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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-133-22

PAULINA GIRALDO,

Plaintiff,

v.

DON CLAUSSEN; KRISTINE CLAUSSEN; MONMOUTH HILLS, INC., etc., et al.

Defendants.

OPINION

Decided December 12, 2024.

G. Aaron James, attorney for plaintiff.

Cutolo Barros LLC (Gregg S. Sodini, Esq.), attorneys for counterclaimant Monmouth Hills, Inc., and defendants Leland Clayton Currier, William Frank Currier, Ariadne Goerke, Marguerite Goerke Downey, Nancy G. Bell, and Carol G. Taylor.

Biancamano & Di Stefano P.C. (James Passantino, Esq.), attorneys for defendants Monmouth Hills, Inc. (in defense of the complaint) and Don Claussen.

FISHER, P.J.A.D. (t/a, retired on recall).

The court has been asked to resolve a dispute about the ownership of a small area in Monmouth Hills, a community in the highlands overlooking Sandy Hook to its east. This dispute requires consideration of: language in an 1896 map by which Water Witch, Inc. (now Monmouth Hills, Inc.) laid out the lots and roadways in this community; the meaning or significance of the many transactions throughout the twentieth century and into the twenty-first; and how it all impacted ownership of a small area – the area designated on the 1896 map as Cycle Path – which, depending on the court's findings, either abuts or is subsumed by the property plaintiff purchased in 2020, or is now owned by Monmouth Hills by way of quitclaims deeds it obtained even more recently.

To resolve the matters in dispute, the court must discuss and consider: (1) the procedural events that brought us to this point; (2) a brief outline and description of the area in dispute and surrounding areas; (3) the aspects of this dispute that cannot be decided because of the absence of certain parties; (4) the intentions of the critical grantors and how they affect whether any abutting property owners took title to the centerline of Cycle Path by operation of law; (5) whether certain grantors conveyed Cycle Path by operation of the legal

principles contained in N.J.S.A. 46:3-13; (6) claims about a right of way over Cycle Path; (7) whether plaintiff's allegations of discrimination are supported by evidence or whether those allegations have relevance to this quiet-title dispute and whether or how recent quitclaim deeds impact the court's determination of ownership of the disputed areas; (8) whether N.J.S.A. 2A:61-1's peaceable possession element has been met; (9) whether the doctrine of judicial estoppel plays any role here; and (10) whether the court should reconsider its earlier denial of summary judgment and whether there is anything to be gained by reconsidering that disposition.

I

A summary of the relevant procedural events helps put the dispute in perspective. This suit was commenced in August 2022 by plaintiff Paulina Giraldo, owner of 30 Bayview Terrace in Monmouth Hills. She sought, by way of her complaint against Monmouth Hills and Don and Kristine Claussen, a judgment that would quiet title by declaring she is the lawful owner of all or portions of Cycle Path and Cupid Path. Monmouth Hills filed a counterclaim, seeking a determination that it is the rightful owner of Cycle Path (it claims no interest in the part of Cupid Path to which plaintiff claims ownership). Plaintiff

has also asserted claims against other individuals alleging trespass and slander of title.[1]

The parties cross-moved for summary judgment on the quiet-title claims. Both sides acknowledged on April 15, 2024, during oral argument on those motions, that there are no genuine material disputes about the facts relevant to their competing quiet-title claims. They eschewed the need for a trial on the quiet-title issues, asserting no person who might have possessed direct evidence about the intentions of any of the relevant grantors or grantees of the property in question still lives. Despite those concessions, the court concluded that the convoluted issues were not sufficiently presented and that the issues would be better understood and better adjudicated if there was a trial during which the parties' experts could provide their analyses of the situation. For that reason, on July 5, 2024, the court denied the cross-motions for summary judgment and later scheduled a trial on the competing quiet-title claims.

The court presided over that trial on September 30 and October 1, 2024, at which time the parties presented testimony from their title experts: John A.

[1] The trespass and slander of title claims were not addressed at trial and are not the subject of this opinion except to the extent the quiet-title disposition cuts the legs out from under those claims.

Cannito for plaintiff, and Joseph A. Grabas for Monmouth Hills.[2] All parties agreed these two witnesses possess the necessary expertise to opine on the legal disputes their quiet-title claims have generated.[3] Having heard and considered that evidence, which has greatly illuminated the court's understanding of the dispute, as well as the many exhibits admitted into evidence and the parties' oral and written legal arguments,[4] the court renders the following findings of fact and conclusions of law.

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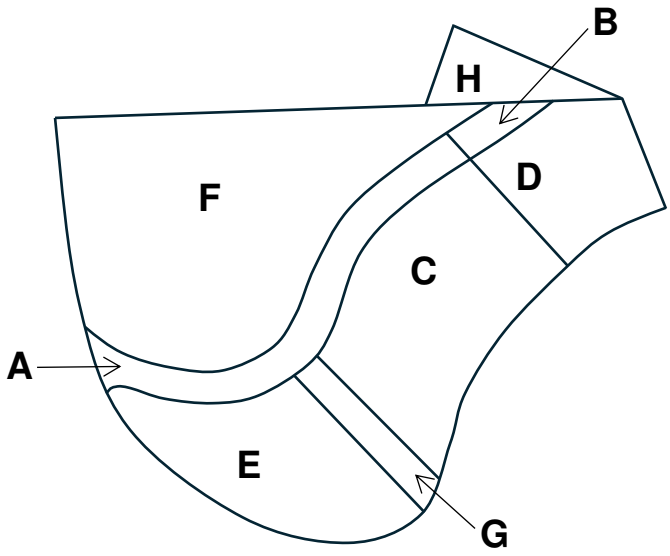
[2] At the conclusion of the first day of the trial – after plaintiff rested – defendant Don Claussen moved for an involuntary dismissal of the quiet title action insofar as it was directed at him. Plaintiff consented to that relief.

[3] Plaintiff argues that the court shouldn't find Grabas credible. In many ways, the court need not make credibility determinations about the two experts. These two witnesses merely outlined through their testimony their views about the legal significance of the many conveyances relevant to the dispute. Whether one of their opinions is correct, or not, does not turn on anything except the undisputed facts they have discussed. So, while the court concludes that Grabas's analysis of the way to resolve this dispute is accurate it is only because it adheres to the court's legal interpretation of the undisputed facts and circumstances. In short, both experts have been extremely helpful in illuminating the problem and the many relevant property transfers but – as both sides agree – there are no disputed facts to be resolved in the usual way of weighing the credibility of witnesses such that it would matter whether the court finds one expert to be more honest, knowledgeable or forthright than the other. In other words, their credibility is irrelevant; only the undisputed facts and the court's application of the law to those facts is relevant.

[4] The parties' chief written summations were submitted by November 5, 2024. The court also called counsel in to answer, on the record, certain questions about some of the arguments contained in those submissions. That virtual proceeding occurred on November 12, 2024. Rebuttals were permitted and were received by November 19, 2024. The court posed additional questions after receipt of the

II

If only words were used, the court would be hard-pressed to describe the area in question that the reader could follow or clearly understand. A picture is more helpful; the specific area in question (A, B, and G) and the surrounding area look something like this[5]:



North is up, and south is down. Plaintiff owns C and D, which front onto Bay View Terrace that, if depicted above, would abut on the southerly side of E, C and D. The property depicted as F is owned by Mitchell Nelson and Sarah Hearn-

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replies, including a question about whether an easement or right of way exists in her favor over Cycle Path, see Section VI, below; the parties responded to those questions in writing on December 4, 2024.

[5] This depiction is similar to GD-2 in evidence.

Nelson; this property also fronts onto Bay View Terrace as the roadway winds its way north. E is property obtained by Middletown Township through a tax sale foreclosure judgment entered in 1987 (MH-18). The disputed Cycle Path appears as A and B; the reasons it is depicted as consisting of two pieces will later become apparent. A and B meander from left to right (west to east) on the above drawing between F (the Nelson property) to its north, and E (Middletown's property), as well as C and D (plaintiff's property), to its south. Roughly perpendicular to Cycle Path, and either between or on the property owned by Middletown (E) or that part of plaintiff's property labeled C, runs a narrow area depicted on the 1896 map as Cupid Path (G). The area labeled H, and property to the east of H, is property that was never part of the overall tract once owned by Water Witch; Cycle Path terminates at the boundary between B and H on the above drawing.

Plaintiff claims legal title to all of A and B (all of Cycle Path) and that part of Cupid Path that appears in the drawing as G. Monmouth Hills claims ownership of A and B and expresses no interest in G. Cupid Path continues south but that southerly portion of Cupid Path is neither relevant nor questioned here. Plaintiff's claim to title of these areas is based solely on the consequences of the various conveyances of property discussed later in this opinion. Plaintiff doesn't

argue that she or her predecessors gained ownership of A, B or G through adverse possession.

III

The court must next determine whether there are issues that may not be decided because of the absence of necessary parties.

The court first holds that plaintiff's claim that she owns Cupid Path (G)[6] cannot be adjudicated here. While Monmouth Hills does not claim ownership of it and has not disputed plaintiff's claim about Cupid Path, Middletown – the owner of E – or possibly E's prior owners or, if not still living, their heirs,[7] may

[6] Cupid Path continues further south on the other side of Bay View Terrace. That part isn't depicted on page 6 because no party here claims ownership of or an interest in it.

[7] Middletown likely only foreclosed on that part of E that it was taxing, and it is arguable that Middletown was not taxing the prior owner of E for that property designated above as Cupid Path, so that when E failed to pay taxes on its property, and Middletown foreclosed on a tax sale certificate, Middletown did not obtain ownership of any part of Cupid Path. In other words, the means by which Middletown became the owner of E did not necessarily cause ownership of whatever interest the prior owner of E may have had to Cupid Path to go to Middletown. If that is so, that would mean E's prior owner would be the real party in interest in any suit to quiet title to that part of Cupid Path depicted as G on page 6. Since neither Middletown nor E's prior owner (or that owner's heirs) were made parties to this suit, it is juridically inappropriate for this court to opine on Cupid Path's true ownership. The court's ability to resolve that aspect of the claim is governed by the principle that a claimant must join all parties who are "inevitably involved in the subject matter" without whom "a judgment cannot justly be made" on the subject matter "without either adjudging or necessarily affecting the absentee's interest." Allen B. Du Mont Laboratories, Inc. v. Marcalus Mfg. Co., 30 N.J 290, 298 (1959); see also Cogdell v. Hosp.

have an interest in this part of Cupid Path; Middletown or the prior owner of E or their heirs are most certainly real parties in interest in any dispute designed to clear up any doubt about ownership of that or any other part of Cupid Path. Middletown and all other potential owners of an interest in Cupid Path have not been joined and, for that reason, the court will express no view about Cupid Path's ownership and dismiss for this reason plaintiff's claim insofar as it relates to Cupid Path.

The absence of Middletown or E's prior owners of E or their heirs from this suit also complicates a resolution of ownership as to that part of Cycle Path that abuts E (Middletown's property). This requires a necessary detour into a brief discussion of plaintiff's chief theory. Plaintiff argues that when C and D were transferred to her and her predecessors, and when F was transferred to the Nelsons and their predecessors, they all became owners of the property up to the centerline of Cycle Path (that is, that part of Cycle Path abutting their property) by operation of law. Plaintiff claims this even though the metes-and-bounds description as well as other descriptions in all the deeds transferring both sides of Cycle Path expressly declared that the grantor was conveying only up to Cycle Path's edge, not its centerline. Monmouth Hills' chief argument relies on the

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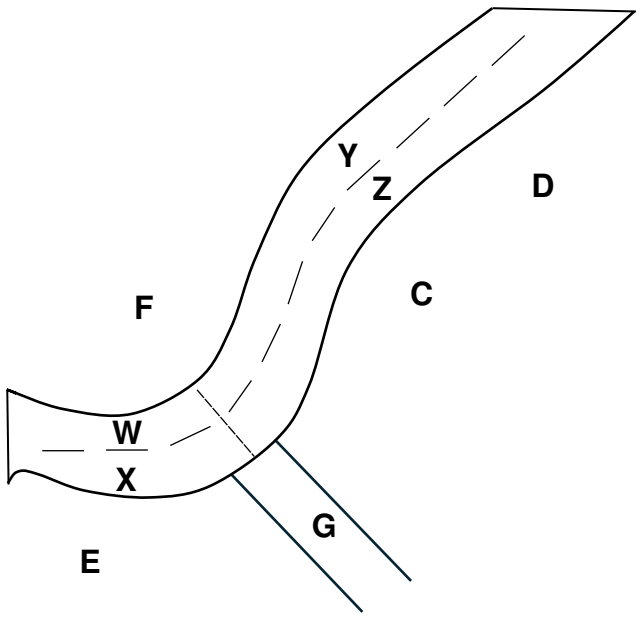
Ctr. at Orange, 116 N.J. 7, 18 (1989); Int'l Broth. of Elec. Workers Local 400 v. Bor. of Tinton Falls, 468 N.J. Super. 214, 225-26 (App. Div. 2021).

express limitations in the metes-and-bounds descriptions contained in the deeds of all those conveyances, leaving the area labeled on the 1896 map (MH-1) as Cycle Path un-transferred from those who owned Cycle Path over 100 years ago. Monmouth Hills further contends that it obtained quitclaim deeds from the heirs of those distant owners of Cycle Path so that it recently became Cycle Path's owner. Even if the court were to determine that plaintiff's legal theory about ownership up to the centerline of Cycle Path is correct, that would only make plaintiff the owner of that half of Cycle Path that runs along the northerly side of her property (C and D), and that the Nelsons were the owners, by operation of law, of the other half of Cycle Path that runs along the southerly border of their property (F). In other words, plaintiff's centerline theory requires the court to look at Cycle Path in pieces, like this:



The court is mindful that, for $1, the Nelsons gave plaintiff a quitclaim deed to their purported half of Cycle Path (W and Y). But no one disputes that the Nelsons could only convey what they owned, see K. Woodmere Assocs., L.P. v. Menk Corp., 316 N.J. Super. 306, 316 (App. Div. 1998),[8] so, on its best day, plaintiff's theory allows for plaintiff's ownership of only W, Y and Z above because plaintiff's theory requires an assumption that X – that part of Cycle Path from its centerline south to E – passed to either the prior owner of E or that owner's heirs, or Middletown, its current owner. That is, plaintiff's legal theory does not permit an assumption that the Nelsons once owned further south of Cycle Path's centerline – any such contention would be antithetical to plaintiff's theory of ownership of any part of Cycle Path – so the Nelsons were unable to convey by quitclaim deed that part of Cycle Path south of its centerline (X or Z). By the same token, although the outcome of this case may render any future dispute about X a fait accompli, the court must be clear in its holdings of today that it cannot adjudicate any dispute about X without the presence of Middletown or the prior owner of E or that prior owner's heirs.

[8] As Judge Fall explained for the Woodmere court, "a quitclaim deed transfers 'whatever interests I have, assuming I have any' in the title." 316 N.J. Super. at 316.

For all those reasons, the court will not determine the rightful owner of title to Cupid Path and will determine the rightful owner of title of Cycle Path but only the part that is designated above as W, Y and Z.

IV

As always in quiet-title matters, clarity is best provided when starting chronologically at the earliest relevant point and then working forward to the present. Happily, examination of the relevant facts and circumstances need not start with ownership of the area in these highlands west of Sandy Hook as of 1492 nor need the court determine ownership of the area during the time of Lord John Berkeley and Sir George Carteret. See Graham v. Edison, 35 N.J. 537, 540-44 (1961).[9] Instead, this story begins much later, in 1893, when an entity known as Highlands of Navesink Improvement Company conveyed the property in question here – and more – to Water Witch Club (Monmouth Hills' predecessor).

Disputes of this nature turn on the relevant grantors' intentions. Those intentions are usually determined by resort to deeds and other instruments that reveal the location and scope of the conveyed property through references to street addresses, tax map designations, or metes-and-bounds descriptions, but

[9] In 1676, the two divided what is now New Jersey into East and West Jersey; Carteret became the proprietor of East Jersey, which included the area in question. Our Supreme Court has recognized that it is from the proprietorships of Berkeley and Carteret that "the basis for land titles in New Jersey" was formed. Graham, 35 N.J. at 541 n.2.

when there are ambiguities or conflicts within the four corners of a deed, a preference may be given to one identifier over another, see, e.g., Schroeder v. Engroff, 57 N.J. Super. 452, 464 (App. Div. 1959) (observing that as "a general rule in the interpretation of descriptive words in deeds and grants, that courses and distances, admeasurements and ideal lines should yield to known and fixed monuments, natural or artificial, upon the ground itself"), rev'd on other grounds, 33 N.J. 204 (1960), the goal always being "the manifest intent of the grantor," S.R.H. Corp. v. Rogers Trailer Park, Inc., 54 N.J. 12, 20 (1969). There is here no available extrinsic evidence beyond the four corners of the various maps, deeds, and instruments to reveal the grantors' intentions. Indeed, both sides previously argued there was no need for a trial here because death has silenced all those individuals who might at one time have been able to supply evidence of intentions or other extrinsic evidence,[10] Hofer v. Carino, 4 N.J. 244, 250 (1950). Both sides instead argue that their relative position about ownership of the disputed areas is revealed and supported by the deeds and other recorded

[10] It should also be observed that plaintiff argued in her brief seeking summary judgment that "[w]hile it is unlikely that the parties will be able to secure any extrinsic evidence, none is needed here." Pb at 22. Plaintiff has not changed her position; she states in her written summation that "it is impossible for the parties to be able to secure any extrinsic evidence in th[is] instan[ce]." Ps at 12. Plaintiff insisted then and argues now that the grantors' intentions are revealed by the language in the deeds forming the chain of her title, and Monmouth Hills similarly argues that ownership is revealed by resort to the filed map of 1896 and the deeds of the properties in question that followed.

documents that are in evidence. And, so, the court turns to the various relevant conveyances.

With that understanding, the court starts its examination as of January 6, 1896, when Water Witch executed a map (MH-1) of these highlands, including those areas in question here, and filed it in the county clerk's office. That map depicts Cycle Path, Cupid Path, the lots abutting them, numerous other roadways, and all other lots within the area now known as Monmouth Hills.

The record here also includes authentic copies of recorded deeds conveying the property in question and adjacent lots since the filing of the 1896 map, including deeds of the transfers of what eventually became plaintiff's property, on the one hand, and the Nelsons' property on the other. Except as more closely examined later in this opinion, the deeds conveying plaintiff's property down through the years specifically referenced the 1896 map (MH-1) and by implication the limitations contained therein and contained as well metes-and-bounds descriptions that expressly stated the property conveyed to the predecessors of both plaintiff and Nelson halted at Cycle Path's sidelines.

So, plaintiff's claim to ownership of some or all of Cycle Path is not based on an expressed conveyance of Cycle Path to plaintiff or her predecessors but on a legal theory. She argues that, as a general matter, "the owner of land bounded on a street or highway, is presumed to own the soil in front of his lot

to the middle of the street, subject to the easement of the public highway." Haven Homes, Inc. v. Raritan Twp., 19 N.J. 239, 245 (1955) (emphasis added) (quoting Glasby v. Morris, 18 N.J. Eq. 72, 73 (Ch. 1866)).

This legal principle, however, doesn't apply in all instances. It is subject to certain exceptions, including when "express words in the conveyance show[] clearly the intention of the parties that the property to be conveyed does not extend beyond the sideline of the highway." Housing Auth. of Atlantic City v. Atlantic City Expo., Inc., 62 N.J. 322, 326 (1973); see also Haven Homes, 19 N.J. at 244-45; Brill v. Eastern N.J. Power Co., 111 N.J.L. 224, 225 (E. & A. 1933); Salter v. Jonas, 39 N.J.L. 469, 471 (E. & A. 1877). This principle – that recognizes an assumed intent that a conveyance extends to the centerline of an abutting public roadway – also presupposes the logical proposition that the grantor "had such title" to convey in the first place. Housing Auth., 62 N.J. at 327.

In arguing this legal principle's inapplicability, Monmouth Hills contends that the prior transfers could not convey beyond the sidelines or edges of Cycle Path because the principle does not apply when the abutting roadway has ceased to be a public roadway. Monmouth Hills contends that Cycle Path ceased to exist or be dedicated to public use before 1902, and the owner of the area at that time never later conveyed what was once Cycle Path to plaintiff's predecessors or the

Nelsons' predecessors. That makes this a pivotal question on which the parties' competing claims turn: was Cycle Path a public roadway in 1902?

Of course, if the grantors of these earlier conveyances were here they could tell us about their intentions. But they're not, so the court must ascertain what if anything became of Cycle Path at or around the beginning of the twentieth century from the evidence the parties have provided: the express statements made by grantors in the various deeds or other instruments that conveyed title to property in and about this area as well as any inferences the court might draw from those express statements, as illuminated by the expert testimony provided.

In pursuing this line of thought, the court should start with the limits in the dedication of the depicted "[s]treets and [a]venues" in the 1896 map (MH-1). First, Water Witch expressly stated that "in dedicating the lands for Streets and Avenues indicated on this map for public use as highways, the Water Witch Club intends to make and does make only a qualified dedication" (emphasis added). There then immediately followed an expression of what Water Witch meant; in so qualifying its dedication, Water Witch "reserved, and hereby specifically and expressly reserves, to itself, and to its special and expressed assigns of the matters hereby reserved, the exclusive franchises, easements, rights and privileges in said lands so dedicated for, Streets and Avenues, for

each and all of the following purposes . . .” (emphasis added). That phrase is followed – all part of the same sentence – with the abbreviation “viz”[11] and then sets forth those “purposes”:

> To from time to time construct, maintain, repair and operate sewers, water mains, gas mains and other mains and subways, with the appurtenances; to from time to time construct, maintain, repair and operate horse railways, steam railways and electrical railways, the latter to be operated by the trolley system or by any other system, with the appurtenances; to from time to time construct, maintain, repair and operate electrical plants for lighting or for any other purpose or purposes; by means of supports and aerial wires to be placed in any of said Streets or Avenues, or by means of electrical conductors through subways therein, or otherwise with the appurtenances; to from time to time alter vacate or relay any street or to change the grade or name of the same provided no street shall be altered or vacated without the consent of all the owners of lots fronting on said street.

In a nutshell, these “purposes” relate to one general collection of limitations imposed on the dedication and they are purposes that do not necessarily impact the question at hand: ownership.

Water Witch, however, had more to say about its “qualified dedication.” The handwritten language on MH-1 went on to provide another qualification and it is here the matter begins to turn in Monmouth Hills’ favor:

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[11] “Viz” – no longer regularly used – is an abbreviation derived from the Latin phrase “videre licet,” meaning: “it is permitted to see” and is and no doubt was then understood as being synonymous with “namely,” “to wit,” or “as follows.”

> And notice is hereby expressly given to any and all person who may become, or may desire to become, by purchase or otherwise, owners of any lands abutting on any of said Streets or Avenues, or any interest or estate in any such abutting lands, that no deed to any such abutting land, or of any interest or estate in any such abutting land, is or will be intended to carry or convey or will carry or convey, any right to, or to the exercise of, any of the franchises, easements, rights or privileges hereby reserved or intended to be reserved, in any of said Streets or Avenues, or in any part of either of them, but that every such deed is and will and shall be subject to the reservation hereabove referred to; and that no claim by any such abutting owner, or by any other person whatsoever, to have or exercise any of said reserved franchises, easements, rights or privileges, in or in any part of either of said Streets or Avenues, is or shall be available for any purpose whatsoever, unless or until such claim shall be established by a proper deed from the said Company to a grantee of the Company, granting, in clear, explicit and unmistakable terms, the franchise, easement, right or privilege particularly claims, in addition to anything else granted by such deed or by any other deed.

More succinctly, Water Witch gave "express[]" notice "to any and all person[s]" then and in the future[12] that upon becoming an owner of lands "abutting" any roadway that conveyances to them will be subject to the reserving language and such persons would not – by becoming an owner or by gaining an interest in any abutting property – obtain an interest in the roadway itself "unless or until such claim shall be established by a proper deed" from Water Witch stating that which

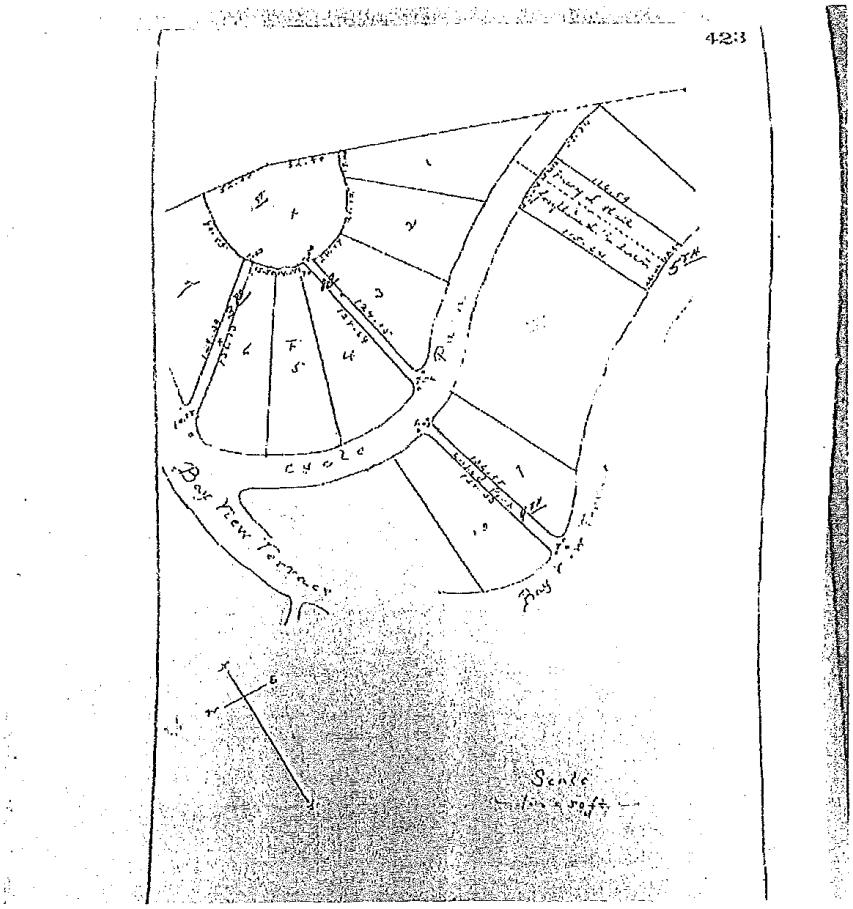
[12] That would certainly include plaintiff, who obtained her property through a deed that referenced the 1896 map and the limitations contained therein.

is conveyed in the roadway "in clear, explicit and unmistakable terms." It is as if Water Witch was telling us – 128 years later – that the principle of law that a grantee takes to the center line of an abutting dedicated roadway does not apply in the Monmouth Hills' community and that the only way such an interest could be conveyed would be by a deed that contains an express conveyance of that or any other part of an abutting dedicated roadway. This was the opinion of Monmouth Hills' expert and that opinion coincides with the court's understanding of the language on the map and its legal impact.[13]

That this is the clear and unmistakable meaning of the 1896 map's written limitation is further demonstrated by how those closer in time to the filing of the 1896 map acted. By way of a series of deeds soon after, Water Witch conveyed lots that engulfed Cycle Path to Josephine Pemberton; in one of those deeds (MH-4), Water Witch separately conveyed most of Cycle Path itself (A as shown on the depiction on page 6 above) and paths to its north to Josephine Pemberton. These deeds reveal what it was that Water Witch meant in MH-1's handwritten

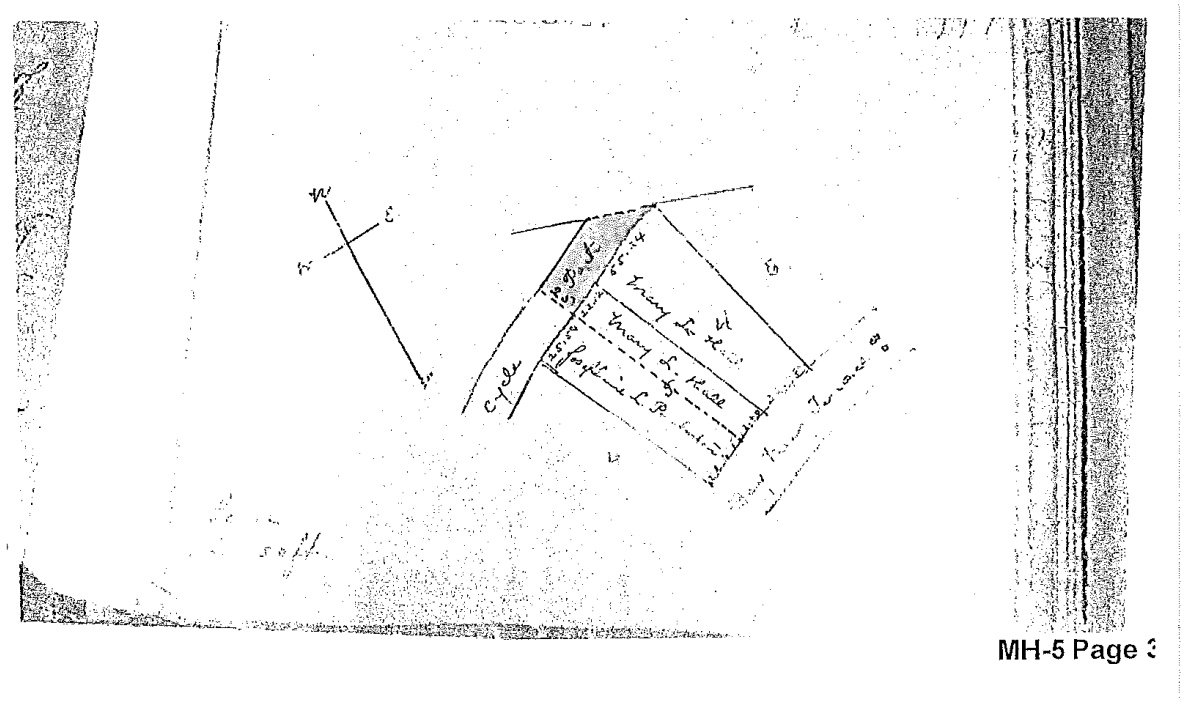
[13] Plaintiff contends that this language was included on a "multitude of subdivision maps" recorded back then. See Prs at 1-2. This language does appear, as plaintiff asserts, in Canda Realty Co. v. Carteret, 136 N.J. Eq. 550, 551 (Ch. 1945), where the court considered a 1903 map. But it hasn't been shown that this particular provision regularly appeared in other maps at the time. Even if it was as common as plaintiff asserts, nothing has been shown to suggest its meaning should be something other than the interpretation the court employs here.

limitation: any interest in any roadway could only be conveyed by way of a separate deed that expressly revealed that intention, as was the case with MH-4, which conveyed paths pictured within the deed itself:



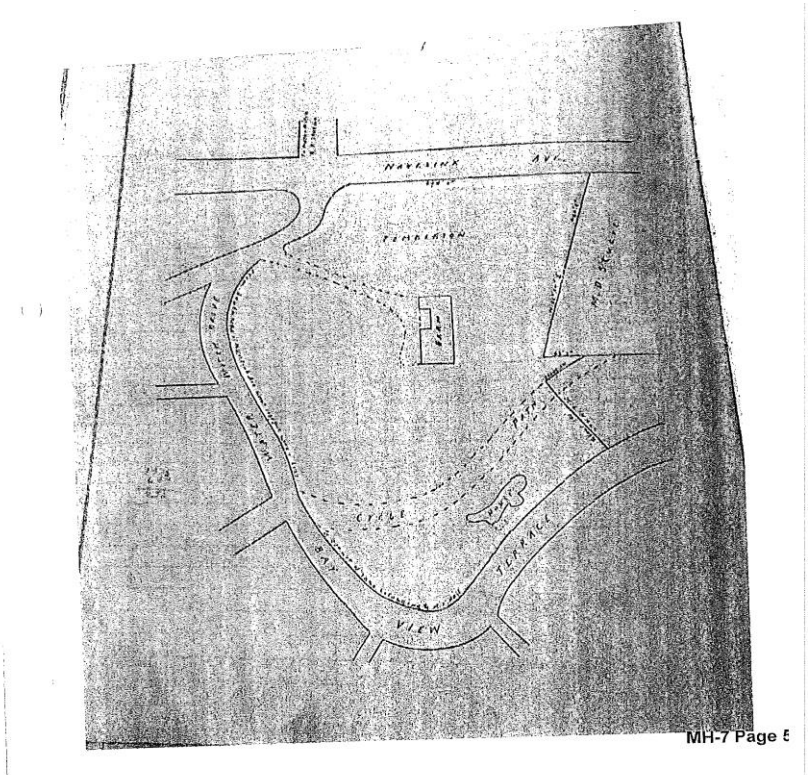
Fee simple to Cycle Path – except for a small part to the west (B on the depiction on page 6) over which only an easement was granted – passed at that moment from Water Witch to Pemberton. That other small part of Cycle Path (B) was conveyed by separate deed to Mary L. Hall (MH-5), which also contains on its

second page a hand-drawn depiction of that part of Cycle Path (the shaded part) that then passed, on July 2, 1902:



Those conveyances – from Water Witch to Pemberton in 1902 (MH-4) and from Water Witch to Hall also in 1902 (MH-5) – had the effect of ending Cycle Path's existence as a roadway. This is further revealed by other language in those deeds. In MH-4 – that which conveyed most of Cycle Path (A) and other paths to the north to Pemberton in 1902 – the grantor expressly referred to Cycle Path as "heretofore vacated" and "formerly vacated," revealing that before these transactions to Pemberton and Hall, Water Witch had already rescinded its qualified dedication of Cycle Path. This unmistakable understanding is further revealed by a 1907 deed by which Pemberton assembled all the property she had earlier obtained in the area and transferred it to Joseph E. Schwab (MH-7). This

deed, like those that transferred Cycle Path in part to Pemberton and in part to Hall, contained this drawing which reveals the boundaries of what was conveyed to Schwab that totally encompasses all of Cycle Path except the Hall piece.



Cycle Path is depicted in this deed's drawing but by way of dotted instead of solid lines, demonstrating that Cycle Path was depicted for illustration purposes and not to reveal or suggest an intent that it still existed as a roadway.

These transactions, as memorialized by deeds that represent the only evidence of the grantors' and grantees' intentions in making and receiving these conveyances, in this court's view, conclusively demonstrates that Cycle Path ceased to exist as a roadway then or at some time between then and the 1896 map. Schwab owned without limitation the westerly portion of Cycle Path (A) and Hall owned the smaller easterly piece (B). From that point, it's just a matter

of ascertaining if or when A and B were transferred by its then owners to someone else.

In 1923, Joseph E. Schwab transferred all his property to Charles W. Schwab (MH-8), who, in 1926, transferred it to Edgar Cornelius (MH-9). Cornelius transferred in 1928 what is now the property belonging to Middletown (E) and plaintiff (C and D), all of which encompassed Cupid Path, to Laura Goodrich (MH-10). The deed, as did all others that followed in the chain of title of the lots abutting Cycle Path, referenced the 1896 map (MH-1) and, thus, its limitations; the deed also contained a metes-and-bounds description that incorporated C, D and E that encompassed property only as far north as the southerly edge of Cycle Path. Cornelius did not transfer any part of what is pictured on MH-1 as Cycle Path to Goodrich (MH-10). And, in 1947, Cornelius conveyed to Margaret and Edmund Goerke all of what would eventually become the Nelson lot (F) by way of a deed (MH-11) that referenced the 1896 map (MH-1) and provided a metes-and-bounds description that encompassed the lot but only so far south as the northerly edge of what had been known as Cycle Path. In short, Cornelius – the prior owner of the entire territory (C, D, E and F), including all of Cycle Path (except the small far easterly portion that was previously transferred by Water Witch to Hall (MH-5)) – conveyed to Goodrich

and Goerke, by way of separate transactions, all that property except any part of what was known as Cycle Path.

As noted above, plaintiff's claim to any part of Cycle Path is dependent on a finding that Cycle Path was still then a roadway dedicated to public use. Only in that way would there be the predicate necessary to a consideration of an inference that when Cornelius conveyed the adjoining lots by expressly describing those lots as only reaching the edge of Cycle Path, the operation of law would require a finding that he conveyed to Cycle Path's centerline. If Cycle Path was not a dedicated roadway, then no such inference would attach and Goodrich and Goerke only gained fee simple of the property transferred to them to the edge or sideline of what was referred to in their deeds as Cycle Path. Because Cycle Path ceased to be a roadway dedicated to public use prior to those transactions, plaintiff's reliance on the principle set forth in cases like Housing Auth. of Atlantic City, 62 N.J. at 326, has no application here.

Nothing about the transactions that followed altered that fact. The succeeding transactions were similarly limited by the statements in each deed that the conveyed property was subject to MH-1 and each succeeding deed provided a metes-and-bounds description that extended only to the edge or sideline of the former Cycle Path.

And there is no evidence that the original qualified dedication of Cycle Path as a public roadway changed in any way since that qualified dedication was rescinded or vacated either at or sometime prior to the transaction between Water Witch and Pemberton in 1902. Even if Cycle Path could later be rededicated despite Cornelius's fee simple ownership of it, there is no evidence that such a rededication ever occurred.[14]

[14] A 1989 Middletown ordinance and an incorporated agreement (MH-36) reveals Middletown's willingness to "perform routine maintenance, grading, plowing and cleaning work" on "roads [within Monmouth Hills] which are not dedicated as public roads [but on] which public travel is sufficient to warrant such work in the public interest." Nothing about this suggests that the roads in Monmouth Hills were dedicated to public use or that the dedication had been accepted, only that Middletown and Monmouth Hills reached an agreement about the maintenance of the latter's roadways. Even if more might be suggested by this, plaintiff has not shown that Cycle Path was one of the roadways that the 1989 agreement and ordinance subsumed. Plaintiff also provided correspondence in the 1970s between Monmouth Hills and Middletown about a proposal for Middletown's "acceptance and improvement" of "certain roads" (G-47). There is no evidence in the record that would suggest this correspondence was intended to encompass Cycle Path. The parties have also debated the significance of a letter opinion issued on June 23, 1999, by Judge Patrick J. McGann, Jr., in a matter entitled Iler v. Monmouth Hills, MON-C-167-97 (MH-38). While Judge McGann did state that the roads in Monmouth Hills "have never been dedicated to" Middletown (MH-38 at page 3), this factual statement does not appear to relate to the issues raised in that lawsuit (whether the plaintiff there was in violation of a Middletown ordinance about tenancies and whether Monmouth Hills had standing to maintain an action to enforce Middletown's ordinance, id. at 1), and seems to represent only one of many general statements far removed from the litigated issues there, that was made by Judge McGann about the nature of this particular community.

The same may be said for the small easterly part of Cycle Path (B) that was conveyed by Water Witch to Hall in 1902. The conveyances of the property bordering that part of Cycle Path (B) only conveyed up to the edge or sideline of Cycle Path and, since all of Cycle Path had ceased to be a roadway dedicated to public use, the legal principle that a conveyance to the edge would be a conveyance to the centerline does not apply to that small part of the former Cycle Path as well.

In short, the entirety of the former Cycle Path was owned for the most part by Cornelius or his heirs and assigns (the part labeled herein as A) and the rest by Goerke[15] or her heirs and assigns (B).[16] None of their later conveyances ever incorporated the parts of the former Cycle Path that they came to own so many years ago.

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[15] That eastern part (B) was, as observed earlier, owned by Cornelius, who also owned the rest of B, but he transferred the eastern part to Margaret Goeke in 1947, who transferred it to Marguerite Goerke in 1970 (MH-15).

[16] So there is no confusion, what was noted earlier should be repeated. A and B represent <u>all</u> of what was originally known as Cycle Path. Cycle Path, at the time of its most robust existence – theoretical or otherwise – terminated at its border with the property designated in the drawing on page 6 as H, and H is not part of the property Water Witch originally acquired near the end of the nineteenth century.

V

Plaintiff has presented an alternate theory based on N.J.S.A. 46:3-13. The court's rejection of this theory requires some explanation.

As the factual record discussed above reflects, Cornelius once owned all the property now owned by the Nelsons and plaintiff, as well as the area once known as Cycle Path. Plaintiff's theory is that the court should not conclude that he conveyed to the Nelsons' predecessor only up to the northern edge of the former Cycle Path and to plaintiff's predecessor only up to the southern edge of the former Cycle Path; instead, she argues the court should find that Cornelius intended to convey his ownership of the former Cycle Path in those long ago conveyances because N.J.S.A. 46:3-13 declares that "[e]very deed conveying lands shall, unless an exception be made therein, be construed to include all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, both in law and equity, of the grantor, including the fee simple if he had such an estate, of, in and to the premises conveyed, with the appurtenances, and the word 'heirs' shall not be necessary in any deed to effect the conveyance of the fee simple" (emphasis added).

Plaintiff misconstrues this statute's meaning and scope. The statute was intended to be the means for precluding a grantor from silently withholding from a conveyance some interest within the scope of the property expressly conveyed.

In other words, the statute was intended to prevent grantors from holding back or retaining for themselves an equitable interest in property when the conveyed deed would otherwise appear – on its face – to have been conveyed in fee simple. A grantor intending to retain such an interest would be required, in the words of N.J.S.A. 46:3-13, to express and declare "an exception . . . therein."

Plaintiff takes this statute too far by asserting that, for example, when F was conveyed to Nelsons' predecessor – at a time when the grantor also owned the abutting Cycle Path – that the grantor also, by operation of the principles contained in N.J.S.A. 46:3-13, conveyed the former Cycle Path to Nelsons' predecessor. But wouldn't that same theory require a conclusion that the grantor also conveyed, in conveying C and D, the adjoining Cycle Path to plaintiff's predecessor because he also then owned that as well?

Plaintiff's theory – that a grantor who conveys should be deemed to convey "all the estate, right, title, interest, use, possession, property, claim and demand whatsoever" also conveys all other abutting land he or she owns – would wreak havoc in the transferring of property in New Jersey. Stating the problem more simply, if a grantor owns two lots – L and N – as well as an undedicated path M that bisects L and N – like Cycle Path wends between F on one side and C and D on the other – and he then conveys to one buyer L and another N, if the

grantor must also – by operation of N.J.S.A. 46:3-13 – convey M, then which of the two buyers of L and N would thereby become the owner of M?

The answer to the theory suggested by plaintiff is that it is not supported by either N.J.S.A. 46:3-13 or common sense. In conveying L, the grantor will certainly be deemed, without any expressed exception, to have conveyed all of L and everything within its boundaries, and in conveying N, the same would be true about the conveyance of fee simple of N and all within its boundaries. But it doesn't follow that somehow the grantor lost fee simple to M through the act of conveying L and N. N.J.S.A. 46:3-13 requires a broad understanding of what is conveyed within the boundaries of the property conveyed, but that understanding is not so broad as to include property interests owned by the grantor outside those boundaries. See Panetta v. Equity One, Inc., 190 N.J. 307, 317-18 (2007).

VI

The parties have also disputed the continued viability of what has been referred to as the "Hall Private Right of Way," which is mentioned in the 1902 deeds (MH-4 and MH-5) conveying property from Water Witch Club to Pemberton (MH-4) and Hall (MH-5), and in which the conveyor granted a "private right of way for persons, animals and vehicles" (MH-5) over "what was formerly Cycle Path" (MH-5) or "what was formerly part of Cycle Path" (MH-

4), so that the part referred to herein as A could be traversed to reach B. As noted earlier, these deeds referred to Cycle Path as property that had ceased to be a roadway ("heretofore vacated" and "heretobefore vacated"), giving credence to Monmouth Hill's position that plaintiff's centerline theory was inapplicable here.

In any event, whether real or theoretical, both the dominant and servient estates (A and B) have merged, if not earlier, certainly with Monmouth Hills' ownership of both A and B through the quitclaim deeds referred to earlier. That merger extinguishes the private right of way. See Camp Clearwater, Inc. v. Plock, 52 N.J. Super. 583, 594 (Ch. Div. 1958). As owner of fee simple of both A and B, Monmouth Hills does not require an easement or right of way to get from A to B or from B to A,[17] and the law recognizes that in such circumstances, the easement or right of way must cease to exist. See Fetter v. Humphreys, 19 N.J. Eq. 471, 476 (E. & A. 1868); see also Leasehold Estates, Inc. v. Fulbro Holding Co., 47 N.J. Super. 534, 560 (App. Div. 1957) (holding that "an owner cannot have an easement in his own land").

[17] The court has oversimplified this somewhat since it has already been held that X (the southerly part of A) cannot presently be adjudicated. Still, with or without X, there has been a merger because the purpose of the easement – to get from A to B or from B to A – is unencumbered with or without the right of way.

VII

With those findings, the court's description and resolution of the controversy is nearly . . . but not quite . . . ended. Still to be considered is the battle of the quitclaim deeds. Plaintiff, as noted earlier, received a quitclaim deed from the Nelsons that conveyed to her any interest the Nelsons had to Cycle Path. Any claim the Nelsons may have had to Cycle Path, as observed earlier, is not the entirety of A and B of Cycle Path, only that which was designated as W and Y on page 10. And, consistent with its ruling in Section III of this opinion, the court expresses no view about that part of A from its centerline to the northern edge of Middletown's property (E) – that which is depicted as X in the depiction on page 10 – although the court's holding about the rest of Cycle Path would likely provide the outcome of any dispute about that part. In any event, since the principle that a conveyance to the edge of a roadway dedicated to public use betokens a conveyance to its centerline is inapplicable to Cycle Path here, title in Cycle Path remained with Cornelius's heirs as to A and Goerke's heirs as to B.

The Nelson's quitclaim deed to plaintiff (G-25) is unavailing because the Nelsons had no interest in Cycle Path to convey. Instead, Monmouth Hills obtained quitclaim deeds from the heirs of Cornelius (MH-47) and Goerke (MH-48) and relies not only on their position as to plaintiff's claim but also those

quitclaim deeds to support its claim to ownership of Cycle Path. The court can resolve that claim in Monmouth Hills' favor but only with respect to W, Y and Z of Cycle Path. Without the presence of Middletown (the present owner of E) or the prior owners of E or their heirs, any dispute about ownership of X cannot take place here.

As for this aspect of the controversy, plaintiff presents some other arguments; she claims: (a) the quitclaim deeds obtained by Monmouth Hills should either be discounted or disregarded because she believes Monmouth Hills is a legally-disfavored "heir hunter"; (b) Monmouth Hills as an entity was not authorized by its principals to purchase the quitclaim deeds and, so, the quitclaim deeds should be invalidated; and (c) plaintiff's alleged status as a Latina warrants a ruling in her favor and against Monmouth Hills because the membership of Monmouth Hills is white and Christian.

A

The court may assume that Monmouth Hills might be labeled as an "heir hunter." It literally tracked down the heirs of the grantor it believed held true legal title to Cycle Path and obtained quitclaim deeds for minimal consideration. But this label, at best, suggests that a court should look at the legitimacy of the heir hunter's claim to title with some skepticism. It does not mean the claim of the so-called heir hunter should be rejected in either law or equity.

According to Phoenix Pinelands Corp. v. Davidoff, 467 N.J. Super. 532, 593 (App. Div. 2021), the "first reference to heir hunting in New Jersey was by Judge Jayne, who [as a trial judge in Carey v. Thieme, 2 N.J. Super. 458, 464-65 (Ch. Div. 1949)] described it as a 'racket' in which unscrupulous agents reviewed probate records for the purpose of 'assisting' non-resident heirs in obtaining their inheritances." Judge Jayne, however, condemned the practice insofar as the heir hunter there had insinuated himself into the situation by obtaining a power of attorney to act on behalf of the heirs and to benefit himself thereby. It does not follow that just because an individual or entity seeks out an heir of a title owner and reaches an agreement for the conveyance of title that he, she or it was engaged in the same type of conduct condemned by Judge Jayne in Carey; indeed, Judge Jayne was quick to observe that he was "not concerned with all patterns of such an enterprise but only with the model of it exhibited by the acknowledged performances and circumstances of the case" then before him. 2 N.J. Super. at 465. Monmouth Hills' activities in obtaining its quitclaim deeds are quite different from what occurred in Carey.

The term "heir hunter" has also been used to refer to individuals or entities who obtain – after the conveyance of a tax sale certificate – title or an interest from the owner to redeem the property and defeat the windfall sought by the tax sale certificate holder. Earlier cases revealed hostility toward that type of heir

hunter, see Bron v. Wentraub, 42 N.J. 87, 95 (1964) (generally asserting that "those who intervene" in the tax sale process "should not be tolerated"), and later cases recognized that this hostility should be reserved for those who obtained a property interest for less than minimal consideration, see Simon v. Cronecker, 189 N.J. 304, 328 (2007) (observing that the policy against intermeddling was limited to those who "exploit vulnerable owners by offering only nominal consideration for their property interests"), but even more recent cases have recognized no particular hostility toward these types of heir hunters when they provide a more-than-minimal benefit to beleaguered property owners, see Green Knight Capital, LLC v. Calderon, 252 N.J. 265 (2022), and even more recently the whole process of depriving property owners of their equity in the property through heir hunting may lack a constitutional foundation, see Tyler v. Hennepin County, 598 U.S. 631 (2023); 257-261 20th Ave. Realty, LLC v. Roberto, 477 N.J. Super. 339 (App. Div. 2023), certif. granted, A-29-23 (argued on Sept. 23, 2024). The court points all this out, not to go off the rails into an irrelevant tangent – since the processes and policies underlying tax sale foreclosures aren't relevant here – but to point out that the criticism of "heir hunting" in plaintiff's summation is based on criticism of interlopers in tax sale foreclosures, not when an individual or entity interested in securing ownership of property approaches an heir to an ancient grantor and enters into an arms-

length agreement to obtain title. In short, although Monmouth Hills tracked down heirs to purchase their interests in Cycle Path and may, in that sense, be labeled an "heir hunter," the criticism of heir hunters evinced in our case law is for entirely different classes of purported owners than those like Monmouth Hills.

Moreover, the fact that Monmouth Hills might be called an heir hunter does not talismanically deprive it of its interest or its right to seek relief in this court. The court must still determine whether the quitclaim deeds conveyed legal title to Monmouth Hills regardless of how Monmouth Hills came into possession of that interest. Indeed, in this context, Monmouth Hills' actions in obtaining an interest in Cycle Path is not materially different from plaintiff's pursuit of an interest in Cycle Path from the Nelsons. They both purchased quitclaim deeds for minimal value.

B

Plaintiff next argues that Monmouth Hills lacked the authority to purchase the quitclaim deeds from the heirs of Cornelius and Goerke. She claims, however, only that as to its authority, "there are issues," and claims that defendant Claussen "failed to send shareholders absentee ballots[,] . . . failed to give any shareholders who could not attend a Saturday morning meeting the opportunity to nominate another proxy besides himself to vote on their behalf[,

and] [n]o one could vote anonymously." Pb at 11. There are no citations to the factual record to support any of these factual contentions. As noted above, in between the submission of the parties' chief written summations and their replies, the court conducted a brief hearing and posed questions that the court felt were either unclear or had not been adequately supported in their written summations. This was one such issue. And this issue was raised again after the parties submitted their replies but before the filing of this opinion.[18] Despite having this issue highlighted at that time, plaintiff's reply still fails to provide any factual support for the contention that Monmouth Hills was not authorized to obtain the quitclaim deeds. Plaintiff refers the court only to G-41, which is a collection of items that neither support nor refute plaintiff's contention. And no witness was called at trial to provide evidence to suggest a lack of authority.

Since there is no evidence to support Monmouth Hills' lack of authority, the court must conclude that plaintiff's claim to the contrary is not supported by the evidence in the record, and that, in the absence of proof that Monmouth Hills was not authorized to act as it did,[19] no reason has been provided that would warrant a rejection of its quiet-title claim.

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[18] The parties were invited to respond to three discrete inquiries, and they did so in writing on December 5, 2024.

[19] It might be added that even if there was some inadequacy in conveying the authority to Monmouth Hills to obtain the quitclaim deeds, it doesn't necessarily

C

During the November 19, 2024 post-trial proceeding referred to earlier, see n.4, the court also questioned why plaintiff was making allegations about her race or ethnicity and the race and ethnicity of Monmouth Hills' membership since the issues to be decided concerned only the ownership of legal title to the areas in dispute. See Ps at 19 (asserting that "[t]he two law firms that represent [d]efendants in this matter, represent a small minority of the shareholders of [Monmouth Hills], all white and Christian, that [p]laintiff alleges conspire in working to racial cleanse the neighborhood of its first Latina owner of real property"). In other words, in light of that accusation, the court questioned why race, religion or ethnic background matters in such a case. The court also then questioned where in the record – if race, religion, and ethnicity do matter – was there evidence about those matters in the trial record. The parties were invited to address this in their written reply summations.

Plaintiff's response to those concerns is telling in that she merely repeats the same broad allegations of an intent to discriminate without explaining how that should somehow properly influence the court to determine whether Cycle Path was or wasn't conveyed to her or her predecessors, or the Nelsons or their

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mean that the deeds are void, only voidable, and the court is aware of no reason why the actions taken by Monmouth Hills may not be ratified after the fact if it can be said that there was some inadequacy in the process of obtaining authority.

predecessors, or someone else altogether. See Prs at 10-11 (repeating nearly word for word the assertions contained in Ps at 19). After arguing then and arguing now that all that matters is the operation of law to the past conveyances, plaintiff appears to seek to influence or inject some other considerations into the disposition of this quiet-title action that would appear to have no support in our jurisprudence.

So, the court fairly asked where in the record is there evidence to support the claim that plaintiff is a Latina and that some of the members of Monmouth Hills are white and Christian, as alleged in plaintiff's initial and reply summations. Despite that second opportunity to amplify her position, plaintiff has not referred the court to where in the record there is evidence of anyone's race, religion or ethnic background, so the matter might end right there. But plaintiff also provided no legal support for her argument that she should win this quiet-title dispute because she is a Latina or that Monmouth Hills should lose because white Christians may be found among its membership. Those facts – if they are facts – might have relevance in many other contexts, but the court finds no relevance when determining the rightful owners of legal title to the property in question. In this particular context, as in many others, justice must be blind to the parties' races, religions, and ethnic backgrounds.

VIII

The parties also dispute whether an element necessary to having standing to sue is present. This disagreement is based on the Legislature's declaration that not just any person may seek to quiet title. Suit may be commenced and maintained only by a person "in the peaceable possession of lands in this state and claiming ownership thereof" when that person's "title thereto, or any part thereof, is denied or disputed"; such a person may commence an action to "settle the title to such lands and to clear up all doubts and disputes concerning the same." N.J.S.A. 2A:62-1.

"Peaceable possession" is not clearly defined by statute or case law. For example, the Legislature has declared that "actual peaceable possession" may be found as to lands that "by reason of their extent or because they are wild, wood, waste, uninclosed or unimproved" possession may be uncertain. N.J.S.A. 2A:62-2. In those circumstances, the person claiming ownership "has paid taxes thereon and to whom or to whose grantors the taxes thereon have been assessed for 5 consecutive years immediately prior to the commencement of the action." Ibid. This statute, however, is inapplicable because the land in question is not extensive, wild, uninclosed or unimproved, or otherwise not of a nature that would trigger N.J.S.A. 2A:62-2. Nor is there any evidence before the court to support, for example, Monmouth Hills' claim that it has paid the taxes on the

disputed lands; evidence about that is suggested only by taxing authority records that reveal Monmouth Hills is assessed taxes for "roadway common area" (MH-28). Neither this exhibit nor anything else in the record persuades this court to the assertion that "roadway common area" refers to or includes Cycle Path.

In any event, the argument about peaceable possession appears to the court to be circular. Plaintiff claims she is in peaceable possession of Cycle Path and that she has made use of it and that seems so. That would be sufficient, see, e.g., Oberon Land Co. v. Dunn, 56 N.J. Eq. 749, 751 (Ch. 1898), as would the contention – as to which no competing evidence was offered – that her in-ground swimming pool partially sits on the former Cycle Path. Less certain is the use of the former Cycle Path by Monmouth Hills. The parties' arguments seem to equate possession with ownership and the court cannot consider the latter unless there is evidence of the former.

In the final analysis, resolving their legal disputes about peaceable possession is a trip to nowhere. The parties claiming ownership of the disputed lands have sought a judgment from this court that would quiet title by resolving that legal dispute. At least one of them – whether it is plaintiff or Monmouth Hills – must be in peaceable possession of the disputed areas and, thus, the court has jurisdiction under N.J.S.A. 2A:62-1 since at least one of the litigants has standing to seek statutory relief.

IX

Plaintiff argues as well that Monmouth Hills' quiet-title position should be barred or rejected by the doctrine of judicial estoppel. This argument is without merit. There is nothing about that doctrine that would preclude a party from asserting conflicting theories or from changing its approach during the course of a lawsuit as Monmouth Hills may have done here. Judicial estoppel is, as the Supreme Court has recognized, "an extraordinary remedy" that should be invoked "only to prevent a miscarriage of justice." Bhagat v. Bhagat, 217 N.J. 22, 37 (2014). It serves to bar a party "who advances a position in earlier litigation that is accepted and permits the party to prevail in that litigation . . . from advocating a contrary position in subsequent litigation to the prejudice of the adverse party." Id. at 36. So, for example, the doctrine has been applied to bar "a casino employee facing revocation of his license due to a criminal conviction . . . from disavowing in the license revocation proceeding the factual basis of his guilty plea." Id. at 37 (citing State, Dep't of Law & Pub. Safety v. Gonzalez, 142 N.J. 618, 632 (1995)). Nothing like that has occurred here. It has not been shown that Monmouth Hills prevailed in a prior suit on a position contrary to that pursued here.

At best, Monmouth Hills sought and obtained quitclaim deeds during the pendency of this action to better its position in this suit about its claim to

ownership of the former Cycle Path. There was no prior lawsuit; there was no ruling in Monmouth Hills' favor on the earlier factual contentions; and there is no inconsistency in what Monmouth Hills has done, nor will a miscarriage of justice result by entertaining the merits of Monmouth Hill's current legal and factual contentions.

X

Plaintiff has argued – and the court lastly considers – that the court should reconsider its earlier denial of summary judgment. To rephrase the court's disposition at that earlier point, summary judgment was denied to both sides because, quite simply, the court could not follow or fully comprehend the nature of the various transactions and their relevance to the parties' competing quiet-title claims even though – then and now – no one has disputed any of the relevant facts and no one has been able to offer any extrinsic evidence that might persuade the court to one view or the other. The court felt that a better adjudication of the dispute would occur if the parties' factual positions were illuminated by the testimony of their experts or any other evidence that might be relevant to the parties' contentions. That supposition has proven true since the expert testimony has greatly assisted the court in understanding the parties' contentions.

For some reason, plaintiff argues that the court should reconsider the earlier denial of summary judgment and now grant summary judgment – obviously in her favor. To be sure, the standard to be applied is broad. See R. 4:42-2; Lawson v. Dewar, 468 N.J. Super. 128, 134-36 (App. Div. 2021). It allows for the court, in the interest of justice, to reconsider an interlocutory order anytime up to entry of final judgment and for many reasons, including the simple possibility that the court might have been wrong the first time. Despite that broad authority, which the court has entertained and, in a sense, has "reconsidered" the earlier ruling, the court finds no reason to alter or amend the earlier interlocutory order. It was the right decision because the denial of summary judgment "decides nothing"; it "merely reserves issues for future disposition." Gonzalez v. Ideal Tile Imp. Co., Inc., 371 N.J. Super. 349, 356 (App. Div. 2004), aff'd, 184 N.J. 415 (2005), or, as Judge Gaulkin succinctly held in A & P Sheet Metal Co., Inc. v. Edward Hansen, Inc., 140 N.J. Super. 566, 573 (Law Div. 1976), a denial of summary judgment "preserves rather than resolves issues." This court, as explained at the time, thought it better for a full understanding of the issues to deny summary judgment, thereby preserving all issues for trial. The court concludes that that was the proper disposition of those cross-motions as it has, in fact, led to a clearer understanding of the parties' contentions and the relevant evidence.

Indeed, if the earlier summary-judgment decision were to be altered, it would be to grant Monmouth Hills' motion to the extent the court has ruled in Monmouth Hills' favor here and continues to adhere to the determination that plaintiff was not entitled to summary judgment but, this time, because her legal theory to ownership has no legal merit and not because of uncertainty about her claim.

The court should lastly add that it may be that plaintiff seeks reconsideration of the earlier summary-judgment decision, in part, to open further the record on which today's decision is based. In other words, it may be that she would like to rely on factual assertions then posed but not supported at trial. The court rejects this as well. Indeed, there is nothing about the proceedings that would have anticipated that the summary-judgment factual record would be more broad or fulsome than the record that the parties were free to make at trial. If plaintiff held back on her factual presentation at trial – thinking that some fact could be argued even though not supported by the evidence adduced at trial – that tactic ought not be rewarded through the relief plaintiff now seeks. Rule 4:42-2 allows for the revisiting of earlier orders "in the interest of justice" and there is nothing just about allowing one party to sandbag the other by way of this indirect attempt to have the court consider evidence not offered at trial.

The issues resolved here are based on the factual record created only during the trial. See, e.g., Bank of N.Y. v. Corradetti, 466 N.J. Super. 185, 199 n.6 (App. Div. 2020), rev'd on other grounds, 245 N.J. 136 (2021). If some alleged fact referred to in the summary-judgment papers wasn't presented at trial, then the relief plaintiff should have sought was not reconsideration of the earlier denial of summary judgment but instead a reopening of the trial record. And plaintiff hasn't sought a reopening of the record.

* * *

For these reasons and based on the evidence adduced at trial,[20] and there being no other theory offered in this civil action on which the court might

[20] The court has received in evidence numerous exhibits. The court recognizes that there is some disagreement about whether plaintiff's complaint and her third-party complaint, and the exhibits appended to both, are in evidence. As noted at trial, and repeated here, those pleadings were admitted via New Jersey Rule of Evidence 201(b)(4), but it should be clear that this threshold admissibility question does not mean that the allegations and assertions within those pleading that were made by individuals who were not called to testify are admissible. The court took judicial notice that those pleadings were filed, and therefore authentic, or that certain facts were alleged or arguments made, but it doesn't follow that the court took – or should take – judicial notice of the "truth" of those allegations or assertions. See, e.g., RWB Newton Associates v. Gunn, 224 N.J. Super. 704, 710-11 (App. Div. 1988). To the extent plaintiff desired to argue the truth of the contents of those pleadings, she could have called the appropriate witnesses to testify at trial. In short, the pleadings are admissible, but they do not prove the truth of their content merely because of their admission.

conclude that plaintiff should have title to any of the disputed portions,[21] the court finds in favor of Monmouth Hills and against plaintiff as to the parts of Cycle Path depicted on page 10 and referred to throughout this opinion as W, Y, and Z. The court further finds that it cannot adjudicate ownership of that part of Cycle Path that has been referred to as X and that it cannot adjudicate ownership of Cupid Path. Lastly, because plaintiff's slander of title and trespass claims required as a predicate a finding that she held legal title to the property in question – and the court concludes that she does not hold title to W, X, Y or Z – those slander and trespass claims shall also be dismissed.

The court has entered judgment in conformity with this opinion. The court, however, also recognizes that the parties may prefer a more detailed judgment in recordable form. Counsel for Monmouth Hills may prepare and submit such an alternate form of judgment, consistent with the court's determination, that would be recordable; that order should be submitted as soon as practicable and under the five-day rule.

[21] For example, plaintiff has not alleged nor sought to demonstrate that she or her predecessors – or the Nelsons or their predecessors – came to own any part of the former Cycle Path through adverse possession.