no evidence of mutual mistake as to the intent of the parties.

The trial court quieted title to the 75 acres in Appellees according to the 2009 survey performed. The trial court granted Appellees' request for a permanent injunction to keep Appellants from crossing the Appellees' west boundary line. The lower level appellate court affirmed the trial court's holdings.

In conclusion the doctrine of merger is well established legal precedent in Ohio. Ohio courts have consistently relied upon *Fuller* in applying the doctrine of merger to similar cases. See *Parahoo v. Mancini*, 10th Dist. No. 97APE08-1071, 1998 WL 180539 (Apr. 14, 1998). The trial court and appellate court in this case relied upon the legal precedent in *Fuller*. There is no new or novel legal precedent used by either the trial court or the lower appellate court which would make this appeal of public or great general interest.

II. **Appellants' Proposition of Law I: MERGER BY DEED SHOULD NOT BE APPLIED TO EXCLUDE RELEVANT EVIDENCE OF INTENT OF THE PARTIES WHERE MUTUAL MISTAKE EXISTS**

The doctrine of merger precludes evidence as to the meaning of terms within a deed if the terms are unambiguous. In this case, the deed clearly states the Appellants conveyed "75 total acres therein."

Ohio case law is unequivocal in stating that the doctrine of merger precludes parol evidence as to the meaning of the term "75 total acres" in this present matter. In *Parahoo v. Mancini*, the court stated: "under the doctrine of merger, when a deed is delivered and accepted without qualification pursuant to apurchase contract, the contract becomes merged into the deed, and no cause of action upon the prior agreement exists." *Parahoo v. Mancini*, 10th Dist. No. 97APE08-1071, 1998 WL 180539, *5 (Apr. 14, 1998). The court further stated, "the doctrine of merger specifically precludes claims by purchasers alleging that the amount or size of the property conveyed does not comport with the purchase agreement." *Id.* [Emphasis added.] As applied to this case, either side cannot claim that the amount or size of the property does not comport with the purchase agreement because the deed is very clear in stating "75 total acres."

This Court's cases also preclude parol evidence in this matter. In fact, in *Fuller v. Drenberg*, this Court posited that the "Appellees' reliance upon the contract is unavailing because the contract was merged into the deed when the deed was delivered and accepted without qualification, and, therefore, no cause of action upon the prior agreement thereafter existed." *Fuller v. Drenberg*, 3 Ohio St. 2d 109, 111, 209 N.E. 2d 417 (1965).

In *Leesee of M. Walsh v. Ringer*, this Court also asserted that "where there is no ambiguity in description, the construction of the terms employed is a matter of law,

independent of the intention of the parties.” *Lessee of M. Walsh v. Ringer*, 2 Ohio 327, 333, 1826 WL 37 (1826).

Hence, in this case, it would be inappropriate to question the intent of the parties as to whether 75 acres was meant to be conveyed. The deed clearly states “75 total acres,” and according to case law, the “amount or size” is merged into the deed. As a result, in this case, the trial court did not allow parol evidence to be admitted as to the acreage the parties desired to convey in the deed.

III. **Appellants’ Proposition of Law II: A TRIAL COURT SHOULD ALLOW PAROL EVIDENCE TO SHOW MUTUAL MISTAKE IN A CLAIM FOR REFORMATION**

According to the doctrine of merger and the parol evidence rule, the intent of the parties as reflected in the purchase agreement, is merged into the deed. If Haldon Copsey and Zeno Wasserman had not admitted that it was intended that the Copseys sell exactly 75 acres to the Wassermans, according to Ohio law, the trial court should still have found, that exactly 75 acres was conveyed. The deed states “75 acres” and contains no “more or less” or other qualifying language. It is unambiguous.

Appellants’ witness, Robert Kusmer, admitted that “75 acres” is clearly stated in the warranty deed.

In *Parahoo v. Mancini*, the court stated: “under the doctrine of merger, when a deed is delivered and accepted without qualification pursuant to apurchase contract, the contract becomes merged into the deed, and no cause of action upon the prior agreement exists.” *Parahoo v. Mancini*, 10th Dist. No. 97APE08-1071, 1998 WL 180539, *5 (Apr. 14, 1998). In *Fuller v. Drenberg*, this court posited that the “Appellees’ reliance upon the contract is unavailing because the contract was merged into the deed when the

deed was delivered and accepted without qualification, and, therefore, no cause of action upon the prior agreement thereafter existed.” *Fuller v. Drenberg*, 3 Ohio St. 2d 109, 111, 209 N.E. 2d 417 (1965).

In *Lessee of M. Walsh v. Ringer*, the Ohio Supreme Court asserts that “where there is no ambiguity in description, the construction of the terms employed is a matter of law, independent of the intention of the parties.” *Lessee of M. Walsh v. Ringer* 2 Ohio 327, 333, 1826 WL 37 (1826).

In *Brumbaugh*, a case Appellants’ counsel cites, this Court states that “by the execution of the deed, the contract to sell and convey the land described in it, whether it was for a definite number of acres or not, was, so far as it embraced this particular stipulation, merged in the deed.” *Brumbaugh v. Chapman*, 45 Ohio St. 368, 374, 13 N.E.584 (1887); See another case cited by the Appellants, *Conklin v. Hancock*, 67 Ohio St. 455, 461, 66 N.E.518 (1903).

The exceptions to the parol evidence rule, such as mutual mistake, fraud, duress, ambiguity as to a particular term, etc. do not apply in this case. The parties did not make any mutual mistake. Haldon Copsey admitted that it was his intent to convey 75 acres under oath at a deposition that he verified in court. Tran Vol. II P 23, ln 13-25 and P 24, ln 1-3. Zeno Wasserman agreed. Tran P 15, ln 8-11.

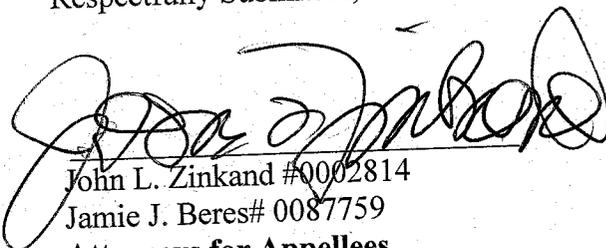
There has been no claim of fraud by either side. Neither is there any ambiguity in the term, “75 acres.” If Appellants claimed any ambiguities, they would be construed against them. “Ambiguities must be construed against the drafter of the agreement.” *Four Howards, Ltd. v. J&F Wenz Rd. Invest., L.L.C.*, 179 Ohio App.3d 399, 902 N.E.2d 63, 2008-Ohio-6174, at ¶ 60, quoting *Holderman v. Huntington Leasing Co.*, 19 Ohio

App.3d 132, 143, 19 OBR 221, 483 N.E.2d 175 (1984), citing *Monnett v. Monnett*, 46 Ohio St.30, 34-35, 17 N.E. 659 (1888). Haldon Copsey testified that he employed J.L.Stearns to draft the deed for the Copseys. Tran P 127, ln 10. As their attorney, she witnessed the deed. *See* Exhibits 18 and C.

IV. CONCLUSION

For the reasons discussed above, this case does not involve any matter of public or great general interest. Therefore, Appellees request that jurisdiction be denied.

Respectfully Submitted,



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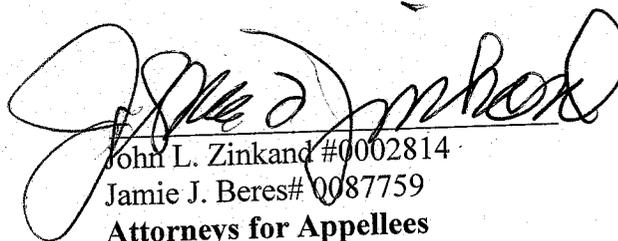
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Certificate of Service

The undersigned hereby certifies that a true and exact copy of the Memorandum in response of Appellees has been served via U.S. mail, this 17 day of May, 2013 upon the following:

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