

**IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA**

**DONALD W. LOVELACE and  
ARDEL A. LOVELACE,**

**PLAINTIFFS,**

**VS.**

**CIVIL ACTION NO. 18-C-09**

**ROBERT P. MARTIN and  
MELANIE A. MARTIN,**

**DEFENDANTS.**

**ORDER**

This cause came before this Court, the Honorable Judge John L. Henning presiding, for trial by jury on April 8, 2019. The Plaintiffs, Donald W. Lovelace and Ardel A. Lovelace, were represented by Barry L. Bruce, Barry L. Bruce and Associates and with Donald W. Lovelace appearing in person. The Defendants, Robert P. Martin and Melanie A. Martin, were represented by John P. Fuller, Bailey and Wyant, PLLC and Robert P. Martin appearing in person. Pursuant to a hearing held before Judge Henning on the 30th day of May 2019, regarding the captioned case, the Court ordered Plaintiffs' attorney to prepare the following order.

On April 8, 2019, the case was called and a jury of six (6) with two (2) alternates was seated and impaneled. Thereafter, opening statements were made and a site inspection by the jury was conducted. Plaintiffs then presented their testimony and evidence through various witnesses. Once Plaintiffs rested, the Defendants presented their testimony and evidence through various witnesses. Upon the Defendants resting, Plaintiffs stated that they had no rebuttal. Thereafter, the Court instructed the jury as to the law and closing arguments were presented.

After presentation of evidence by the parties, testimony of the parties and witnesses, and argument of Counsel, the jury returned a verdict in favor of the Plaintiffs finding that the Plaintiffs

**POCAHONTAS COUNTY  
CIRCUIT/FAMILY COURT  
RECEIVED 7-24-19  
By: CMC/CDB**

had met their legal burden by clear and convincing evidence and are the owners, by adverse possession, of the .75 acre that is the subject of this cause of action, further described in attached Exhibit "A" and "B," under the doctrine of adverse possession that they possessed the property adversely and hostilely, that the possession has been actual, open and notorious, exclusive, continuous, and under color of title/ claim of right for at least ten consecutive years.

Further, the Court orders that the Defendants shall be assessed costs as provided by law. The Court notes the Defendants' objection to the assessment of costs.

**WHEREFORE**, it is hereby **ORDERED** that the Plaintiffs, under the doctrine of adverse possession, possess the .75 acres described in Exhibit A and B.


It is **ORDERED** that a copy of this order, along with the attached exhibits, be placed of record for reference purposes in the Office of the Clerk of the County Commission of Pocahontas County.

It is further **ORDERED** that, pursuant to West Virginia Civ. P. R. 54(d), the clerk shall tax the costs within 10 days after judgment is entered, and shall send a copy of the bill of costs to the Defendants.


*clerk to send copies to counsel of record and the undersigned*  
**ORDERED AND ENTERED** this 19<sup>th</sup> day of July, 2019

  
John Y. Henning, Senior Status Judge

Prepared for entry by:

  
Barry L. Bruce (WV Bar No. 511)  
Barry L. Bruce and Associates, LC  
P.O. Box 388  
Lewisburg, West Virginia 24901  
(304) 645-4182  
*Counsel for Plaintiffs*

Reviewed by:

  
John P. Fuller (WV Bar No. 9116)  
Baily and Wyant, PLLC.  
500 Virginia Street East #600  
Charleston, West Virginia 25301  
(304) 345-4222  
*Counsel for Defendants*



DESCRIPTION OF PROPERTY PREPARED FOR THE FINAL ORDER (LOVELACE v. MARTIN 18-C-09).

Being a description of a parcel of land lying, being and situate in Huntersville District, Pocahontas County, West Virginia, the remainder of that  $1\frac{1}{4}$  (one and one quarter) ACRE parcel first conveyed unto Mabel Pierson (see DEED BOOK 119 PAGE 322 2/26/1969), subsequently incorporated by a 1984 Randy Gardner PS survey for Mabel Pierson (see SURVEY BOOK 5 PAGE 27) to be within the bounds of a 41.9 ACRE parcel which, in turn, was conveyed unto Robert and Melanie Martin, defendants in the CIVIL ACTION CASE # 18-C-09 by a deed of conveyance dated the 8<sup>th</sup> day of January, 2016 of record in DEED BOOK 356 PAGE 594. Following deliberation, the jury found for the plaintiffs, Donald W. Lovelace, Sr. and Ardel A. Lovelace, awarding them that portion of the aforementioned  $1\frac{1}{4}$  (one and one quarter) ACRE TRACT that lays to the west of the existing wire fence line and to the east of Cummins Creek (defined here as the existing centerline of the creek as found and surveyed in October of 2018), and also to the east of that  $\frac{1}{2}$  (one half) ACRE, more or less, PARCEL, a portion of the aforementioned  $1\frac{1}{4}$  (one and one quarter) more or less ACRE PARCEL, that had previously been conveyed unto Donald W. Lovelace, Sr. and Ardel A. Lovelace, husband and wife, by Samir Shabb and Margaret June Shabb, husband and wife, dated the 1<sup>st</sup> day of April, 1985 of record in DEED BOOK 182 PAGE 520, all instruments of record in the Office of the Clerk of the Pocahontas County Commission in Marlinton, West Virginia.

The remainder of the aforementioned  $1\frac{1}{4}$  (one and a quarter) ACRE PARCEL awarded unto Donald W. Lovelace, Sr. and Ardel A. Lovelace by the jury following deliberations in CIVIL ACTION # 18-C-09 shall be described following a survey of existing evidence found and close interpretation of previous deeds and surveys noted and incorporated in a LEGAL DESCRIPTION by David O. Holz PS as follows:

BEGINNING at a point on the northeastern right of way of West Virginia Route 39, a corner now to the remainder of that property heretofore conveyed unto Robert and Melanie Martin (see 356/594), said point being 40' (forty feet) northeast of and perpendicular to the existing center line of West Virginia Route 39 as called for and found and further referenced by a fence corner found as called for, an original corner to the Lovelace 66 ACRE TRACT (see 147/174) located N04-23-33E 8.80' distant, thence leaving the remainder of the Martin property and running with the northeastern limit of West Virginia Route 39 with a line 40' (forty feet) northeast of and parallel to the existing center line of Route 39 (see Project 579-(2) 1946 Department of Highways Plan),

N39-47-25W 231.96' to a point on the northeastern limit of Route 39 at its intersection with the center line of Cummins Creek as found and surveyed, a corner also to that  $\frac{1}{2}$  (one half) ACRE PARCEL and portion of that  $1\frac{1}{4}$  (one and one quarter) ACRE PARCEL extending to Cummins Creek that had previously been conveyed unto Donald W. Lovelace, Sr. and Ardel A. Lovelace by Samir Shabb and Margaret June Shabb but had not, however, been excepted in the Robert and Melanie Martin deed (see 356/594). Thence leaving the northeastern limit of West Virginia Route 39 and running with the center line of Cummins Creek as found and surveyed in October of 2018, and running also with the intent of the aforementioned  $\frac{1}{2}$  (one half) ACRE Shabb to Lovelace deed,

N07-09-35E 103.52' to a point in the center line of the creek,

N07-40-31E 53.23' to a point in the center line of the creek, and,

N02-19-11W 68.70' to a point in the center line of the creek on the line of the aforementioned 1 ¼ (one and one quarter) ACRE TRACT. Thence leaving Cummins Creek and running with the line of said 1 ¼ (one and one quarter) ACRE TRACT,

S68-35-00E 97.70' to a point in the existing fence and property line with Robert and Melanie Martin. Thence leaving Lovelace and running with Martin, and with the existing fence as found and surveyed, according to the specific instructions of the jury,

S14-26-00W 12.00' to the center of a maple snag found as called for at a turn in the fence line,

S13-27-52E 212.16' to a metal fence post, at a turn in the fence line,

S01-59-55E 47.24' to a metal fence post at a turn in the fence line, and,

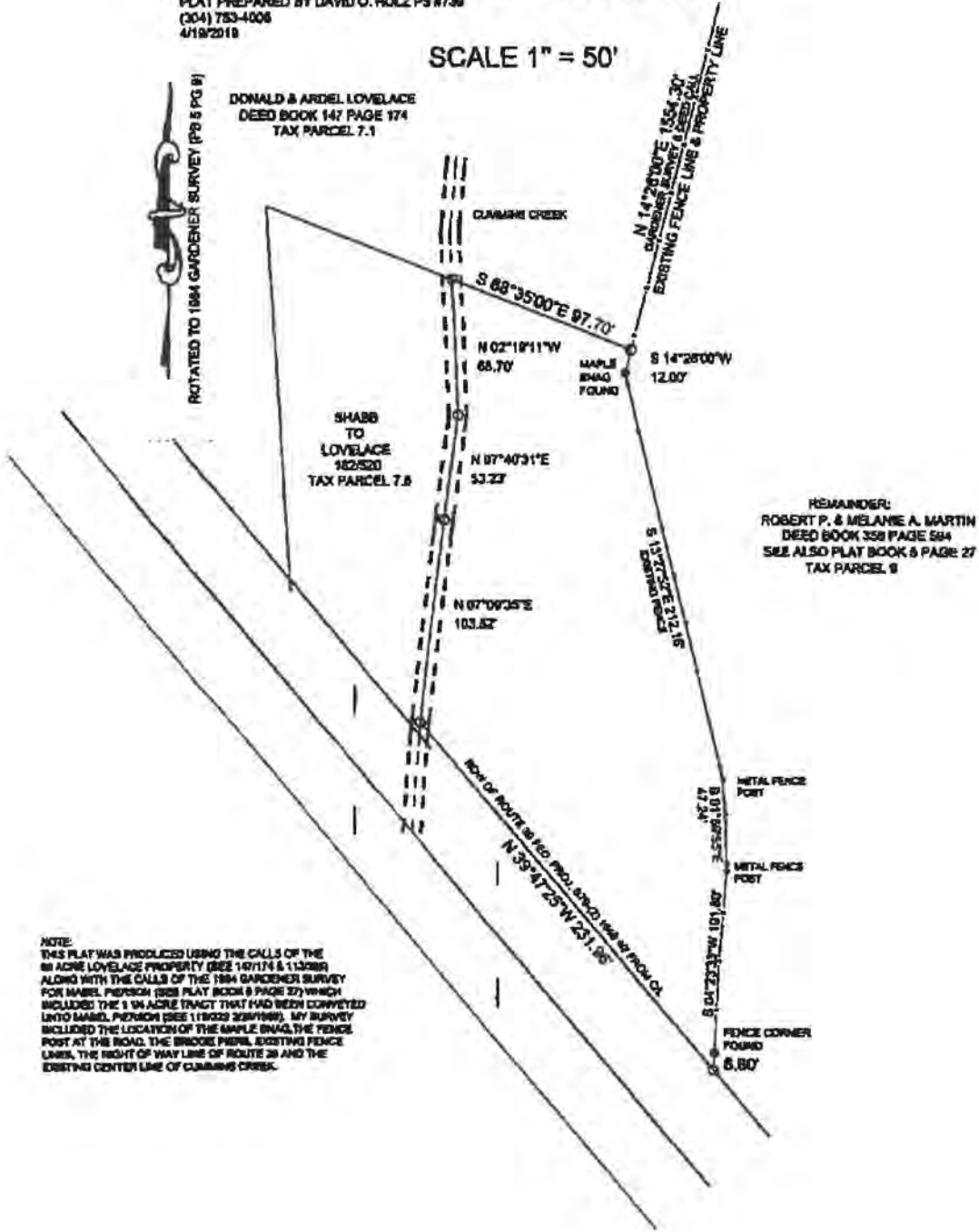
S04-23-33W 101.80' to THE POINT OF BEGINNING, containing by survey 0.850 ACRE as surveyed by David O. Holz PS as further depicted on a "PLAT PREPARED FOR THE FINAL ORDER: LOVELACE v. MARTIN CIVIL ACTION No. 18-C-09, and being determined to be the remainder of that property to the northeast of the northeastern limit of West Virginia Route 39, east of the existing center line of Cummins Creek and that ¼ ACRE PARCEL heretofore conveyed unto Donald W. Lovelace, Sr. and Ardel A. Lovelace (see 182/520), southwest of the northern line of the aforementioned 1 ¼ (one and one quarter) ACRE TRACT and west of the existing fence line with the Robert and Melanie Martin property as it is now defined.

# PLAT PREPARED FOR THE FINAL ORDER:

## LOVELACE v MARTIN

STATE: WEST VIRGINIA  
 COUNTY: POCAHONTAS  
 DISTRICT: HUNTERSVILLE  
 TAX MAP 36, A PORTION OF PARCEL 9,  
 A PORTION OF THAT 41.8 ACRE PARCEL CONVEYED UNTO ROBERT & MELANIE MARTIN (358494),  
 BEING ALSO THE REMAINDER OF THAT PROPERTY FIRST CONVEYED TO MABEL PIERSON (SEE 118022 2/28/1989),  
 PROPERTY AWARDED TO LOVELACE DESCRIBED AS WEST OF "OLD LINE" & EAST OF CUMMINS CREEK,  
 PLAT BASED ON 1864 GARDENER SURVEY FOR MABEL PIERSON (PLAT BOOK 5 PAGE 27),  
 NORTH OF AND ADJOINING THE NORTHERN RIGHT OF WAY LINE OF ROUTE 39,  
 PLAT PREPARED BY DAVID O. HOLZ PS #739  
 (304) 783-4008  
 4/19/2018

SCALE 1" = 50'



REMAINDER:  
 ROBERT P. & MELANIE A. MARTIN  
 DEED BOOK 358 PAGE 584  
 SEE ALSO PLAT BOOK 5 PAGE 27  
 TAX PARCEL 9

NOTE:  
 THIS PLAT WAS PRODUCED USING THE CALLS OF THE 89 ACRE LOVELACE PROPERTY (DEED 1407174 & 113288) ALONG WITH THE CALLS OF THE 1864 GARDENER SURVEY FOR MABEL PIERSON (SEE PLAT BOOK 5 PAGE 27) WHICH INCLUDED THE 1/4 ACRE TRACT THAT HAD BEEN CONVEYED UNTO MABEL PIERSON (SEE 118022 2/28/1989). MY SURVEY INCLUDED THE LOCATION OF THE MAPLE SNAG, THE FENCE POST AT THE ROAD, THE BRIDGE PIER, EXISTING FENCE LINES, THE RIGHT OF WAY LINE OF ROUTE 39 AND THE EXISTING CENTER LINE OF CUMMINS CREEK.

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On April 8, 2019, the case was called and a jury of six (6) with two (2) alternates was seated and impaneled. Thereafter, opening statements were made and a site inspection by the jury was conducted. Plaintiffs then presented their testimony and evidence through various witnesses. Once Plaintiffs rested, the Defendants presented their testimony and evidence through various witnesses. Upon the Defendants resting, Plaintiffs stated that they had no rebuttal. Thereafter, the Court instructed the jury as to the law and closing arguments were presented.

After retiring to deliberate, on April 11, 2019, the jury returned a verdict in favor of the Plaintiffs finding that the Plaintiffs had met their legal burden by clear and convincing evidence and are the owners, by adverse possession, of the .75 acre tract in fee simple. Further, the jury found that

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By: CMC/DB**

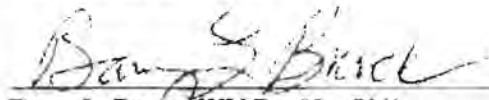
the Defendants had not proved that Plaintiffs had committed a trespass upon the subject real property by a preponderance of the evidence; thereby, returning a verdict in favor of the Plaintiffs with regard to the claim of trespass. At the request of the Defendants, the jury was polled and each responded that this was indeed their verdict.

WHEREFORE, it is hereby ORDERED that the verdict of the jury is hereby entered by the Court with a finding in the Plaintiffs' favor with regard to the claims of adverse possession, as well as a finding in favor of the Plaintiffs with regard to Defendants' counterclaim of trespass.

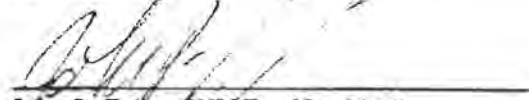
*Clerk do send copies to counsel of record and the undersigned*  
ORDERED AND ENTERED this *19th* day of *July*, 2019

  
John L. Henning, Senior Status Judge

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