

the defendants, Mr. & Mrs. Perry Henson and the defendants, Clarence Hood and Reba Hood, have unlawfully encroached upon the lands of the plaintiff by placing a fence and other structures upon the lands of the plaintiff and that the two said defendants are trespassing upon the lands of the plaintiff and are unlawfully and wrongfully claiming a title to a portion of the plaintiff's lands. Also, plaintiff states that within the past few months the defendants, Mr. & Mrs. Johnny Hart, have placed a fence upon portion of the plaintiff's lands unlawfully and wrongfully claiming title to a portion of the above described lands of the plaintiff.

Plaintiff is uncertain as to what deed or other instruments by which each of the defendants claim an interest in the plaintiff's lands. If there is such deed, same constitutes a cloud upon the lawful title of the plaintiff and plaintiff is entitled to have the cloud extinguished and removed and cleared.

Plaintiff states that neither of the defendants herein have any valid right, title or interest or claim of right title or interest in and to the lands of the plaintiff. Plaintiff states that the claim of title or ownership by each of the defendants is unlawful and constitutes a cloud upon the title of the plaintiff.

Plaintiff states that she is the owner of and the one entitled to the use and possession of the above described lands.

Plaintiff is entitled to have the title to the above described lands quieted and confirmed in the plaintiff and any cloud upon the title of the plaintiff cast by the claim of ownership by the defendants or either of them, extinguished, removed and held for naught.

This court has jurisdiction of the parties and the subject matter hereof.

A copy of plaintiff's deed is attached hereto as Exhibit A.

A copy of plaintiff's survey is attached hereto as Exhibit B.

WHEREFORE plaintiff prays that this court enter an order quieting and confirming in the plaintiff title to the above described lands in fee simple absolute. That the cloud upon the plaintiff's title

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cast by the claim of ownership of each of the defendants be extinguished, removed and held for naught, for her court costs, attorney fees and all other relief to which she may be entitled in the premises.

Goldie Dugan, Plaintiff

Wayland A. Parker

By: Wayland A. Parker
Attorney for Plaintiff
P. O. Box 605
Greenwood, Arkansas 72936

VERIFICATION

I, Goldie Dugan, the plaintiff herein, hereby state on oath that I have read the above and foregoing Petition and that the facts and matters therein contained are true and correct as I verily believe.

Goldie Dugan
Goldie Dugan

Subscribed and sworn to before me this 25th day of January, 1983.

Jane Carnall
Notary Public

My Commission Expires:
July 1, 1984

100416

'83 FEB 3 PM 4 38

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

FILED - CIRCUIT CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY
PLAINTIFF COUNTY

GOLDIE DUGAN

vs.

CASE NO. E-83-28-G

DEFENDANT

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHN E. HART,
and VIOLET HART, husband and wife
WILLARD NEAL, a single person, and
MR. & MRS. PERRY HENSON

MOTION TO DISMISS

Comes now the Defendants, John E. Hart and Violet
Hart, husband and wife, and for their motion do state
and allege as follows:

I.

The Plaintiff has failed to state facts upon which
relief can be granted all in accordance with Rule 12 (b)
(6) of the Arkansas Rules of Civil Procedure.

II.

The Plaintiff has failed to join a party under
Rule 19 of the Arkansas Rules of Civil Procedure.

WHEREFORE, the Defendants pray that the complaint
of the Plaintiff be dismissed, and for any and all other
just and proper relief to which they may be entitled.

JOHN E. HART and
VIOLET HART

WALTERS & RUSH
ATTORNEYS AT LAW, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

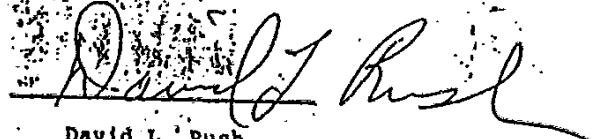
BY

David L. Rush
David L. Rush

000437

CERTIFICATE OF SERVICE

I, David L. Rush, attorney for Defendants herein, hereby certify that I have served a true and correct copy of the foregoing motion upon Plaintiff by mailing said copy to her attorney of record, Wayland Parker, P. O. Box 605, Greenwood, Arkansas 72936, this 3rd day of February 1983.


David L. Rush

000438

IN THE CHANCERY COURT OF SEBASTIAN COUNTY,
GREENWOOD DISTRICT

'83 FEB 2 PH 4 38
FILED - CIRCUIT CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY

GOLDIE DUGAN

VS.

CASE NO. E-83-28-G

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHN E. HART,
and VIOLET HART, husband and wife
WILLARD NEAL, a single person, and
MR. & MRS. PERRY HENSON

DEFENDANT

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The complaint of the Plaintiff herein is entitled "Petition to Quiet and Confirm Title and Remove Cloud". In paragraph three of the Plaintiff's complaint she states that the Defendants, and each of them has encroached upon the lands of the Plaintiff. Additionally, the Plaintiff states that within the past few months, the Defendants, Mr. and Mrs. John E. Hart, have placed fences upon a portion of the Plaintiff's lands unlawfully and wrongfully claiming title to a portion of the above described lands of Plaintiff.

Ark. Stat. Ann. Sec. 34-1901 (REPL. 1962) provides in part as follows:

"Any person claiming to own land ...that is in the actual possession of himself, or those claiming under him, may have his title to such land confirmed and quieted by the proceeding and manner hereinafter provided."

It is apparent from the Plaintiff's complaint that the Plaintiff is not in the possession of the property which she is attempting to quiet title in. Therefore, a quiet title action is a remedy which the Plaintiff is not entitled to.

Rule 19 of the Arkansas Rules of Civil Procedure provides in part as follows:

"A person who is subject to service of process shall be joined as a party in the action if (1) In his absence complete relief cannot be accorded among those already parties, or (2) He claims and interest relating to the subject of the action and is

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so situated that the disposition of the action in his absence may (i) as a practical matter, impair or impede his ability to protect that interest, or (ii) leave any of the persons already party subject to a substantial risk incurring double, multiple or otherwise inconsistent obligations by reason of his claimed interest".

It appears from the legal description set out in the Plaintiff's complaint that the property which she claims is bordered by other parties' property and that in fact, the property she claims would affect numerous other property owners property interest. Therefore, the Plaintiff should be required to join the additional property owners as party defendants to this action.

For all of the reasons heretofore briefed, the Plaintiff's action should be dismissed.

RESPECTFULLY SUBMITTED.

JOHN E. HART and
VIOLET HART

WALTERS & RUSH
ATTORNEYS AT LAW, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

BY David L. Rush
David L. Rush

CERTIFICATE OF SERVICE

I, David L. Rush, attorney for Defendants hereby certify that I have served a true and correct copy of the foregoing brief upon Plaintiff by mailing said copy to her attorney of record, Wayland A. Parker, P. O. Box 605, Greenwood, Arkansas 72936, this 3rd day of February 1983.

David L. Rush
David L. Rush

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS

GREENWOOD DISTRICT

GOLDIE DUGAN

vs

CLARENCE HOOD, REBA HOOD
JOHNNY HART, VIOLET HART
WILLARD NEAL,
MR. & MRS. PERRY HENSON

1983 FEB 10 PM 12:47

Case No. 83-286

FILED - CIRCUIT CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY

PLAINTIFF

DEFENDANTS

ANSWER

Comes now the separate Defendants, Clarence Hood and Reba Hood, husband and wife, and for their Answer to the Petition To Quiet and Confirm Title and Remove Cloud of the Plaintiff states and alleges:

1. That the Defendant denies each and every material allegation of the Plaintiff's Complaint as though specifically set out herein.
2. That the Defendant, pleading in the affirmative, would state that they have prior titles to said land and possess said land under a clear and legal title or in alternative, possess said land under claim adverse possession as being in possession and exercising ownership and control over the land for more time than required by law.
3. That the separate Defendant reserves the right to plead further herein by way of counterclaim, crossclaim, additional affirmative defenses or in any other manner allowed by law.

WHEREFORE, PREMISES CONSIDERED, separate Defendants, Clarence and Reba Hood, pray that the Plaintiff's Petition be dismissed, that they take nothing thereby for their costs and attorney's fees expended herein, and for any and all other relief.

PERSON AND VANWINKLE
Attorneys at Law
204 Court Plaza Building
51 South 6th Street
Fort Smith, Arkansas 72901

By: Gary D. Person
Gary D. Person

CERTIFICATE OF SERVICE

I, Gary D. Person, certify that a true and correct copy of the above and foregoing Answer has been placed in the United States Mail, postage prepaid, addressed to Mr. Wayland A. Parker, Attorney at Law, P. O. Box 605, Greenwood, Arkansas 72936, this 9th day of February 1983.

Gary D. Person
Gary D. Person

000441

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

vs.

NO. E-83-28

CLARENCE HOOD and
REBA HOOD, Husband and Wife,
JOHNNY HART and VIOLET HART,
Husband and Wife,
WILLARD NEAL, A single person,
and MR. & MRS. PERRY HENSON

DEFENDANTS

SEPARATE ANSWER, APPEARANCE AND
CROSS-COMPLAINT OF DEFENDANTS, MR. and MRS. PERRY HENSON

Comes now the Defendants, Mr. and Mrs. Perry Henson,
and for their Answer to the Petition to Quiet and Confirm
Title and Remove Cloud filed by Goldie Dugan allege and state:

1. That they deny each and every material allegation of
said Petition and assert that the Plaintiff is attempting to
establish title to a portion of the Defendants' property,
which has been in his use and possession for a period in ex-
cess of twenty (20) years.

2. To further establish their ownership of the property
claimed by the Defendant, the Defendants state that they re-
ceived by Warranty Deed, dated September 25, 1956, as recorded
in Record Book 119, Page 349, the following property described
in the attached Exhibit A:

"Part of the Southwest Quarter of Section 31, Township 7
North, Range 31 West, being all of the West One Half of
the Following described tract: Commencing at the North-
west corner of the above described SW $\frac{1}{4}$ of said Section;
thence Due South 1733 feet to the North bank of a strip
pit, thence in an easterly direction and following the
said North bank of the said strip pit to a point which
is 2088 feet due East of the West line of Section 31;
thence North 1557 feet to the North line of said SW $\frac{1}{4}$;
thence due West 2088 feet to the place of Beginning
Except, Beginning at the Northeast corner of the West
Half of the above described property, thence South 750
feet; thence West 522 feet; thence North 750 feet;
thence East 522 feet; AND EXCEPT COAL AND OTHER MINERAL
RIGHTS AND EXCEPT PUBLIC ROADS."

And further that they, received by reason of Warranty Deed,
dated December 4, 1959, property as recorded in Record Book 139,
Page 265, described in the attached Exhibit B:

FILED
CLERK
SEBASTIAN COUNTY

83 FEB 18 AM 10 33
J. J. [Signature]
CLERK

000442

"A part of the Southwest Quarter of Section 31, Township 7 North of Range 31 West as follows: Beginning at a point 1044 feet East of the Northwest corner of said Southwest Quarter, thence 750 feet South, thence 522 feet West, thence 750 feet North, thence 522 feet East to the point of Beginning; except coal and other mineral rights and except public roads, the intention being to convey all of that part which I reserved in a former deed to the above grantees herein, which said deed is recorded in Book 119 at page 349."

CROSS-COMPLAINANT

Defendants, Perry A. Henson and Martha L. Henson, for their Cross-Complaint state:

1. That the Petition filed by the Plaintiff, Goldie Dugan, represents an attempt to encroach upon the Defendants' property and has placed this Cross-Complainant in a position of having to incur legal expenses, costs of survey, witness expense, abstract costs and other items of damage in the amount of Five Thousand Dollars (\$5,000.00).

WHEREFORE, Cross-Complainant prays that this Court enter an order quieting and confirming to the Cross-Complainants their title to the above described lands in fee simple absolute, that the Plaintiff's claim be dismissed as to that portion which conflicts and encroaches upon Cross-Complainants' property and that the Cross-Complainants have judgment for their costs, attorney's fees and all other proper relief to which they may be entitled.

MR. AND MRS. PERRY HENSON

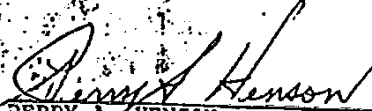
BY: *D. T. Westmoreland*

DAVID T. WESTMORELAND
Attorney for Defendants
P. O. Box 246
Fort Smith, Arkansas 72902
501/785-1313

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VERIFICATION

We, Perry A. Henson and Martha L. Henson, state that we have read the above and foregoing and the allegations contained therein are true and correct to the best of our knowledge and belief.


PERRY A. HENSON


MARTHA L. HENSON

STATE OF ARKANSAS)
) ss.
COUNTY OF SEBASTIAN)



Subscribed and sworn to before me this 17th day of February, 1983.


NOTARY PUBLIC

My Commission Expires:

June 11, 1990

CERTIFICATE OF SERVICE

I, David T. Westmoreland, hereby certify that I have mailed a true and correct copy of the foregoing finding this 17th day of February, 1983 to Plaintiff's attorney, Wayland A. Parker, P.O.Box 605, Greenwood, Arkansas 72336.


David T. Westmoreland

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MOSLEY ABSTRACT COMPANY

ABSTRACTS

FORT SMITH, ARKANSAS

TITLE INSURANCE

3000445

HAZEL GAYSKI, widow and surviving tenant
by the entirety (My husband Joe
Gayski having Died in 1951)

INSTRUMENT WARRANTY DEED

TO

DATED September 25, 1956.
ACKNOWLEDGED Sept. 25, 1956.
FILED Sept. 25, 1956 3:30 P.M.
CONSIDERED valid a. o. v. c.

PERRY A. HENSON AND MARTHA L. HENSON,
husband and wife

DOWER AND HOMESTEAD
RECORD BOOK 119 PAGE 349

CONVEYS: Part of the Southwest Quarter of Section 31, Township 7 North,
Range 31 West; being all of the West One Half of the Following
described tract: Commencing at the Northwest corner of the
above described SW $\frac{1}{4}$ of said Section; thence Due South 1733
feet to the North bank of a strip pit, thence in an easterly
direction and following the said North bank of the said strip
pit to a point which is 2088 feet due East of the West line
of said Section 31; thence North 1557 feet to the North line
of said SW $\frac{1}{4}$; thence due West 2088 feet to the place of Begin-
ning. Except, Beginning at the Northeast corner of the West Half of
the above described property thence South 750 feet; thence
West 522 feet; thence North 750 feet; thence East 522 feet;
AND EXCEPT COMB AND OTHER MINERAL RIGHTS AND EXCEPT PUBLIC ROADS

NOTE: \$1.65 R.S. cancelled

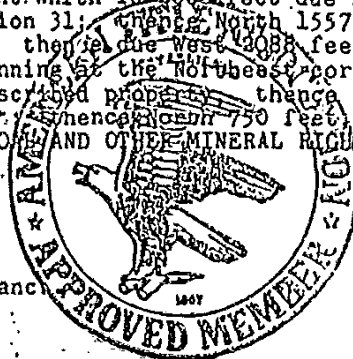


Exhibit A

MOSLEY ABSTRACT COMPANY

ABSTRACTS

FORT SMITH, ARKANSAS

TITLE INSURANCE

00446

HAZEL GAYSKI, surviving tenant of an estate by the entirety, Joe Gayski, having died in 1951

TO

PERRY A. HENSON AND MARTHA L. HENSON, husband and wife

INSTRUMENT: WARRANTY DEED
DATED: 4 1959.
ACKNOWLEDGED: December 5, 1959.
FILED: 05 P.M.
CONSIDERATION: \$1.00 and o. v. c.

DOWER AND HOMESTEAD
RECORD BOOK 139 PAGE 265

CONVEYS: A part of the Southwest Quarter of Section 31, Township 7 North of Range 31 West as follows: Beginning at a point 1844 feet East of the Northwest corner of said Southwest Quarter, thence 750 feet South, thence 522 feet West, thence 750 feet North, thence 522 feet East to the point of Beginning; except coal and other mineral rights and except public roads, the intention being to convey all of that part which I reserved in a former deed to the above grantees herein, which said deed is recorded in Book 119 at page 349.

Exhibit B

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

83 FEB 29 AM 9 18
FILED BY CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY

GOLDIE DUGAN

VS.

No. E-83-28

CLARENCE HOOD and
REBA HOOD, Husband and Wife
JOHNNY HART and VIOLET HART,
Husband and Wife,
WILLARD NEAL, A single person,
and MR. & MRS. PERRY HENSON

DEFENDANTS

REPLY TO CROSS-COMPLAINT OF
DEFENDANTS
MR. & MRS. PERRY HENSON

Comes now the plaintiff, Goldie Dugan, and for her Reply
to the Cross-Complaint of the defendants, Mr. & Mrs. Perry Henson,
alleges and states:

I.

That she denies each and every material allegation of the
Cross-Complaint of the defendants, Mr. & Mrs. Perry Henson. That the
Cross-Complaint be dismissed for want of equity and that the Cross-
Complainants take nothing thereby.

WHEREFORE, the plaintiff, Goldie Dugan, prays that this
Court enter an Order dismissing the defendants, Mr. & Mrs. Perry Henson's,
Cross-Complaint and for all other equitable relief to which she may
be entitled.

Goldie Dugan, Plaintiff

Wayland A. Parker

By: Wayland A. Parker
Attorney for Plaintiff
P. O. Box 605
Greenwood, Arkansas 72936

CERTIFICATE OF SERVICE

I, Wayland A. Parker, hereby certify that I have mailed a
true and correct copy of the foregoing pleading on this first day of
March, 1983, to the defendant's attorney, David T. Westmoreland,
Westmoreland and Westmoreland, P. O. Box 246, Fort Smith, Arkansas 72901.

Wayland A. Parker
Wayland A. Parker

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IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

VS.

NO. E-83-28

CLARENCE HOOD and
REBA HOOD, Husband and Wife
JOHNNY HART and VIOLET HART,
Husband and Wife,
WILLARD NEAL, A single person,
and MR. & MRS. PERRY HENSON

FILED
GREENWOOD DISTRICT
SEBASTIAN COUNTY

83 NOV 1 10 4 04

DEFENDANTS

AMENDED PETITION

Comes the Plaintiff, Goldie Dugan, and for her Amended Petition herein, and states:

The Plaintiff is the owner of and entitled to possession of the following described lands in Sebastian County, Arkansas, to-wit:

Part of the South half of the Southwest Quarter of Section 31, Township 7 North, Range 31 West, Sebastian County, Arkansas, more particularly described as follows: Beginning at the Southwest corner of said South half of the Southwest Quarter, thence North 00 degrees 05 minutes West, along the West line of said South half, 830.65 feet to the point of beginning. Thence Continue North 00 degrees 05 minutes West, along said West line, 107.2 feet to the approximate North bank of strip pit. Thence North 84 degrees 50 minutes East, along said approximate North bank, 2174.24 feet. Thence South 00 degrees 20 minutes West 190.0 feet to the approximate South bank of strip pit. Thence following said approximate South bank, South 86 degrees 41 minutes West 507.8 feet. Thence South 81 degrees 30 minutes West 281.2 feet. Thence South 83 degrees 43 minutes West 341.6 feet. Thence South 00 degrees 15 minutes West 41.55 feet. Thence North 87 degrees 57 minutes West 1040.04 feet to the point of beginning containing 8.90 acres more or less, subject to existing road right of way.

The Plaintiff states that she is the owner of the above described lands by purchase from the actual actual and record owner of the same, Minnie Clark. The Plaintiff states that she purchased the above described lands from Minnie Clark on 29 June, 1981, by Warranty Deed, recorded on 29 June, 1981, in record Book 320 Page 160 office of the Circuit Clerk and Ex-Officio recorder of deeds, Court House, Greenwood, Arkansas.

The Plaintiff states that at the time of the purchase of the above described lands by the Plaintiff, and for more than twenty-one years

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In addition, the Defendants, Mr. & Mrs. Johnny Hart, at the beginning of this lawsuit, have also violated the agreed boundary between the parties by placing a fence upon a portion of the Plaintiff's lands and destroying the existing boundary line between the parties.

That the actions of each of the Defendants in destroying the said boundary line between the Plaintiff and the Defendants and the establishment of a fence placed by the Defendants on the lands of the Plaintiff is the assertion of a claim by the said Defendants to the lands of the Plaintiff and constitutes a cloud upon the lawful title of the Plaintiff, which cloud the Plaintiff is entitled to have extinguished and removed.

The Plaintiff states that she is the owner of and the only one entitled to the use and possession of the above described lands.

That because of the actions of the Plaintiff herein and the resulting boundary line dispute between the parties that this Court has jurisdiction to establish the actual boundary line between the parties. That the remedy at law of the Plaintiff is inadequate.

A copy of the Plaintiffs deed has been attached to the original Petition as Exhibit A and a copy of Plaintiffs survey is attached to the original Petition as Exhibit B.

That this Court has jurisdiction of the parties and the subject matter hereof.

WHEREFORE, Plaintiff prays that this Court enter an Order establishing the boundary line between the parties as being along the top of the old strip pit bank on the North and South side of Plaintiffs property as it existed as an agreed line for more than twenty-one years last past. That a mandatory injunction be issued against each of the Defendants directing these Defendants to remove and place on the actual line the encroaching fences which each has placed on the lands of the Plaintiff contrary to the existing boundary line between the parties.

That the cloud cast upon the Plaintiff's title by the encroachment and claim of interest of each of the Defendants in the lands of the Plaintiff be forever extinguished, set aside and held for naught, for her

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prior thereto, portion of the boundary line of the said lands were marked by the top of an existing bank of dirt along the North side and the South side of the said tract of land with the actual line, dividing Plaintiff's lands from the lands of the Defendants, being along the top of such bank of dirt existing along both the North and the South side of Plaintiff's lands. That the said line was an established and agreed line between the lands of the Plaintiff and the lands of the Defendants. In addition, between the lands of the Plaintiff and the Defendants, Clarence Hood and Reba Hood, there existed a fence line which had been in existence as an agreed line for more than twenty-one years last past.

That each of the Defendants have encroached upon the lands of the Plaintiff by destroying or removing the line along the top of the said bank and have asserted a claim to a portion of the Plaintiff's lands by establishing a fence line on the lands of the Plaintiff which lines as established by each of the Defendants encroaches upon the lands of the Plaintiff contrary to the established boundary line between the parties along the top of the old bank of dirt on each side of the Plaintiff's lands. Plaintiff is entitled to a mandatory injunction directing each of the Defendants to remove the present encroaching fence and to place same on the actual agreed line between the parties.

There is a dispute between the Plaintiff and each of the Defendants as to the boundary lines between each of the Defendants tract of land and the lands of the Plaintiff herein described. Despite such dispute, the said boundary line had been well established for more than twenty-one years prior to the destruction of the boundary line by each of the Defendants and the encroachment of the Defendants upon the lands of the Plaintiff as herein stated.

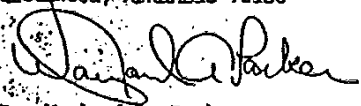
Plaintiff states that the Defendants, (Clarence Hood and Reba Hood have moved the said fence line more than once since the beginning of this lawsuit and that each move has resulted in the Defendants, Clarence Hood and Reba Hood, placing the fence line at a point further South of the agreed actual boundary line between the lands of the Plaintiff and the Defendants, Clarence Hood and Reba Hood.)

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court costs, attorney's fees and all other relief to which she may be entitled in the premises.

Goldie Dugan, Plaintiff

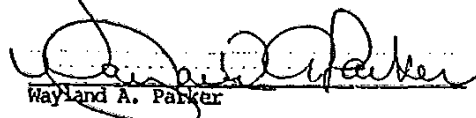
PARKER AND PARKER
Attorneys at Law
P. O. Box 605
Greenwood, Arkansas 72936



By: Wayland A. Parker
Attorney for Plaintiff

CERTIFICATE OF SERVICE

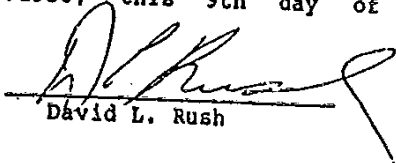
I, Wayland A. Parker, hereby certify that I have served a copy of the above and foregoing Amended Petition on the Defendants by mailing a true and correct copy thereof to Mr. David T. Westmoreland, Mr. David L. Rush, Mr. Gary D. Person, attorneys of record for the Defendants at their respective office, on this first day of November, 1983.


Wayland A. Parker

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CERTIFICATE OF SERVICE

I, David L. Rush, attorney for Defendant, hereby certify that I have served a true and correct copy of the foregoing Answer to Amended Petition upon Plaintiff by mailing said copy to her attorney of record, Wayland A. Parker, PARKER & PARKER, Attorneys at Law, P. O. Box 605, Greenwood, Arkansas 72936, this 9th day of November, 1983.


David L. Rush

000452

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

VS.

Case No. E-83-28

83 NOV 9 PM 4 49

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife,
WILLARD NEAL, a single person, and
MR. & MRS. PERRY HENSON

Cindy Dandrea
FILED CIRCUIT CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY
DEFENDANTS

MOTION TO DISMISS

Comes now the Defendants, John E. Hart and Violet Hart, husband and wife, and for their motion to dismiss do state and allege as follows:

I.

That the Plaintiff has failed to join parties under Rule 19 of the Arkansas Rules of Civil Procedure.

WHEREFORE, the Defendants pray that the complaint of the Plaintiff be dismissed; and for any and all other just and proper relief to which they may show themselves entitled.

JOHN E. HART and
VIOLET HART

WALTERS AND RUSH
ATTORNEYS AT LAW, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

BY *David L. Rush*
David L. Rush

CERTIFICATE OF SERVICE

I, David L. Rush, attorney for Defendant, hereby certify that I have served a true and correct copy of the foregoing Motion to Dismiss upon Plaintiff by mailing said copy to her attorney of record, Wayland A. Parker, PARKER & PARKER, Attorneys at Law, P. O. Box 605, Greenwood, Arkansas 72936, this 9th day of November, 1983.

David L. Rush
David L. Rush

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IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

VS.

Case No. E-83-28

83 HOV 9 PII 4 45

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife,
WILLARD NEAL, a single person, and
MR. & MRS. PERRY HENSON

Cindy Samble
FILED - CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY
DEPENDANTS

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The Defendants, John E. Hart and Violet Hart, have previously filed herein their motion to dismiss and based said motion on Rules 12 (b) 6 and Rule 19 of the Arkansas Rules of Civil Procedure. The Court found in its notification letter dated October 17, 1982, that the Defendant's motion to dismiss was well taken. In that light, it is the Defendants' John E. Hart and Violet Hart, position that the cause of action should be dismissed for the reason that the Plaintiff has yet to add additional parties who are necessary and indispensable to finally adjudicate this matter, all in accordance with Rule 19 of the Arkansas Rules of Civil Procedure.

Additionally, the Defendants, John E. Hart and Violet Hart, would refer the Court to the original argument set forth in its Motion to Dismiss, all as it relates to Rule 19 and the necessity for including all parties necessary for a just adjudication of this matter.

RESPECTFULLY SUBMITTED.

JOHN E. HART and
VIOLET HART

WALTERS AND RUSH
ATTORNEYS AT LAW, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

BY

David L. Rush
David L. Rush

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behalf by destroying or removing the old and existing boundary line that had existed for more than twenty-one (21) years between the Plaintiff and all of the Defendants in this action and have asserted a claim to a portion of the plaintiff's lands by establishing a fence line upon the lands of the Plaintiff which lines as established by each of the Defendants above and the other Defendants previously a party in this action; and, such actions are an encroachment upon the lands of the Plaintiff contrary to the established boundary line between all of the parties in this action along the top of the old bank of dirt on each side of the Plaintiff's lands. That Plaintiff is entitled to a mandatory injunction directing each of the Defendants to remove the present existing fence which is an encroachment upon the lands of the Plaintiff and to place the same on the actual agreed line between the parties and the line that has been established by surveyors in the past for and on behalf of the Plaintiff, Goldie Dugan, and the Defendant, John E. Hart and Violet C. Hart, his wife.

000456

XI.

That there is a dispute between the Plaintiff and each of the Defendants as to the boundary lines between each of the tracts of lands owned by the respective Defendants and the lands of the Plaintiff described herein. Despite such dispute, the boundary line had been well established for more than twenty-one (21) years prior to the destruction of the boundary line and the encroachment of the Defendants upon the lands of the Plaintiff as herein stated.

XII.

That the actions of each of the Defendants named above in destroying the old existing boundary line between the Plaintiff and the Defendants and the establishment of a fence placed by the Defendants and on the lands of the Plaintiff is an assertion of a claim by the Defendants to the lands of the Plaintiff and constitutes a cloud upon the lawful title of the Plaintiff, which cloud the Plaintiff is entitled to have extinguished and removed.

XIII.

That the Plaintiff is the owner of and the only one entitled to the possession of the above described lands that she acquired from Minnie

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

VS.

Case No. E-83-28

PLAINTIFF

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife,
WILLARD NEAL, a single person, and
MR. & MRS. PERRY HENSON

83 NOV 9 PM 4 49
Cathy Samble
FILED-CIRCUIT CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY
DEFENDANTS

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The Defendants, John E. Hart and Violet Hart, have previously filed herein their motion to dismiss and based said motion on Rules 12 (b) 6. and Rule 19 of the Arkansas Rules of Civil Procedure. The Court found in its notification letter dated October 17, 1982, that the Defendant's motion to dismiss was well taken. In that light, it is the Defendants' John E. Hart and Violet Hart, position that the cause of action should be dismissed for the reason that the Plaintiff has yet to add additional parties who are necessary and indispensable to finally adjudicate this matter, all in accordance with Rule 19 of the Arkansas Rules of Civil Procedure.

Additionally, the Defendants, John E. Hart and Violet Hart, would refer the Court to the original argument set forth in its Motion to Dismiss, all as it relates to Rule 19 and the necessity for including all parties necessary for a just adjudication of this matter.

RESPECTFULLY SUBMITTED.

JOHN E. HART and
VIOLET HART

WALTERS AND RUSH
ATTORNEYS AT LAW, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

BY

David L. Rush
David L. Rush

200454

CERTIFICATE OF SERVICE

I, David L. Rush, attorney for Defendant, hereby certify that I have served a true and correct copy of the foregoing Memorandum in Support of Motion to Dismiss upon Plaintiff by mailing said copy to her attorney of record, Wayland A. Parker, PARKER & PARKER, Attorneys at Law, P. O. Box 605, Greenwood, Arkansas 72936, this 9th day of November, 1983.


David L. Rush

000457

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS

GREENWOOD DISTRICT NOV 17 AM 10 39

GOLDIE DUGAN

vs.

Case No. E-83-28

Gary D. Person
FILED CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY

PLAINTIFF

CLARENCE HOOD and
REBA HOOD, Husband and Wife
JOHNNY HART and VIOLET HART,
Husband and Wife,
WILLARD NEAL, a single person,
and MR. & MRS. PERRY HENSON

DEFENDANTS

A N S W E R

COME NOW the separate Defendants, Clarence Hood and Reba Hood, by and through their attorney, Gary D. Person, and for their Answer to the Plaintiff's Amended Petition, state:

1. That the separate Defendants deny each and every material allegation contained in the Plaintiff's Amended Petition as though same were denied, set forth herein and written word for word.
2. That the separate Defendants reserve the right to plead further herein.

WHEREFORE, PREMISES CONSIDERED, separate Defendants pray that the Plaintiff's Amended Petition be dismissed, that Plaintiff take nothing thereby, and for any and all other proper relief to which they may be entitled whether specifically prayed for or not.

Clarence Hood and Reba Hood,
Separate Defendants

PERSON AND VANWINKLE
Attorneys at Law
204 Court Plaza Building
51 South 6th Street
P. O. Box 456
Fort Smith, Arkansas 72902

By:

Gary D. Person
Gary D. Person

CERTIFICATE OF SERVICE

I, Gary D. Person, certify that a true and correct copy of the above and foregoing Answer has been placed in the United States Mail, postage prepaid, addressed to Mr. Wayland A. Parker, Parker and Parker, Attorneys at Law, P. O. Box 605, Greenwood, AR 72936 this 16th day of November, 1983.

Gary D. Person
Gary D. Person

000458

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Cludy Kambile

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS

GREENWOOD DISTRICT

FILED-CIRCUIT CLERK
GREENWOOD DISTRICT
SEBASTIAN COUNTY

GOLDIE DUGAN

PLAINTIFF

VS.

NO. E-83-28

CLARENCE HOOD and REBA HOOD,
Husband and Wife,
JOHNNY HART and VIOLET HART,
Husband and Wife,
WILLARD NEAL, A single person,
MR. and MRS. PERRY HEWSON,
DENNIS E. and TERESA K. HART, His Wife,
Route 2 Box 372, Fort Smith, Arkansas 72916,
HENRY R. IVY and MINNIE P. IVY,
Route 2, Box 372A, Fort Smith, Arkansas 72916,
RAYMOND CHARLES HART and LORA HART,
Route 2, Box 372, Fort Smith, Arkansas 72916,
KENNY D. VAUGHN and JOYCE A. VAUGHN, his wife,
oute 2, Box 373-A, Fort Smith, Arkansas 72916

DEFENDANTS

000459

SECOND AMENDED PETITION

The plaintiff, Goldie Dugan, for her Second Amended Petition herein, would state and allege as follows:

I.

That she has previously filed a petition and Amended petition in this action and would adopt and affirm herein each and every allegation set out in the two above mentioned pleadings as if set out word for word herein.

II.

That the various Defendants have filed a Motion to Dismiss asserting that necessary parties have not been joined in this action under Rule 19 of the Arkansas Rules of Civil procedure so that complete relief cannot be afforded between the parties due to their absence.

III.

That by the joining of the Defendants, Dennis E. and Teresa K. Hart, Henry R. Ivy and Minnie P. Ivy, Raymond Charles Hart and Lora Hart, and Kenny D. Vaughn and Joyce A. Vaughn, all necessary parties have been joined to this action and complete relief can be afforded between all parties in this boundary line dispute.

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IV.

That the plaintiff is the owner of and entitled to possession of the following described lands in Sebastian County, Arkansas, to-wit:

part of the South half of the Southwest Quarter of Section 31, Township 7 North, Range 31 West, Sebastian County, Arkansas, more particularly described as follows: Beginning at the Southwest corner of said South half of the Southwest Quarter, thence North 00 degrees 05 minutes West, along the West line of said South half, 830.65 feet to the point of beginning. Thence continue North 00 degrees 05 minutes West, along said West line, 107.2 feet to the approximate North bank of strip pit. Thence North 84 degrees 50 minutes East, along said approximate North bank, 2174.24 feet. Thence South 00 degrees 20 minutes West 190.0 feet to the approximate South bank of strip pit. Thence following said approximate South bank, South 86 degrees 41 minutes West 507.8 feet. Thence South 81 degrees 30 minutes West 281.2 feet. Thence South 83 degrees 43 minutes West 341.6 feet. Thence South 00 degrees 15 minutes West 41.55 feet. Thence North 87 degrees 57 minutes West 1040.04 feet to the point of beginning containing 8.90 acres more or less, subject to existing road right of way.

V.

That the Defendants, Dennis E. and Teresa Hart, his wife, are the owners of certain real property in the Greenwood District of Sebastian County, Arkansas, that adjoins and abuts to the property owned by the Plaintiff. That they obtained title to the property from the Defendant, John E. Hart and Violet C. Hart, his wife. That such deed is dated April 18, 1980 and found in record Book 307 at Page 215 in the office of the Circuit Clerk and Ex-Officio Recorders of deeds, Courthouse, Greenwood, Arkansas. That a copy of such deed is attached hereto marked Exhibit A and made a part herein as if set out herein word for word.

VI.

That the Defendants, Henry R. Ivy and Minnie P. Ivy, his wife, are also the owners of certain real property as tenants by the entirety, with right of survivorship, that adjoins and abuts the lands owned by the Plaintiff herein. That they are residents and citizens of the Greenwood District of Sebastian County, Arkansas. That they acquired title to such lands from John E. Hart and Violet C. Hart by warranty deed dated April 30, 1982 and found in record Book 331 at Page 436 in the office of the Circuit Clerk and Ex-Officio Recorder of deeds at the Courthouse in Greenwood, Arkansas. That the legal description of the real estate is described in the warranty deed which is attached hereto and marked Exhibit B and made a part herein.

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VII.

That the Defendants, Kenny D. Vaughn and Joyce A. Vaughn, his wife are the owners of certain real property in the Greenwood District of Sebastian County, Arkansas, having purchased the same by warranty deed dated April 28, 1981 and found in record Book 318 at Page 247 in the Office of the Circuit Clerk and Ex-Officio Recorder in the Courthouse at Greenwood, Arkansas. That a copy of such deed is attached hereto marked Exhibit C and made a part herein as if set out word for word. That the legal description to such property is contained in the attached Exhibit C. That Kenny D. Vaughn and Joyce A. Vaughn, his wife, are residents and citizens of the Greenwood District of Sebastian County, Arkansas. That they acquired title to the above described property from John E. Hart and Violet Hart.

VIII.

That the Defendant, Raymond Charles Hart and Lora Hart, his wife, own certain real property in the Greenwood District of Sebastian County, Arkansas, as tenants by the entirety with right of survivorship. That such property adjoins and abuts the property owned by the Plaintiff. That such property was acquired from John E. Hart and Violet C. Hart by Warranty Deed dated April 30, 1982 and is found in record Book 232 at page 377 and Page 378 in the Office of the Circuit Clerk and Ex-Officio Recorder at the Courthouse in Greenwood, Arkansas. That Raymond Charles Hart and Lora Hart are residents and citizens of the Greenwood District of Sebastian County, Arkansas.

IX.

That the Defendants, Dennis E. and Teresa K. Hart, Henry R. Ivy and Minnie P. Ivy, Raymond Charles Hart and Lora Hart, and Kenny D. Vaughn and Joyce A. Vaughn are all the owners of real estate that adjoins and abuts the property owned by the Plaintiff in this action and that they all acquired title to such real estate by purchase from John E. Hart and Violet C. Hart, his wife. That John E. Hart and Violet C. Hart are also Defendants in this action.

X.

That each of the Defendants have encroached upon the lands of the Plaintiff either personally or by and through an agent acting on their

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Clark. That because of the actions of the Defendants herein and the resulting boundary line dispute between the parties, this Court has jurisdiction to establish the actual boundary line between the parties. The remedy at law of the Plaintiff is inadequate. That the Court has jurisdiction of the parties and the subject matter herein.

WHEREFORE, Plaintiff prays that this Court enter an Order establishing the boundary line between the parties as being along the top of the old stip pit bank on the North and South of Plaintiffs property as it existed as the agreed line for more than twenty-one (21) years last past. That a mandatory injunction be issued against each of the Defendants directing each and every Defendant to remove and place on the actual boundary line the encroaching fence which each have placed on the lands of the Plaintiff contrary to the existing boundary line between the parties. That the cloud cast upon the Plaintiff's title by the encroachment and claim of interest of each of the Defendants in the lands of the Plaintiff be forever extinguished, set aside and held for naught, and for her court costs, attorney's fees and all other relief to which she may be entitled in the premises.

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Goldie Dugan, Plaintiff

PARKER AND PARKER
Attorneys at Law
P. O. Box 603
Greenwood, Arkansas 72936

Wayland A. Parker II
By: Wayland A. Parker, II

CERTIFICATE OF SERVICE

I, Wayland A. Parker, II, hereby certify that I have served a true and correct copy of the above and foregoing Second Amended petition upon the previous named Defendants in this action by mailing a true and correct copy thereof to Mr. David L. Rush, Attorney of record for the Defendants, John E. Hart and Violet C. Hart, at his address of P. O. 280, Greenwood, Arkansas 72936; and upon the attorney of record for the separate Defendants, Mr. & Mrs. Perry Henson, by mailing a true and correct copy of same to Mr. David T. Westmoreland, Attorney at Law, P. O. Box 246, Fort Smith, Arkansas 72902, and upon the separate Defendant, Willard Neal,

by mailing a true and correct copy thereof to him personally at his address of Route 2, Fort Smith, Arkansas 72916, and a copy to Mr. Gary Persons as attorney for Clarence Hood and Reba Hood, at his office in Fort Smith, Arkansas, all of the same being mailed on this 24th day of August, 1984.

That I have caused to be issued a Summons for the additional Defendants added to this action by the Second Amended Complaint and requested that they be delivered to the Sebastian County Sheriff for service of the same or caused to be served by certified mail pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

Wayland A. Parker, II
Wayland A. Parker, II

000463

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

VS.

CASE NO. E-83-28-G

CLARENCE HOOD and REBA HOOD
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife
and WILLARD NEAL, a single person,
and MR. & MRS. PERRY HENSON, DENNIS E.
and TERESA K. HART, his wife, HENRY R.
IVY and MINNIE P. IVY, his wife, RAYMOND
CHARLES HART, and LORA HART, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN, his wife DEFENDANTS

ANSWER TO SECOND AMENDED PETITION
AMENDED PETITION AND PETITION
AND COUNTERCLAIM

Comes now the Defendants, Johnny Hart and Violet
Hart, husband and wife, Kenny D. Vaughn and Joyce A.
Vaughn, husband and wife, Raymond Charles Hart and Lora
Hart, husband and wife, Dennis E. Hart and Teresa K.
Hart, husband and wife and Henry R. Ivy and Minnie P.
Ivy, husband and wife, and for their answer to the
complaint filed herein against them do state and allege
as follows:

I.

That Defendants deny each and every material
allegation of the Plaintiff's complaint, amended
complaint, and second amended complaint not specifically
admitted herein.

II.

That the Defendants deny paragraph one of the
Plaintiff's second amended petition.

III.

That the Defendants admit paragraph two of the
Plaintiff's second amended petition.

IV.

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Clerk
Clerk

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That the Defendants are without knowledge sufficient to admit or deny paragraph three of the Plaintiff's second amended petition and therefore, said paragraph is denied.

V.

That the Defendants deny paragraph four of the Plaintiff's second amended petition.

VI.

That the Defendants admit paragraph five of the Plaintiff's second amended petition.

VII.

That the Defendants admit paragraph six of the Plaintiff's second amended petition.

VIII.

That the Defendants admit paragraph seven of the Plaintiff's second amended petition.

IX.

That the Defendants admit paragraph eight of the Plaintiff's second amended petition.

X.

That the Defendants admit paragraph nine of the Plaintiff's second amended petition.

XI.

That the Defendants deny paragraph ten of the Plaintiff's second amended petition.

XII.

That the Defendants deny paragraph eleven of the Plaintiff's second amended petition.

XIII.

That the Defendants deny paragraph twelve of the Plaintiff's second amended petition.

XIV.

That the Defendants deny paragraph thirteen of the Plaintiff's second amended petition.

000465

XV.

That the Defendants deny each and every material allegation of the Plaintiff's amended petition.

XVI.

That the Defendants deny each and every material allegation of the Plaintiff's original petition to quiet and confirm title and remove the cloud.

XVII.

By way of affirmative defense and denial, the Defendants, and each of them, allege the following: Estoppel, failure of consideration, fraud, illegality, laches, statute of limitations, waiver, adverse possession by the Defendants, and the parole evidence rule.

WHEREFORE, Defendants, and each of them, pray that the petition, first amended petition and second amended petition filed herein against them be dismissed; for costs herein expended, including attorneys fees; and for any and all other just and proper relief to which Defendants may be entitled.

COUNTERCLAIM

Comes now Reba Hood, and for her. Counterclaim against the Defendant, Goldie Dugan, does state and allege as follows:

I.

The the Counter-Claimant is a citizen and resident of the Greenwood District of Sebastian County, Arkansas and the property which is the subject matter of this action lies in the Greenwood District of Sebastian County, Arkansas and therefore, venue and jurisdiction are proper in this county and district.

II.

That in paragraph two of the Counter-Defendant's, Goldie Dugan, original petition to quiet and confirm title and remove cloud, the said Counter-Defendant, Goldie Dugan, stated that she was the owner of the lands

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more particularly described in paragraph one of the said petition, pursuant to a warranty deed dated June 29, 1981, wherein Minnie Clark was grantor, and Goldie Dugan, was grantee.

III.

That it is alleged in said paragraph two of the Plaintiff's original petition to quiet and confirm title and remove cloud that she "purchased" the property more particularly described therein.

IV.

That attached to the complaint filed herein by the said Goldie Dugan, was the warranty deed whereby she claims title and interest in and to the property more particularly described in the Plaintiff's original petition to quiet and confirm title and remove cloud; that it is indicated on said warranty deed that Marie Byrd was the signatory of said deed as power of attorney for Minnie Clark pursuant to a power of attorney dated July 25, 1973, and recorded in book 246 at page 475.

V.

That also recited in the said warranty deed referred to above, is the fact that no money was involved in the transfer of the property.

VI.

That as such, the Counter-Defendant, Goldie Dugan, has no legal or equitable right to claim the property, as it is alleged and believed that the said Minnie Clark is, and was, an incompetent on the day said deed was executed by the said Marie Byrd.

VII.

That as such, said deed should be set aside, voided and forever held for naught.

VIII.

That by virtue of the fact that the said Counter-Defendant is the daughter of the said Minnie

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Clark and therefore, has standing to question the propriety and validity of the said deed executed by the power of attorney.

WHEREFORE, Counter-Plaintiff, Violet Hart, prays that the warranty deed attached to the Plaintiff/Counter-Defendant's original petition to quiet and confirm title and remove cloud, and the deed under which the Plaintiff seeks affirmative relief herein, be set aside, voided, and forever held for naught; for costs herein expended, including attorneys fees; and for any and all other just and proper relief to which the Counter-Claimant should be entitled.

DEFENDANTS

WALTERS & RUSH
ATTORNEYS AT LAW, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

BY David L. Rush
David L. Rush

CERTIFICATE OF SERVICE

I, David L. Rush, Attorney for Defendants, hereby certify that I have served a true and correct copy of the foregoing Answer and Counter-Claim upon the following named persons, by mailing said copy this 7th day of September 1984:

Wayland A. Parker
PARKER & PARKER
Attorneys at Law
P. O. Box 685
Greenwood, Arkansas 72936

David T. Westmoreland
Attorney at Law
P. O. Box 246
Fort Smith, Arkansas 72902

Mr. Gary Neal
Route 2
Fort Smith, Arkansas 72916

Gary Persons
Attorney at Law
2500 Zero
Fort Smith, Arkansas 72901

David L. Rush
David L. Rush

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IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

vs.

NO. E-83-28-G

CLARENCE HOOD and
REBA HOOD, et al.

DEFENDANTS

ANSWER TO SECOND AMENDED PETITION
AMENDED PETITION AND PETITION
AND COUNTERCLAIM

Comes now the Defendants, Mr. and Mrs. Perry Henson, and
for their separate answer, appearance and cross-complaint state:

That they adopt the separate answer, appearance and
cross-complaint as filed February 18, 1983, as it applies to
each and every material allegation of Plaintiff's original
Complaint, Amended Complaint and Second Amended Complaint.

THEREFORE, the Defendants, Mr. and Mrs. Perry Henson pray
that the Plaintiff's original Complaint, Amended Complaint and
Second Amended Complaint be dismissed and that these Defendants
have the relief as prayed for in their Cross-Complaint as filed
February 18, 1983.

MR. and MRS. PERRY HENSON,
Defendants

BY: David T. Westmoreland
DAVID T. WESTMORELAND
Attorney for Defendants
P. O. Box 246
Port Smith, AR 72902

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CLERK
DISTRICT

000469

CERTIFICATE OF SERVICE

I, David T. Westmoreland, Attorney for Defendants, hereby certify that I have served a true and correct copy of the foregoing Answer upon the following named persons, by mailing said copy this 14 day of September, 1984:

Mr. David L. Rush
Walters & Rush
Attorneys at Law
P. O. Box 280
Greenwood, AR 72936

Mr. Gary Person
Attorney at Law
2500 Zero
Fort Smith, AR 72901

Wayland A. Parker
Parker & Parker
Attorneys at Law
P. O. Box 605
Greenwood, AR 72936

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County Clerk

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
FILED-COUNTY CLERK
GREENWOOD DISTRICT DISTRICT
CLERK

GOLDIE DUGAN

PLAINTIFF

VS.

NO. E-83-28-G

CLARENCE HOOD and REBA HOOD,
husband and wife, JERRY HART
and VIOLET HART, husband and wife,
WILLARD NEAL, a single person,
MR. & MRS. PERRY HENSON, DENNIE E.
and TERESA K. HART, his wife, HENRY R.
IVY and MIRNIE P. IVY, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN,
his wife

DEFENDANTS

AFFIDAVIT OF SERVICE OF PROCESS

Comes now the undersigned, attorney for the Plaintiff herein,
Wayland A. Parker, II, and for his Affidavit of Service respectfully
states on oath to the Court.

I.

That under the date of August 29, 1984 I mailed a certified
letter, addressee only, return receipt requested to Raymond Hart, P. O.
Box 656, Oilton, Oklahoma 74052; to Kenny D. Vaughn, Route 2, Box 373A,
Fort Smith, Arkansas 72916; to Henry R. Ivy, Route 2, Box 372A, Fort
Smith, Arkansas 72916; to Dennis E. Hart, Route 2, Box 372, Fort Smith,
Arkansas 72916. That such letters included a copy of the Complaint,
Amended Complaint and Second Amended Complaint that I have filed herein
on behalf of the Plaintiff in this matter. That a copy of the receipt
for certified mail for such letters are attached hereto marked Group
Exhibit "A" and made a part herein as if set out word for word. That a
That a copy of the receipt for certified mail is attached as Group Exhibit
"B" showing receipt of same by the Defendants. That such service is
authorized under Rule 4 of the Arkansas Rules of Civil Procedure.

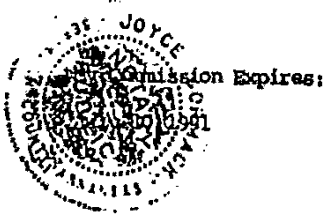
Wayland A. Parker, II
Wayland A. Parker, II
Parker and Parker
Attorneys at Law
P. O. Box 605
Greenwood, Arkansas 72936

000471

Subscribed and sworn to before me this 18th day of September,

1984.

Joyce Carmack
Notary Public



000472

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):

- Show to whom and date delivered.
- Show to whom, date and address of delivery.
- RESTRICTED DELIVERY
- RESTRICTED DELIVERY. Show to whom and date delivered.
- RESTRICTED DELIVERY. Show to whom, date, and address of delivery.

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Ramond Charles Hart
 P. O. Box 656
 Oilton, Oklahoma 74052

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 P441 145 97

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE: *Dora Hart* ADDRESS: CLASSIFICATION

DATE OF DELIVERY: 8-31-84

4. ADDRESS (Complete only if requested)

5. UNABLE TO DELIVER BECAUSE:

POSTMARK: AUG 31 1984

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):

- Show to whom and date delivered.
- Show to whom, date and address of delivery.
- RESTRICTED DELIVERY
- RESTRICTED DELIVERY. Show to whom and date delivered.
- RESTRICTED DELIVERY. Show to whom, date, and address of delivery.

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Dennis E. Hart
 Route 2, Box 372
 Fort Smith, Arkansas 72916

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 P441 145 976

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE: *Dennis Hart* ADDRESS: CLASSIFICATION

DATE OF DELIVERY: 8-28-84

4. ADDRESS (Complete only if requested)
 R 2 B 372 AB

5. UNABLE TO DELIVER BECAUSE:

POSTMARK: AUG 28 1984

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):

- Show to whom and date delivered.
- Show to whom, date and address of delivery.
- RESTRICTED DELIVERY
- RESTRICTED DELIVERY. Show to whom and date delivered.
- RESTRICTED DELIVERY. Show to whom, date, and address of delivery.

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Kenny D. Vaughn
 Route 2, Box 373A
 Fort Smith, Arkansas 72916

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 P441 145 972

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE: *Kenny D. Vaughn* ADDRESS: CLASSIFICATION

DATE OF DELIVERY: 8-28-84

4. ADDRESS (Complete only if requested)
 R 2 B 373 A

5. UNABLE TO DELIVER BECAUSE:

POSTMARK: AUG 28 1984

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):

- Show to whom and date delivered.
- Show to whom, date and address of delivery.
- RESTRICTED DELIVERY
- RESTRICTED DELIVERY. Show to whom and date delivered.
- RESTRICTED DELIVERY. Show to whom, date, and address of delivery.

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Henry R. Ivy
 Route 2, Box 372-A
 Fort Smith, Arkansas 72916

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 P441 45 97

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE: *Henry R. Ivy* ADDRESS: CLASSIFICATION

DATE OF DELIVERY: 8-28-84

4. ADDRESS (Complete only if requested)

5. UNABLE TO DELIVER BECAUSE:

POSTMARK: AUG 28 1984

GROUP EXHIBIT NO. 1

84 SEP 19 PH 3 39

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS

GREENWOOD DISTRICT

CLERK
TRICT
ITY

GOLDIE DUGAN

PLAINTIFF

VS.

NO. E-83-28-G

CLARENCE HOOD and REBA HOOD,
Husband and Wife, JOHNNY HART
and VIOLET HART, Husband and Wife
and WILLARD NEAL, a single person,
MR. & MRS. PERCY HENSON, DENNIS E.
and TERESA K. HART, his wife, HENRY R.
IVY and MIRNIE P. IVY, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN,
his wife

DEFENDANTS

RESPONSE TO COUNTERCLAIM OF REBA HOOD

The Plaintiff, Cross-Defendant, Goldie Dugan, for her Response to the Counterclaim filed herein by Defendant, Violet Hart, would state and allege as follows:

I.

That she generally and specifically denies each and every material allegation setforth in the Counterclaim of, the Defendant, Reba Hood, as if denied word for word herein.

II.

That she admits that the Counterclaimant is a citizen and resident of the Greenwood District of Sebastian County, Arkansas and that the subject matter of this action lies in the Greenwood District of Sebastian County, Arkansas.

III.

That she admits the allegation in Paragraph II, III, IV and V.

IV.

That she specifically denies paragraph VI, VII, and VIII. That she would affirmatively state that she is the lawful owner of the property described in her Petition, Amended Petition and second Amended Petition and that the Warranty Deed conveying the same to her was executed in a lawful manner.

V.

By way of affirmative defense and denial, the Cross-Defendant

000474

would allege laches in that the Counterclaimant knew of such Warranty Deed and has taken no action thereon for a period of over three years. That the Counterclaimant should be denied because of the waiver of any claim thereto by the Counterclaimant as well as being barred by the statute of limitations.

WHEREFORE, Cross-Defendant, Goldie Dugan, prays that this Court enter an Order dismissing the Counterclaim of Violet Hart for want of equity; and that the matter proceed upon her Complaint, Amended Complaint and Second Amended Complaint and that she be granted the relief as requested and setforth therein including attorney's fee and costs expended; and, for all other just and proper relief to which she may show herself entitled.

Goldie Dugan, Plaintiff

PARKER AND PARKER
Attorneys at Law
P. O. Box 605
Greenwood, Arkansas 72936

By: Wayland A. Parker, II
Wayland A. Parker, II

000475

CERTIFICATE OF SERVICE

I, Wayland A. Parker, II, attorney for the Plaintiff, hereby certify that I have served a true and correct copy of the Answer to Counterclaim upon the following named persons, by mailing a true and correct copy of the same to their attorney of record: Defendants, Johnny Hart and Violet Hart, Kenny D. Vaughn and Joyce A. Vaughn, Raymond Charles Hart and Lori Hart, Dennis E. Hart and Thresa K. Hart, Henry R. Ivy and Minnie P. Ivy, by mailing a copy to their attorney of record, Mr. David Rush, P. O. Box 280, Greenwood, Arkansas 72936. to Mr. Willard Neal by mailing a true and correct copy to him in person, to Mr. & Mrs. Parry Hanson, by mailing a true and correct copy to their attorney of record, Mr. David T. Westmoreland, P. O. Box 246, Fort Smith, Arkansas 72902. Upon Defendants, Clarence Hood and Rata Hood by mailing a true and correct copy to their attorney of record Mr. Gary Persons, P. O. Box 456, Fort Smith, Arkansas 72902. That all of the above were mailed on the 18th day of September, 1984.

Wayland A. Parker, II
Wayland A. Parker, II

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

VS.

CASE NO. E-83-28-G

CLARENCE HOOD and REBA HOOD
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife
and WILLARD NEAL, a single person,
and MR. & MRS. PERRY HENSON, DENNIS E.
and TERESA K. HART, his wife, HENRY R.
IVY and MINNIE P. IVY, his wife, RAYMOND
CHARLES HART, and LORA HART, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN, his wife DEFENDANTS

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Clerk
J.C.

MOTION TO JOIN A PERSON

Comes now the Defendants, Johnny Hart and Violet Hart, husband and wife, Kenny D. Vaughn and Joyce A. Vaughn, husband and wife, Raymond Charles Hart and Lora Hart, husband and wife, Dennis E. Hart and Teresa K. Hart, husband and wife and Henry R. Ivy and Minnie P. Ivy, husband and wife, and for their motion to join Minnie Clark as a party to this action does state:

I.

That in accordance with Rule 19, a person who is subject to service of process shall be joined as a party in the action if in his absence complete relief cannot be afforded among those already party or he claims an interest relating to the subject of the action.

II.

That Minnie Clark was the record title owner of the property now claimed by the Plaintiff, Goldie Dugan, and that the said Goldie Dugan obtained title to the property pursuant to a warranty deed attached to the Plaintiff's complaint as Exhibit "A", and said deed was executed by Marie Byrd, as power of attorney for Minnie Clark. Additionally, it is indicated on the said deed

that no funds were transferred, and it is believed that the said Minnie Clark is an incompetent and therefore, the conveyance was detrimental to her right, title and interest in and to the property claimed by the Plaintiff, Goldie Dugan.

III.

That this Court should appoint an attorney ad litem to represent the interest of the said Minnie Clark.

IV.

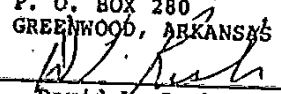
That this Court should enter an Order naming Minnie Clark as a Defendant to the action or if justice requires, as an involuntary Plaintiff.

WHEREFORE, the Defendants, and each of them, pray that this Court enter an Order naming the alleged incompetent, Minnie Clark, as a Defendant in this action, or if justice requires, an involuntary Plaintiff; that an attorney ad litem be appointed to represent the interest of the said Minnie Clark, due to her alleged incompetency; for costs herein expended, including attorneys fees; and for any and all other just and proper relief to which the Defendants may be entitled.

DEFENDANTS

WALTERS & RUSH
ATTORNEYS AT LAW, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

BY


David L. Rush

000477

CERTIFICATE OF SERVICE

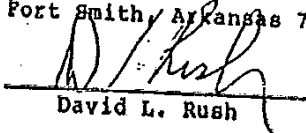
I, David L. Rush, Attorney for Defendants, hereby certify that I have served a true and correct copy of the foregoing Motion upon the following named persons by mailing said copy this 18th day of September, 1984.

Wayland A. Parker
Attorney at Law
P. O. Box 605
Greenwood, Arkansas 72936

David T. Westmoreland
Attorney at Law
P. O. Box 246
Ft. Smith, Arkansas 72902

Mr. Gary Neal
Route 2
Fort Smith, Arkansas 72916

Mr. Gary Person
Attorney at Law
2500 Zero
Fort Smith, Arkansas 72901



David L. Rush

000478

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

VS.

CASE NO. E-83-28-G

CLARENCE HOOD and REBA HOOD
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife
and WILLARD NEAL, a single person,
and MR. & MRS. PERRY HENSON, DENNIS E.
and TERESA K. HART, his wife, HENRY R.
IVY and MINNIE P. IVY, his wife, RAYMOND
CHARLES HART, and LORA HART, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN, his wife DEFENDANTS

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TY

BRIEF IN SUPPORT OF MOTION TO JOIN A PERSON

In accordance with Rule 19 of the Arkansas Rules of Civil Procedure, a person shall be joined as a party to the action if, in their absence, complete relief cannot be afforded to all parties, or, in their absence, the court could make determinations adverse to the interests of the said individual.

It is the belief of these Defendants, the said Minnie Clark is incompetent, by reason of her advanced age and physical health. Additionally, the Counter-Claimant in the above styled and numbered action is the daughter of the said Minnie Clark and has personal knowledge of the physical and mental infirmities under which the said Minnie Clark labors.

That due to the reasons set out in this brief and due to the reasons as alleged in the Defendants' counterclaim and in their motion to add an additional party, it would appear that it would be in the interest of justice that the said Minnie Clark be named as a party to this action and that an attorney ad litem be appointed to represent her interest.

RESPECTFULLY SUBMITTED.

DEFENDANTS

WALTERS & RUSH
ATTORNEYS AT LAW, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

BY


David L. Rush

CERTIFICATE OF SERVICE

I, David L. Rush, Attorney for Defendants, hereby certify that I have served a true and correct copy of the foregoing Brief upon the following named persons by mailing said copy this 18th day of September, 1984.

Wayland A. Parker
Attorney at Law
P. O. Box 605
Greenwood, Arkansas 72936

David T. Westmoreland
Attorney at Law
P. O. Box 246
Ft. Smith, Arkansas 72902

Mr. Gary Neal
Route 2
Fort Smith, Arkansas 72916

Mr. Gary Person
Attorney at Law
2500 Zero
Fort Smith, Arkansas 72901


David L. Rush

000480

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
37
GREENWOOD DISTRICT

GOLDIE DUGAN

VS.

CASE NO. E-83-28-G

CLARENCE HOOD and REBA HOOD
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife
and WILLARD NEAL, a single person,
and MR. & MRS. PERRY HENSON, DENNIS E.
and TERESA K. HART, his wife, HENRY R.
IVY and MINNIE P. IVY, his wife, RAYMOND
CHARLES HART, and LORA HART, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN, his wife

PLAINTIFF
SEBASTIAN COUNTY, ARKANSAS
CLARENCE HOOD
REBA HOOD
JOHNNY HART
VIOLET HART
WILLARD NEAL
PERRY HENSON
DENNIS E. HART
TERESA K. HART
HENRY R. IVY
MINNIE P. IVY
RAYMOND CHARLES HART
LORA HART
KENNY D. VAUGHN
JOYCE A. VAUGHN
DEFENDANTS
OCT 24 AM 8 41

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JUDGMENT AND ORDER

Now, on this 5th day of October, 1984, comes on for hearing the above styled and numbered action, the Plaintiff appearing in person and by and through her attorney, Wayland Parker, and the Defendants, John E. Hart and Violet Hart, husband and wife, Raymond Charles Hart and Lora Hart, husband and wife, Kenny D. Vaughn and Joyce A. Vaughn, husband and wife, Dennis E. Hart and Teresa K. Hart, husband and wife, and Henry R. Ivy and Minnie P. Ivy, husband and wife, appearing by and through their attorney, David L. Rush, and the Defendants, Clarence Hood and Reba Hood, husband and wife, appearing by and through their attorney, Gary Person, and the Defendants, Mr. and Mrs. Perry Henson, appearing by and through their attorney, David Westmoreland, and the Defendant, Willard Neal, appearing not nor through an attorney, but has been personally served with summons and is in default herein, and after the hearing and trial of this matter, statement of counsel, testimony of the parties and witnesses on their behalf, and from the entire file of this matter, the Court finds:

I. That the Plaintiff's complaint is denied.

II. That the Defendants', John Hart, Violet Hart, Kenny D. Vaughn, Joyce A. Vaughn, Raymond Charles Hart, Lora Hart, Dennis E. Hart, Teresa K. Hart, Henry R. Ivy and Minnie P. Ivy's, motion

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to join Minnie Clark as a party to this action is granted in part as follows: That the said Minnie Clark is joined as a party to this action and the deed which is attached to the Plaintiff's original petition to quiet and confirm title and remove cloud, as Exhibit A, which deed is recorded in Book 320 at page 160, wherein Minnie Clark was grantor, by and through her attorney-in-fact, Marie Byrd, and Goldie Dugan was grantee, is hereby cancelled, set aside and held for naught, as the said power of attorney executed by Minnie Clark on July 25, 1973, and recorded in Book 246 at page 475 is defective, and invalid. The Court also finds that even if the power of attorney was valid it has been voided, as by statement and testimony of the parties, including Plaintiff. The said Minnie Clark is now incompetent, and was incompetent on the date the aforementioned deed was executed, and therefore, the conveyance was ineffectual to grant the Plaintiff, Goldie Dugan, any interest in and to the property owned by the said Minnie Clark.

000482

III.

That the power of attorney heretofore mentioned is hereby cancelled and declared to be invalid and ineffectual.

IV.

That the Court finds that the said Minnie Clark is an incompetent and a guardian should be appointed for her in an appropriate Court.

V.

That the Court finds that in all the deeds which contemplate the banks of the strip pit as the property line and which are in issue in this case are construed to mean the edge of the strip pit and not the mound of the dirt and material taken from the strip pit. By way of illustration, the boundaries referred to in the deeds are established as the face of the bank, or where the land actually drops into the strip pit itself.

VI.

That the Defendants', Hensons', boundary lines are established by their survey and the fence line in existence on October 5, 1984 and title to said property is confirmed and quieted in them.

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VII.

That the Defendants', John E. Hart and Violet Hart, Dennis E. Hart and Teresa K. Hart, Henry R. Ivy and Minnie P. Ivy, Raymond Charles Hart and Lora Hart, and Kenny D. Vaughn and Joyce A. Vaughn's, property lines are established by their survey and by the fence in existence on October 5, 1984 and title to the said Defendant's respective tracts are confirmed and quieted in them.

VIII.

That the Defendants', Clarence Hood and Reba Hood's, property line is established by their survey and the fence line in existence on October 5, 1984 and title to said property is confirmed and quieted in them.

IX.

That all parties are enjoined from molesting or bothering the other parties to this action in the peaceful enjoyment of the other parties' property as established above.

X.

That the Plaintiff, Goldie Dugan, or Minnie Clark should have their property resurveyed, taking into consideration the surveys of the Defendants and the fence lines established and existing on October 5, 1984.

XI.

That each party shall pay their own costs and attorney's fees, except that the fee of the guardian ad litem, Norman Wilkinson, a duly authorized and practicing attorney in good stead, are to be apportioned one-half to the Plaintiff and one-half as to the remaining Defendants, to be paid by on a pro rata basis. The Court finds a reasonable fee of the Guardian Ad Litem is \$835.00.

IT IS SO ORDERED AND DECREED.

William A. ...
Chancellor

000483

103

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
36
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

vs.

No. E-83-28-G

CLARENCE HOOD and
REBA HOOD, Husband and Wife, et al

DEFENDANTS

ORDER

Now on this 4th day of October, 1984, this cause comes before the Court for review upon the Motion to Join a Person, i.e., Mrs. Minnie Clark as a necessary party and additional Defendant herein and for the appointment of a Guardian Ad Litem herefor. WHEREUPON, the Court finds that said Motion should be granted and that Mrs. Minnie Clark should be made an additional Party Defendant herein as a necessary party and joined accordingly and that Hon. Norman Wilkinson, a regularly practicing attorney at the Bar of this Court is hereby appointed Guardian Ad Litem to represent, investigate, appear, plead, and defend the interest of the alleged incompetent adult person, Mrs. Minnie Clark, herein; and that the cost thereof will be taxed as costs in this case.

IT IS SO ORDERED AND DECREED all as hereinabove found and set forth and jurisdiction continues herein accordingly.

*Filed 10-5-84 in open Court
Nancy Brewer - clerk
By Devin Diullman - D.C.*

Norman Wilkinson
CHANCELLOR

000484

338

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

vs.

Case No. E-83-28-G

PLAINTIFF

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[Signature]

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife
and WILLARD NEAL, a single person,
and MR. & MRS. PERRY HENSON, DENNIS E.
and TERESA K. HART, his wife, HENRY R.
IVY and MINNIE P. IVY, his wife, RAYMOND
CHARLES HART, AND LORA HART, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN,
his wife

DEFENDANTS

000485

MOTION FOR CITATION FOR CONTEMPT OF COURT

COME NOW the separate Defendants, Clarence Hood and Reba Hood, by and through their attorney, Gary D. Person, and for their Motion For Citation For Contempt Of Court, state and allege:

I.

That the Court entered its Order in the above matter on the 5th day of October, 1984.

II.

That under the terms of said Order, the boundary lines of said property were established by the surveyors and fence lines in existence as of the date of the Court's Order.

III.

Since that date, the Plaintiff, Goldie Dugan and family members of Goldie Dugan have trespassed upon and otherwise taken actions to destroy fence posts and survey spikes marking the boundary lines of said property.

IV.

That the separate Defendants, Clarence Hood and Reba Hood, pray that Goldie Dugan be found in contempt of Court and an injunction be entered ordering her and her family to cease and desist said activities.

WHEREFORE, PREMISES CONSIDERED, separate Defendants pray for relief as set out hereinabove; for attorney's fees plus all costs of this action; for any and all other proper relief to which they may be entitled, whether specifically prayed for or not.

PERSON AND VANWINKLE
Attorneys at Law
204 Court Plaza Building
51 South 6th Street
P. O. Box 456
Fort Smith, Arkansas 72902

By: *Gary D. Person*
Gary D. Person

000486

CERTIFICATE OF SERVICE

I, Gary D. Person, certify that a true and correct copy of the above and foregoing Motion For Citation For Contempt Of Court has been placed in the United States Mail, postage prepaid this 16th day of May, 1985 addressed to:

Mr. David L. Rush
Walters & Rush
Attorneys at Law
P. O. Box 280
Greenwood, AR 72936

Mr. Wayland A. Parker
Attorney at Law
P. O. Box 605
Greenwood, AR 72936

Mr. David T. Westmoreland
Attorney at Law
P. O. Box 246
Fort Smith, AR 72902

Gary D. Person
Gary D. Person

STATE OF ARKANSAS
County of Sebastian
Fourth Judicial District

vs
PEGGY WATSON

and for the County
and District of the State

PARTIAL JUDICIAL NOTICE

Now remaining in the Court of the State of Arkansas

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the
Court at the City of Fort Smith, Arkansas, this 16th day of July, 1988.

Circuit Clerk

CERTIFICATE

STATE OF ARKANSAS
COUNTY OF SEBASTIAN
GREENWOOD DISTRICT

I, Peggy Watson, Clerk of the
Court within and for the County of
Sebastian and District of the State
of Arkansas, do hereby certify that
the foregoing is a true and correct
copy of the original as the same
is on file in my office and I have
subscribed my name and the seal
of the aforesaid Court at the
City of Fort Smith, Arkansas, this
16th day of July, 1988.

PEGGY WATSON, Circuit Clerk

Peggy Watson
Circuit Clerk

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

VS.

CASE NO. E-83-28-G

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHNNY HART and
VIOLET HART, husband and wife
and WILLARD NEAL, a single person
and MR. & MRS. PERRY HENSON, DENNIS B.
and TERESA K. HART, his wife, HENRY R.
IVY and MINNIE P. IVY, his wife, RAYMOND
CHARLES HART, and LORA HART, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN,
his wife

DEFENDANTS

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RESPONSE TO MOTION FOR CITATION FOR CONTEMPT OF COURT

Comes now the Defendants, Johnny Hart and Violet
Hart, Raymond Hart and Lora Hart, Dennis Hart and Teresa
Hart, Kenny Vaughn and Joyce Vaughn and Henry Ivy and
Minnie Ivy, and for their response to the Plaintiff's
petition to cite individuals known and unknown for
contempt, state:

I.

That these Defendants do not have sufficient
knowledge, information or belief to know what the
Plaintiffs are talking about and therefore deny all
material allegations.

WHEREFORE, having fully answered these Defendants
pray that they be dismissed from this action and for all
other relief to which they may be entitled.

JOHNNY HART and VIOLET
HART, his wife; RAYMOND
HART and LORA HART, his
wife; DENNIS HART and
TERESA HART, his wife;
KENNY VAUGHN and JOYCE
VAUGHN, his wife; HENRY
IVY and MINNIE IVY, his wife

WALTERS LAW FIRM, P.A.
P. O. BOX 280
GREENWOOD, ARKANSAS 72936

BY: Bill Walters
Bill Walters

00488

KNOW ALL MEN BY THESE PRESENTS:

THAT John E. Hart and Violet Hart,
his wife, RT 2, Box 372, Fort Smith, AR 7290

hereinafter called GRANTORS, for and in consideration of the
sum of Ten DOLLARS
and other good and valuable consideration in hand
paid by Kenny E. Vaughn and Joyce A. Vaughn,
his wife RT 2, Box 372-A, Fort Smith, 72916

the receipt
of which is hereby acknowledged, do hereby grant, bargain, sell and
convey unto Kenny E. Vaughn and Joyce A. Vaughn,
his wife, as tenants by the entirety with
right of survivorship, hereinafter called
GRANTEE S, and unto their heirs and assigns forever
the following lands lying in Greenwood District, Sebastian County,
Arkansas, to-wit:

A part of the Southwest Quarter of the Southwest Quarter of Section 31, Township 7 North,
Range 31 West, more particularly described as follows: Commencing at the Southwest corner
of said Section 31; thence South 87°57' East 2,151.7 feet along the South line of said
Section 31; thence North 00°20' East 447.7 feet; thence North 78°11' West 365.7 feet; thence
North 75°47' West 248.4 feet; thence North 82°54' West 368.2 feet for a place of beginning;
thence South 49°38' East 63.8 feet; thence South 82°15' West 69.9 feet; thence South
84°18' West 49.2 feet; thence North 69°57' West 41.2 feet; thence North 12°24' East 54.7
feet; thence North 82°54' West 59.1 feet; thence North 00°15' East 271.8 feet; thence
North 83°56' East 135.8 feet to the center line of a County road; thence South 02°14'
West 159.2 feet; thence South 09°45' East 148.5 feet to the point of beginning, containing
1.06 acres, more or less.

To have and to hold the same unto the said GRANTEE S

and unto their heirs and assigns forever, with all appurtenances thereunto belonging.

And they hereby covenant with said GRANTEE S that they will forever warrant and
defend the title to the said lands against all claims whatever.

And John E. Hart and Violet Hart his wife

for and in consideration
of the sum of money, do hereby release and relinquish unto the said GRANTEE S all our right of dower and
curtesy and homestead in and to the said lands.

WITNESS hand and seal on this 9th day of April, 1981

This Deed prepared by:
Walters, Davis & Cox
Attorneys at Law, P.A.
Greenwood, AR 72936
(mg)

John E. Hart (s)
Violet Hart (s)

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF SEBASTIAN) ss.

On this 9th day of April, 1981, before me, the undersigned Notary Public
within and for the County and State aforesaid, duly commissioned and acting, appeared in
person John E. Hart and Violet Hart, to me well known as the persons whose
names appear upon the within and foregoing deed of conveyance as the parties grantor and
stated that they had executed the same for the consideration and purpose therein mentioned
and set forth, and I do hereby so certify.

And I further certify that on the same day voluntarily appeared before me Violet Hart
wife of the said John E. Hart, and John E. Hart
husband of the said Violet Hart, to me known to be the persons whose names
appear upon the within and foregoing deed, and in the absence of their said spouse, stated
and declared that each of them had of their own free will executed said deed and had signed
the relinquishment of dower or curtesy and homestead therein expressed for the purpose and
consideration therein contained and set forth, without compulsion or undue influence of
their said spouse.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office as such Notary
Public of the County and State aforesaid on this 9th day of April, 1981.

By Commission Expires:

William P. Walter

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GREENWOOD AR

00049

CERTIFICATE OF SERVICE

I, Bill Walters, Attorney for Defendants, hereby certify that I have served a true and correct copy of the foregoing Response upon the following named individuals this 22nd day of May, 1985.

Gary D. Person
PERSON & VANWINKLE
Attorneys at Law
51 South 6th Street
P. O. Box 456
Fort Smith, Arkansas 72902

Wayland A. Parker
Attorney at Law
P. O. Box 605
Greenwood, Arkansas 72936

Mr. David T. Westmoreland
Attorney at Law
P. O. Box 246
Fort Smith, Arkansas 72902


Bill Walters

000490

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

GOLDIE DUGAN

PLAINTIFF

vs.

No. E-83-28-3

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife,
and WILLARD NEAL, a single person,
and MR. & MRS. PERRY HENSON, DENNIS E.
and TERESA K. HART, his wife, HENRY R.
IVY and MINNIE P. IVY, his wife, RAYMOND
CHARLES HART, and LORA HART, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN, his wife

DEFENDANTS

MOTION FOR JUDGMENT

Comes now Norman Wilkinson, Guardian ad Litem herein,
and for his Motion for Judgment, states:

(1) On October 4, 1984, Norman Wilkinson was appointed
Guardian ad Litem for Mrs. Minnie Clark.

(2) On October 5, 1984 this case was heard and the
Judgment and Order was entered on October 24, 1984. Said
Guardian ad Litem was awarded a fee in the sum of \$835.00
for his services to be paid one-half ($\frac{1}{2}$) by the plaintiff
and one-half ($\frac{1}{2}$) by the defendants on a pro rata basis.

(3) Each defendants pro rata share was calculated and
agreed to be \$59.65. This amount has been paid by Clarence
and Reba Hood (Oct. 25, 1984), by Mr. and Mrs. Perry Henson
(Nov. 2, 1984), by Johnny and Violet Hart (Dec. 11, 1984),
and by Dennis E. and Teresa K. Hart (April 29, 1985).


(4) The plaintiff, Goldie Dugan, has failed and refused
to pay her one-half ($\frac{1}{2}$) share of the Guardian ad Litem fee
which was calculated to be \$417.50.

(5) The remaining defendants, Henry R. Ivy and Minnie P.
Ivy, his wife, Raymond Charles Hart and Lora Hart, his wife,
and Kenny D. Vaughn and Joyce A. Vaughn, his wife, have failed
and refused to pay their pro rata share calculated to be \$59.65
each.

000491

(6) The delinquent parties herein should be ordered to show cause why they should not be held in contempt of court for failure to follow and obey the Court's Order of October 5, 1984 which was filed October 24, 1984.

WHEREFORE, said Guardian ad Litem prays judgment against Goldie Dugan in the sum of \$417.50, against Henry R. Ivy and Minnie P. Ivy, his wife, in the sum of \$59.65, against Raymond Charles Hart and Lora Hart, his wife, in the sum of \$59.65, and against Kenny D. Vaughn and Joyce A. Vaughn, his wife, in the sum of \$59.65, for additional costs incurred by said Guardian ad Litem in attempting to collect his fee which was approved by the Court in this matter, and for all other proper and equitable relief to which said Guardian ad Litem may be entitled whether specifically prayed for or not.


Norman Wilkinson
Guardian ad Litem
P. O. Box 954
Fort Smith, AR 72902
(501) 783-554E

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Motion for Judgment was duly mailed to The Honorable Warren O. Kimbrough, Chancery Judge, Sebastian County Courthouse, Fort Smith, Arkansas 72901, to Mr. David L. Rush, Attorney at Law, P. O. Drawer 607, Paris, AR 72855, and to Mr. Wayland A. Parker, Attorney at Law, P. O. Box 605, Greenwood, AR 72936, this 20th day of September, 1985.


Norman Wilkinson

000492

IN THE CHANCERY COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT
38

GOLDIE DUGAN

PLAINTIFF

vs.

No. E-83-28-G

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SEB. CO.
GREENWOOD DIST.

CLARENCE HOOD and REBA HOOD,
husband and wife, JOHNNY HART
and VIOLET HART, husband and wife,
and WILLARD NEAL, a single person,
and MR. & MRS. PERRY HENSON, DENNIS E.
and TERESA K. HART, his wife, HENRY P.
IVY and MINNIE P. IVY, his wife, RAYMOND
CHARLES HART, and LORA HART, his wife, and
KENNY D. VAUGHN and JOYCE A. VAUGHN, his wife

DEFENDANTS

000493

JUDGMENT

On this 10th day of October, 1985, the Motion for Judgment filed herein by Norman Wilkinson comes on for hearing, and the Court being fully advised in the premises and from other things, matters, and proof presented, finds:

- (1) On October 4, 1984, Norman Wilkinson was appointed Guardian ad Litem for Mrs. Minnie Clark.
- (2) On October 5, 1984 this case was heard and the Judgment and Order was entered on October 24, 1984. Said Guardian ad Litem was awarded a fee in the sum of \$835.00 for his services to be paid one-half (1/2) by the plaintiff and one-half (1/2) by the defendants on a pro rata basis.
- (3) Each defendants' pro rate share was calculated and agreed to be \$59.65. This amount has been paid by Clarence and Reba Hood (Oct. 25, 1984), by Mr. and Mrs. Perry Henson (Nov. 2, 1984), by Johnny and Violet Hart (Dec. 11, 1984), by Dennis E. and Teresa K. Hart (April 29, 1985), by Kenny D. and Joyce A. Vaughn (Oct. 10, 1985), and by Raymond Charles and Lora Hart (Oct. 10, 1985).
- (4) The plaintiff, Goldie Dugan, has failed and refused to pay her one-half (1/2) share of the Guardian ad Litem fee which was calculated to be \$417.50.

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(5) The remaining defendants, Henry R. Ivy and Minnie P. Ivy, his wife, have failed and refused to pay their pro rata share calculated to be \$59.65.

(6) This Court has jurisdiction over the parties and subject matter herein.

IT IS THEREFORE, by the Court, CONSIDERED, ORDERED, ADJUDGED AND DECREED that Norman Wilkinson, be and hereby is awarded judgment against Goldie Dugan in the sum of \$417.50 plus interest thereon at the rate of 10% per annum from October 24, 1984 until paid, and further that Norman Wilkinson be and hereby is awarded judgment against Henry R. Ivy and Minnie P. Ivy, jointly and severally, in the sum of \$59.65 plus interest thereon at the rate of 10% per annum from October 24, 1984 until paid, for all of which execution may issue.

Entered this 16th day of October, 1985.

William O. Wilkinson
CHANCERY JUDGE

000494

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WARRANTY DEED
WITH RELINQUISHMENT OF DOWER

A.

Know All Men by These Presents:

#1446
B-207

'80 APR 21 AM 11 51

THAT WE, John E. Hart

and Violet C. Hart

FILED - COUNTY CLERK
GRANTORS
BY [Signature]

for and in consideration of the sum of One dollar and other valuable considerations

DOLLARS (\$ 1.00)

In hand paid by Dennis Earl Hart

Route 2 Box 372, Fort Smith, Arkansas 72916

GRANTEE, the receipt of which is hereby acknowledged, hereby grant,

bargain, sell and convey unto the said GRANTEE, and unto his heirs and

assigns forever, the following lands lying in Sebastian County, Arkansas:

A Part of the Southwest Quarter (SW¹/₄) of the Southwest Quarter (SW¹/₄)
and a Part of the Southeast Quarter (SE¹/₄) of the Southwest Quarter
(SW¹/₄) of Section 31, T-7-N, R-31-W, Sebastian County, Arkansas more
particularly described as follows:

Commencing at the SW corner of said Section 31, thence S 87° 57' E,
2151.7 feet along the South line of said Section 31, thence N 00° 20'
E, 447.7 feet to the point of beginning; thence N 78° 11' W, 365.7 feet;
thence N 75° 47' W, 149.4 feet; thence N 00° 17' E, 440.1 feet to the
South bank of a strip pit; thence N 87° 15' E, 504.7 feet along said
South bank; thence S 00° 20' W, 576.0 feet to the point of beginning
containing 5.90 acres more or less.

To have and to hold the same unto the said GRANTEE, and unto his

heirs and assigns forever, with all appurtenances thereunto belonging.

And we hereby covenant with said GRANTEE that we will forever warrant and defend the
title to the said lands against all claims whatever.

And I, Violet C. Hart

wife of the said John E. Hart

for and in consideration of the said sum of money, do hereby release and relinquish unto the said
GRANTEE all my right of dower and homestead in and to the said lands.

WITNESS our hands and seals on this 18th day of April 19 80

25

This deed prepared by
Farmers Bank
Greenwood, Arkansas 72936

John E. Hart (l.s.)
John E. Hart

Violet C. Hart (l.s.)
Violet C. Hart

100705

WARRANTY DEED

MARRIED PERSONS

FORM NO. 1114 CLASS 1

82 MAY 12

PH 4 28

1728 8-33



Know All Men by These Presents:

THAT WE, John E. Hart

Viola C. Hart

FILED-CIRCUIT CLERK GREENWOOD DISTRICT SEBASTIAN COUNTY ARK.

....., husband and wife, GRANTORS,

for and in consideration of the sum of ..Five Dollars..and..Orbx..Good..and..Valuable

..Consideration..... ~~HEREXXX~~(\$5.00..&.O.G.V.C.),

In hand paid by ...Henry R. Ivy and Minnie P. Ivy, husband and wife, as tenants by the entirety with right of survivorship, Rt. 2, Box 372-A, Fort Smith, AR 72916.

..... GRANTEES .., the receipt of which is hereby acknowledged, hereby grant,

bargain, sell and convey unto the said GRANTEES .., and unto ..their..... heirs and

assigns forever, the following lands lying in ..Sebastian..... County, Arkansas:

THE WEST 149 FEET OF THE FOLLOWING DESCRIBED REAL PROPERTY.

A part of the Southwest Quarter of the Southeast Quarter of Section 31, Township 7 North, Range 31 West, more particularly described as follows: Commencing at the Southwest corner of said Section 31; thence South 67° 57' East 2151.7 feet along the South line of said Section 31; thence North 00° 20' East 647.7 feet; thence North 78° 11' West 365.7 feet; thence North 75° 47' West 149.4 feet; thence North 00° 17' East 187.1 feet for the place of beginning; thence North 86° 14' West 278.2 feet; thence North 00° 15' East 191.7 feet to the South bank of a strip pit; thence North 81° 12' East 281.2 feet along the said South bank; thence South 00° 17' West 253.0 feet to the point of beginning.

INTENDING TO CONVEY THE WEST 149 FEET, MEASURING SAID 149 FEET FROM THE SOUTHWEST CORNER OF SAID TRACT ALONG THE SOUTH BOUNDARY OF SAID TRACT, LESS AND EXCEPT MINERALS AND MINERAL RIGHTS

(LEGAL DESCRIPTION FURNISHED BY GRANTORS)

To have and to hold the same unto the said GRANTEES .., and unto ..their..... heirs and assigns forever, with all appurtenances thereunto belonging.

And we hereby covenant with said GRANTEES .., that we will forever warrant and defend the title to the said lands against all claims whatever.

And we, the GRANTORS, John E. Hart and Viola C. Hart

..husband and wife.....

for and in consideration of the said sum of money, do hereby release and relinquish unto the said GRANTEES .., all our rights of dower, entury and homestead in and to the said lands.

WITNESS our hands and seals on this 31st day of April 1982

THIS INSTRUMENT PREPARED BY: HARTZ, DAVIS & COX ATTORNEYS AT LAW, P.A. P. O. BOX 230 FORT SMITH, ARKANSAS 72906

John E. Hart Viola C. Hart

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