

The Order of the Court is stated below:

Dated: September 07, 2021  
04:17:17 PM

/s/ DEREK P PULLAN  
District Court Judge



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ENT 50857:2023 PG 1 of 7  
**Andrea Allen**  
**Utah County Recorder**  
2023 Aug 04 09:54 AM FEE 40.00 BY MG  
RECORDED FOR Cottonwood Title Insurance Agency, Inc.  
ELECTRONICALLY RECORDED

*Attorneys for Plaintiff*

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**IN THE FOURTH JUDICIAL DISTRICT COURT, STATE OF UTAH  
IN AND FOR UTAH COUNTY**

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KATHLEEN M. CARDWELL, Trustee of  
the DAVE EVANS SMITH LIVING TRUST,  
dated APRIL 13, 2004,

Plaintiff,

v.

THE ESTATE OF LORETTA ALICE  
SMITH; and DOES 1–10, inclusive;

Defendants.

**Findings of Fact and Conclusions of Law  
and Judgment Quieting Title**

Civil No. 210400678

Judge DEREK P PULLAN

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The matter before the court is a complaint for quiet title. This matter was resolved by a hearing held on Friday, September 3, 2021, notice of which was served on all parties.

Plaintiff Kathleen M. Cardwell, Trustee of the Dave Evans Smith Living Trust, dated April 13, 2004, was present and she was represented by Matthew D. Spring. Nobody appeared on behalf of Defendants and no objection was received by Plaintiff, her counsel, or the court. Having considered the documents filed with the court, the evidence and the arguments, and now being fully informed,

**The Court Finds That:**

1. Plaintiff currently owns a portion of the real property located in Utah County, State of Utah, which forms the basis of this action (“Property”).
2. Defendant, the Estate of Loretta Alice Smith, (hereinafter “Estate”) is the estate of Loretta Alice Smith, who is deceased, and who, along with her husband David E. Smith, owned, or currently own, portions of the real property located in Utah County, State of Utah, which forms the basis of this action.
3. In or around March of 2009, David E. Smith and Loretta Alice Smith owned certain real property located in Utah County, State of Utah, which is more specifically described in the Warranty Deed dated March 6, 2009 (“Property”), and duly recorded on March 31, 2009, as document number 33420-09 with the Utah County Recorder, State of Utah (“Warranty Deed”).
4. David E. Smith and Loretta Alice Smith’s purpose in executing and recording the Warranty Deed was to transfer the Property into their trust, the Dave Evans Smith Living Trust, dated April 13, 2004, which is the Plaintiff of this case.
5. Nevertheless, due to an error in the legal description of the Property, the Office of the Utah County Recorder issued a Notice of Discrepancy which stated that the Warranty Deed failed to transfer the parcel of real property labelled as “Smith Property C” on the Warranty Deed, due to an error in the legal description of “Smith Property C” which did not appear to account for the effects of Boundary Line Agreement 178135-2003 or Warranty Deed 48484-2001 (“Notice of Discrepancy”).

6. Consequently, because the portion of the Property known as “Smith Property C” was not properly transferred to Plaintiff, David E. Smith and Loretta Alice Smith remained the owners of Smith Property C.

7. David E. Smith passed away on July 2, 2009.

8. Upon the death of David E. Smith, Loretta Alice Smith was left as the sole owner of the portion of the Property known as Smith Property C.

9. Loretta Alice Smith passed away on October 3, 2014.

10. No probate was opened for the estate of Loretta Alice Smith.

11. Smith Property C is still in possession of the Estate of Loretta Alice Smith.

12. It was the intention of both Loretta Alice Smith and David E. Smith that all of the Property be transferred into their trust upon the execution and recording of the Warranty Deed.

13. If the Warranty Deed contained the proper legal description for Smith Parcel C, the deed would have transferred the entirety of the Property to Plaintiff.

14. The correct legal description for Smith Parcel C is as follows: *See Exhibit “A”*.

15. It was the belief of David E. Smith and Loretta Alice Smith, that they were transferring the entirety of the Property to Plaintiff by executing and recording the Warranty Deed.

16. It was the belief of Plaintiff that it owned the entirety of the Property based upon the recording of the Warranty Deed.

17. But for the error in the legal description of the portion of the Property labelled as Smith Property C on the Warranty Deed, the entirety of the Property would have been transferred to Plaintiff.

18. Because Defendant is the current owner of the portion of the Property known as Smith Property C and because it was the intention of Loretta Alice Smith to convey the entirety of the Property, including the ownership of Smith Property C, to Plaintiff, Plaintiff should be the record title holder of the entirety of the Property.

19. Complete and fee title of the Property should be quieted in and to Plaintiff as the sole and exclusive property of Plaintiff.

**Therefore, based on the foregoing, the court concludes that,**

1. Service to Defendant in this matter was proper and duly fulfilled;
2. No objections to Plaintiff's Complaint were received by Plaintiff, her counsel, or the court;
3. Plaintiff is the sole owner of the Property; and,
4. The court may enter judgment quieting title and interest in and to the Property to Plaintiff.

**THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that all right, title and interest in and to the following described property, located in Utah County, State of Utah is quieted in favor of Plaintiff:

*See Exhibit "A".*

Furthermore, complete and fee title of the Property, as described in Exhibit "A" is hereby quieted in and to Plaintiff as the sole and exclusive property of Plaintiff.

**\*\*\*END OF ORDER\*\*\***

In accordance with the Utah State District Court eFiling standards No 4, and URCP 10(e), this Order does not bear the handwritten signature of the Judge, but instead displays an

electronic signature at the upper-righthand corner of the first page of this Order along with the court's seal and the date and time the Order was executed.

## Exhibit "A"

## 1. PARCEL 1:

BEGINNING AT A POINT IN THE CENTER OF GROVE CREEK, SAID POINT BEING EAST 2405.10 FEET FROM THE NORTHWEST CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH AND RUNNING THENCE EAST 234.91 FEET; THENCE SOUTH 2670.96 FEET; THENCE WEST 556.52 FEET TO THE EAST LINE OF THE SALT LAKE AQUEDUCT PROPERTY AS DEEDED TO THE UNITED STATES OF AMERICA AND DESCRIBED IN A WARRANTY DEED IN BOOK 545, PAGE 131-148, UTAH COUNTY RECORDER'S OFFICE; THENCE NORTHWESTERLY ALONG THE ARC OF A 250.0 FOOT RADIUS CURVE TO THE LEFT 44.68 FEET (CHORD BEARS NORTH 35°25'18" WEST 44.62 FEET) ALONG SAID EAST LINE; THENCE NORTH 40°32'30" WEST 876.80 FEET ALONG SAID EAST LINE; THENCE NORTHWESTERLY ALONG THE ARC OF A 150.0 FOOT RADIUS CURVE TO THE RIGHT 19.24 FEET (CHORD BEARS NORTH 36°52'04" WEST 19.23 FEET) ALONG SAID EAST LINE; THENCE NORTH 33°11'30" WEST 773.13 FEET ALONG SAID EAST LINE TO THE CENTER OF SAID GROVE CREEK; THENCE NORTH 53°41'31" EAST 138.89 FEET ALONG SAID CREEK; THENCE NORTH 55°42'47" EAST 159.76 FEET ALONG SAID CREEK; THENCE NORTH 51°31'43" EAST 199.93 FEET ALONG SAID CREEK; THENCE NORTH 25°31'46" EAST 71.28 FEET ALONG SAID CREEK; THENCE NORTH 41°09'18" EAST 87.83 FEET ALONG SAID CREEK; THENCE NORTH 76°22'39" EAST 73.14 FEET ALONG SAID CREEK; THENCE NORTH 35°33'12" EAST 82.45 FEET ALONG SAID CREEK; THENCE NORTH 25°21'36" EAST 94.31 FEET ALONG SAID CREEK; THENCE NORTH 60°26'54" EAST 56.97 FEET ALONG SAID CREEK; THENCE NORTH 29°01'10" EAST 77.74 FEET ALONG SAID CREEK; THENCE NORTH 58°35'32" EAST 57.46 FEET ALONG SAID CREEK; THENCE NORTH 35°31'17" EAST 70.53 FEET ALONG SAID CREEK; THENCE NORTH 20°19'16" EAST 67.14 FEET ALONG SAID CREEK; THENCE NORTH 67°21'44" EAST 78.00 FEET ALONG SAID CREEK; THENCE NORTH 65°59'47" EAST 194.79 FEET ALONG SAID CREEK; THENCE NORTH 39°33'35" EAST 149.16 FEET ALONG SAID CREEK; THENCE NORTH 45°00' EAST 155.56 FEET ALONG SAID CREEK; THENCE NORTH 20°33'22" EAST 137.43 FEET ALONG SAID CREEK TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THAT PORTION CONVEYED TO NORTH UTAH COUNTY WATER CONSERVANCY DISTRICT DISCLOSED BY QUIT CLAIM DEED RECORDED MARCH 20, 1964 AS ENTRY NO. 4235 IN BOOK 966 AT PAGE 496 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 1021.1 FEET SOUTH AND 882.8 FEET EAST OF THE NORTHWEST CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SLB&M; THENCE NORTH 55°55' EAST 67.3 FEET; THENCE SOUTH 68°23' EAST 220.3 FEET; THENCE SOUTH 7°33' EAST 198.5 FEET; THENCE SOUTH 44°50' WEST 110.9 FEET; THENCE NORTH 33°10' WEST 380.9 FEET TO POINT OF BEGINNING.

LESS AND EXCEPTING AND TOGETHER WITH THAT PORTION OF LAND CONVEYED BY THAT CERTAIN BOUNDARY LINE AGREEMENT RECORDED NOVEMBER 07, 2003 AS ENTRY NO. 178135:2003 OF OFFICIAL RECORDS.

LESS AND EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE TRUST FOR PUBLIC LAND, A NONPROFIT CALIFORNIA PUBLIC BENEFIT CORPORATION DISCLOSED BY WARRANTY DEED RECORDED MAY 17, 2001 AS ENTRY NO. 48484:2001 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY SECTION LINE OF SAID SECTION 22, BASIS OF BEARING FOR THIS DESCRIPTION IS BASED ON THE UTAH COUNTY STATE PLANE BEARING OF SOUTH 00°10'12" EAST BETWEEN SAID NORTHWEST CORNER AND THE WEST QUARTER CORNER OF SAID SECTION 22, AS SHOWN IN THAT SURVEY BY KNOX & ASSOCIATES, INC. FOR CORNERSTONE GROUP INVESTMENTS, INC., DATED JANUARY 25, 2000; SAID POINT BEING SOUTH 89°52'07" EAST 1020.95 FEET ALONG THE SECTION LINE FROM THE NORTHWEST CORNER OF SECTION 22 AND RUNNING THENCE SOUTH 89°52'07" EAST 1623.60 FEET ALONG THE SECTION LINE TO THE NORTH QUARTER CORNER OF SAID SECTION 22; THENCE SOUTH 00°37'07" EAST 73.56 FEET ALONG THE QUARTER SECTION LINE TO THE CENTER LINE OF GROVE CREEK; THENCE ALONG THE CENTER LINE OF SAID GROVE CREEK THE FOLLOWING 29 COURSES AND DISTANCES: SOUTH 48°46'00" WEST 35.07 FEET; SOUTH 65°33'06" WEST 206.94 FEET; SOUTH 53°27'38" WEST 36.88 FEET; SOUTH 89°16'39" WEST 119.55 FEET; SOUTH 56°41'44" WEST 51.37 FEET; SOUTH 83°00'21" WEST 63.17 FEET; SOUTH 65°29'15" WEST 71.14 FEET; SOUTH 39°55'31" WEST 144.34 FEET; SOUTH 45°50'18" WEST 113.10 FEET; SOUTH 81°13'21" WEST 37.26 FEET; SOUTH 25°51'33" WEST 84.07 FEET; SOUTH 42°47'35" WEST 55.82 FEET; SOUTH 53°49'23" WEST 47.93 FEET; SOUTH 29°01'10" WEST 77.74 FEET; SOUTH 60°26'54" WEST 56.97 FEET; SOUTH 25°21'36" WEST 94.31 FEET; SOUTH 54°17'54" WEST 49.20 FEET; SOUTH 11°06'03" WEST 31.54 FEET; SOUTH 58°09'54" WEST 53.39 FEET; NORTH 74°51'08" WEST 40.28 FEET; SOUTH 56°08'32" WEST 37.96 FEET; SOUTH 21°06'12" WEST 99.02 FEET; SOUTH 44°32'14" WEST 74.34 FEET; SOUTH 73°14'43" WEST 31.72 FEET; SOUTH 50°00'11" WEST 92.17 FEET; SOUTH 04°49'18" EAST 25.50 FEET; SOUTH 47°02'57" WEST 66.84 FEET; SOUTH 83°49'10" WEST 41.24 FEET; SOUTH 55°42'47" WEST 63.92 FEET TO THE NORTH UTAH COUNTY WATER CONSERVANCY DISTRICT PROPERTY AS DEEDED IN BOOK 966, PAGE 496, UTAH COUNTY RECORDS; THENCE ALONG THE BOUNDARY OF SAID PROPERTY THE FOLLOWING TWO COURSES AND DISTANCES: NORTH 07°43'12" WEST 162.58 FEET; NORTH 68°33'12" WEST 185.43 FEET; THENCE 297.44 FEET ALONG THE ARC OF A NON- TANGENT 156.00 FOOT RADIUS CURVE TO THE LEFT BEARING TO RADIUS POINT BEING NORTH 39°48'34" WEST (THE CHORD OF WHICH BEARS NORTH 04°25'50" WEST 254.39 FEET) HAVING A CENTRAL ANGLE OF 109°14'32"; THENCE 69.09 FEET ALONG THE ARC OF A 100.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT (THE CHORD OF WHICH BEARS NORTH 39°15'35" WEST 67.72 FEET) HAVING A CENTRAL ANGLE OF 39°35'02"; THENCE NORTH 19°28'04" WEST 29.73 FEET; THENCE 303.41 FEET ALONG THE ARC OF A 428.00 FOOT RADIUS CURVE TO THE LEFT (THE CHORD OF WHICH BEARS NORTH 39°46'36" WEST 297.10 FEET) HAVING A CENTRAL ANGLE OF 40°37'03"; THENCE NORTH 60°05'07" WEST 60.44 FEET; THENCE 77.42 FEET ALONG THE ARC OF A 100.00 FOOT RADIUS CURVE TO THE RIGHT (THE CHORD OF WHICH BEARS NORTH 37°54'24" WEST 75.50 FEET) HAVING A CENTRAL ANGLE OF 44°21'27"; THENCE NORTH 74°16'20" EAST 59.05 FEET; THENCE NORTH 47°21'27" EAST 127.54 FEET; THENCE SOUTH 56°00'08" EAST 241.09 FEET; THENCE NORTH 61°35'08" EAST 64.81 FEET; THENCE NORTH 00°07'53" EAST 340.42 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A PERMANENT, NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS GRANTED IN THAT CERTAIN CORRECTED EASEMENT AGREEMENT, RECORDED APRIL 7, 2016, AS ENTRY NO. 29878:2016, OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT LOCATED SOUTH 1021.10 FEET AND EAST 882.80 FEET AND NORTH 55°55'00" EAST 10.00 FEET FROM THE NORTHWEST QUARTER CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 55°55'00" EAST 56.01 FEET; THENCE SOUTH 33°10'00" EAST 367.98 FEET; THENCE SOUTH 44°50'00" WEST 57.25 FEET; THENCE NORTH 33°10'00" WEST 378.985 FEET TO THE POINT OF BEGINNING.