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JOHN NICHOLAS and DOROTHY NICHOLAS,

Plaintiffs

vs.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
Case No. 83-CV-324

WILLIAM J. WILLIAMS and VICKIE E.  
WILLIAMS and LOUISE S. WILLIAMS

and

TOWN OF ANGELO, a Wisconsin Municipality,

Defendants.

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TRIAL

PRESIDING JUDGE: Hon. James W. Rice  
PLACE: Monroe County Circuit Court, Sparta, Wisconsin  
DATE: September 9, 13, 29, and October 11, and November 9, 1983  
APPEARANCES: Plaintiffs John and Dorothy Nicholas in person and by Michael J. McAlpine, their attorney, a member of Gleiss, Goodman, Osborne and McAlpine; Defendants William J. Williams, Vickie E. Williams and Louise S. Williams in person and by Steven Luse Abbott, their attorney, a member of Rice & Abbott, S.C. Defendant Town of Angelo, a Wisconsin municipality, having been duly served, did not appear, nor were any answers or other pleadings filed on its behalf.

FINDINGS OF FACT

1. That in 1856 on the date of the plat C.C. Miller established the Northeast corner of the plat of the Village of Athens (now Angelo) and had a piece of charred wood set at the Northeast corner of the plat.

2. Sometime prior to 1951 Ed Babcock's father knew the general location of the Northeast corner of the plat and that there was a charred piece of wood to indicate that point.

3. In 1951 Ed Babcock pointed out that general location to Otho Bergman, a registered land surveyor and the county seurveyor. Otho found the remains of a charred piece of wood at that point in 1951 and replaced it with an iron pipe. That Mr. Bergman found the Northeast corner of the plat and all the measurements that are made from that iron pipe in 1951 are accurates ones. Mr. Bergman found a pipe at the Southeast corner of the plat and an iron pipe located "in the

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park" which is at the Northeast corner of Block 10 of the plat. The distance between this point and the Northeast corner of the plat is within a foot of the distance described on the plat.

4. Mr. Lenshaw used the Bergman pipe at the Northeast corner of the plat in making Exhibit #367 which was dated in 1952.

5. The Northeast corner of the plat is verified by and tied in with the work performed by Fred Holden on or about 1910. Mr. Holden was the county surveyor at that time, and the Northeast corner is further verified by Mr. Lenshaw's work as shown in Exhibit #36.

6. The Sime's surveys indicate a 33 foot shortage in the plat.

7. By using the measurements described in testimony, the defendant's surveyors, Larry Feddersen and Gary Dechant establish the center of the alley between the North half and the South half of Block 12 of the plat to be the line along the fence poles located in the yard as well as the trees between the plaintiff's and defendant's homes.

8. The court finds that the Feddersen measurements to be the center line of the alley and that the center line of the alley is the property line between the land of the plaintiffs and the defendants. That based on the Feddersen measurements the plaintiffs own the portion of the platted alley as described in Exhibit #37 and the defendants own the portion of the platted alley as described in Exhibit #38. That the platted alley has never been opened, traveled or worked as a public alley, highway or thorough fare at any time, and in particular said alley way has been entirely abandoned as a route of travel and there is no evidence of any highway funds being expended upon the alley for a period of five years.

9. Although Mr. Sime and his associates have done extensive work on this matter, the court finds that when someone lays out a plat he finds a point on the outside edge of the plat and measures from that point as was done by Mr. Feddersen in starting from the point which Mr. Bergman found which is the Northeast corner of the plat.

That therefore the map of survey prepared by William C. Jung of H. A. Sime & Associates dated October 9, 1982 concerning the north and east lines of the southerly rows of lots of Block 12 lying East of the creek in the Village of Angelo, is incorrect.

#### CONCLUSIONS OF LAW

10. That the platted alley on the original plat of the Village of Athens (now Angelo) of 1856, lying between the North half and the South half of Block 12, has been vacated pursuant to Section 80.32(3) of the Wisconsin Statutes and said land located on said vacated alley is divided equally between the defendants, owners of land on the north side and the plaintiffs, owners of land on the south side.

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11. That the map of survey prepared by William C. Jung of H. A. Sime & Associates dated October 9, 1982 concerning the north and east lines of the southerly row of lots of Block 12 lying East of the creek in the Village of Angelo, Monroe County, Wisconsin is incorrect.

12. That the defendants are entitled to judgment that the property north of the center line of the vacated platted alley is owned by the defendants is that portion of the north half of the vacated alley lying immediately south of their respective lots, the legal description being as follows:

That part of the North one-half (16.50 feet) of an alley located in Block 12, Village of Angelo (Athens), Monroe County, Wisconsin, described as follows:

Commencing at the Southeast corner of the South one-half of said Block 12, (SE corner of the S $\frac{1}{2}$  of Block 12 being 4.32 feet South of the centerline as now travelled of S.T.H. "21"); thence N0°59'22"E along the East line of said Block 12 a distance of 153.40 feet to the NE corner of said South one-half of Block 12; thence continuing N0°59'22"E a distance of 16.50 feet to the centerline of the alley and also being the point of beginning; thence N88°18'45"W along the centerline of said alley to a point 20.00 feet East of the centerline of a creek; thence Northwesterly along a line parallel to said creek to a point on the South line of the North one-half of Block 12, said point also being on the North line of said alley, and said point being 20.00 feet East of said creek centerline; thence S88°18'45"E along the South line of said North one-half of Block 12 to the SE corner of said North one-half of Block 12; thence S0°59'22"W a distance of 16.50 feet to the point of beginning.

13. That the property south of the centerline of the vacated platted alley owned by the plaintiffs is that portion of the following described land which lies immediately north of plaintiffs lot, the south half of the vacated alley being described as follows:

That part of the South one-half (16.50 feet) of an alley located in Block 12, Village of Angelo (Athens), Monroe County, Wisconsin, described as follows:

Commencing at the SE corner of the South one-half of Block 12 (SE corner of the S $\frac{1}{2}$  of Block 12 being 4.32 feet South of the centerline as now travelled of S.T.H. "21"); thence N0°59'22"E along the East line of said Block 12 a distance of 153.40 feet to the NE corner of said South one-half of Block 12, also being the South line of the alley, and also being the point of beginning; thence continuing N0°59'22"E a distance of 16.50 feet to the centerline of said alley; thence N88°18'45"W along the centerline of said alley to a point 20.00 feet East of the centerline of a creek; thence Southeasterly along a line parallel to said creek to a point on the North line of said South one-half of Block 12, said point also being on the South line of said alley, said point also being 20.00 feet East of said creek centerline; thence S88°18'45"E along the North line of said South one-half of Block 12 to the point of beginning.

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NOW THEREFORE, on motion of Rice & Abbott, S.C., attorneys for the defendants, William J. Williams, Vickie E. Williams and Louise S. Williams,

IT IS ORDERED that a judgment in the usual form as provided by and in conformity with the findings of fact and conclusions of law, be entered in this action.

Dated November 9, 1983 and signed this \_\_\_\_\_ day of December, 1983.

BY THE COURT:

\_\_\_\_\_  
James W. Rice, Circuit Judge

APPROVED:

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Michael J. McAlpine  
Attorney for Plaintiffs

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JOHN NICHOLAS and DOROTHY NICHOLAS,

Plaintiffs

vs.

JUDGMENT

Case No. 83-CV-324

WILLIAM J. WILLIAMS and VICKIE E.  
WILLIAMS and LOUISE S. WILLIAMS

and

TOWN OF ANGELO, a Wisconsin Municipality,

Defendants.

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At the regular term of the Circuit Court, Monroe County, held at the Courthouse in the City of Sparta, Wisconsin, on September 9, 13, and 29, and October 11, and November 9, 1983, the Honorable James W. Rice, Circuit Judge, presiding.

The above entitled action coming on to be heard, the plaintiffs appearing in person and by their attorneys, Gleiss, Goodman, Osborne and McAlpine, by Michael J. McAlpine, the defendants William J. Williams, Vickie E. Williams and Louise S. Williams appearing in person and by their attorney Rice & Abbott, S.C. by Steven Luse Abbott, there being no appearances by the defendant Town of Angelo, a Wisconsin municipality;

Testimony in support of the complaint and counterclaim having been duly taken in open court, and the court having filed its findings of fact and conclusions of law,

NOW THEREFORE, on motion of Rice & Abbott, S.C., attorneys for the defendants William J. Williams, Vickie E. Williams and Louise S. Williams, and pursuant to the order of the court for judgment:

IT IS ORDERED AND ADJUDGED:

1. That the platted alley on the original plat of the Village of Athens (now Angelo) of 1856, lying between the North half and the South half of Block 12, has been vacated pursuant to Section 80.32(3) of the Wisconsin Statutes and said land located on said vacated alley is divided equally between the defendants, owners of land on the north side and the plaintiffs, owners of land on the south side.

2. That the map of survey prepared by William C. Jung of H. A. Sime & Associates dated October 9, 1982 concerning the north and east lines of the

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southerly row of lots of Block 12 lying East of the creek in the Village of Angelo, Monroe County, Wisconsin is incorrect.

3. That the defendants William J. Williams and Vickie E. Williams, husband and wife, and the defendant Louise S. Williams own the north half of the vacated alley lying immediately south of the lots owned by each of them respectively, said north half of the vacated alley owned by said defendants being:

That part of the North one-half (16.50 feet) of an alley located in Block 12, Village of Angelo (Athens), Monroe County, Wisconsin, described as follows:

Commencing at the Southeast corner of the South one-half of said Block 12, (SE corner of the S $\frac{1}{2}$  of Block 12 being 4.32 feet South of the centerline as now travelled of S.T.H. "21"); thence N0°59'22"E along the East line of said Block 12 a distance of 153.40 feet to the NE corner of said South one-half of Block 12; thence continuing N0°59'22"E a distance of 16.50 feet to the centerline of the alley and also being the point of beginning; thence N88°18'45"W along the centerline of said alley to a point 20.00 feet East of the centerline of a creek; thence Northwesterly along a line parallel to said creek to a point on the South line of the North one-half of Block 12, said point also being on the North line of said alley, and said point being 20.00 feet East of said creek centerline; thence S88°18'45"E along the South line of said North one-half of Block 12 to the SE corner of said North one-half of Block 12; thence S0°59'22"W a distance of 16.50 feet to the point of beginning.

4. That the plaintiffs John Nicholas and Dorothy Nicholas own the south half of the vacated alley lying immediately north of the lot owned by them, said south half of the vacated alley owned by said plaintiffs being:

That part of the South one-half (16.50 feet) of an alley located in Block 12, Village of Angelo (Athens), Monroe County, Wisconsin, described as follows:

Commencing at the SE corner of the South one-half of Block 12 (SE corner of the S $\frac{1}{2}$  of Block 12 being 4.32 feet South of the centerline as now travelled of S.T.H. "21"); thence N0°59'22"E along the East line of said Block 12 a distance of 153.40 feet to the NE corner of said South one-half of Block 12, also being the South line of the alley, and also being the point of beginning; thence continuing N0°59'22"E a distance of 16.50 feet to the centerline of said alley; thence N88°18'45"W along the centerline of said alley to a point 20.00 feet East of the centerline of a creek; thence Southeasterly along a line parallel to said creek to a point on the North line of said South one-half of Block 12, said point also being on the South line of said alley, said point also being 20.00 feet East of said creek centerline; thence S88°18'45"E along the North line of said South one-half of Block 12 to the point of beginning.

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5. That each party pay their own attorneys fees and costs in this action.

Dated November 9, 1983 and signed this \_\_\_\_\_ day of December, 1983.

\_\_\_\_\_  
James W. Rice, Circuit Judge

APPROVED:

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Michael J. McAlpine,  
Attorney for Plaintiffs

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