

STATE OF INDIANA)	IN THE HUNTINGTON SUPERIOR COURT
)SS:	
COUNTY OF HUNTINGTON)	CAUSE NO. 35D01-1902-PL-165
HUNTINGTON COUNTY COMMUNITY)		
SCHOOL CORPORATION,)	
)	
PLAINTIFF,)	
VS.)	
)	
JOHN PHILIP KRIEGBAUM, et al.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The Court, having considered Plaintiff, Huntington County Community School Corporation's ("HCCSC") Motion for Summary Judgment, and having further considered the evidence designated by the parties, the respective briefs of the parties and the arguments of counsel, now issues the following Findings of Undisputed Fact, Conclusions of Law and Judgment.

I. FINDINGS OF UNDISPUTED FACTS

On January 23, 2020, the parties filed their Stipulation of Undisputed Facts and stipulated to the following facts for the pending motion for summary judgment:

1. On August 1, 1927, "John P. Kriegbaum and Anna Kriegbaum, his wife", as grantors ("Grantors"), executed a warranty deed which "CONVEY[ED] AND WARRANT[ED]" certain real estate to "The School

City of Huntington,” as grantee (“Grantee”), “for and inconsideration of One and - - - - - No/100 Dollars,” “the receipt of which is hereby acknowledged.” (HCCSC Designation and Table of Contents (“HCCSC Designation”), pp. 5-6, Plaintiff’s Complaint for Quiet Title Action and Declaratory Judgment (“Complaint”), p. 4 ¶12 and Defendants’ Answer to Plaintiff’s Complaint for Quiet Title Action and Declaratory Judgment (“Answer”), p. 3 ¶12).

2. The real estate in the above-described August 1, 1927 deed (“1927 Deed”) is commonly known as “Kriegbaum Field.” (Complaint, p. 5 ¶16 and Answer, p. 3 ¶16).

3. The Grantee was a school corporation that had a five-member board of education, which was appointed by the Common Council of the City of Huntington. (HCCSC Designation, pp. 22 and 43).

4. The Grantee had the following public schools within its school system: Central (grades 1 through 8), Horace Mann (grades 1 through 8), Lincoln (grades 1 through 8), Riley (grades 1 through 8), Tipton (grades 1 through 5), and City High School (grades 9 through 12). (HCCSC Designation, p. 44).

5. At the time the 1927 Deed was executed by the Grantors, there were also twelve (12) other, separate township school corporations in

Huntington County: Warren Township, Clear Creek Township, Jackson Township, Union Township, Huntington Township, Dallas Township, Polk Township, Lancaster Township, Rock Creek Township, Salamonie Township, Jefferson Township and Wayne Township. (HCCSC Designation, pp. 22, 25-26 and 43-44). There were also two (2) separate parochial school systems in the City of Huntington (Catholic and Lutheran). (HCCSC Designation, pp. 26 and 43).

6. The 1927 Deed contained a condition subsequent that Kriegbaum Field was “for the use of grantee as an athletic field for the use of the public schools of the City of Huntington, Indiana” and that “no professional games are to be played thereon and no contests or games are to be played on the above described real estate on Sunday.” (HCCSC Designation, p. 5).

7. The 1927 Deed further stated that if “grantee shall discontinue the use of said real estate for the purposes herein set forth or shall fail to comply with said conditions,” then “the real estate herein conveyed and the estate granted, shall be terminated and forfeited and same shall revert to grantors, their heirs or assigns.” (HCCSC Designation, p. 5, Complaint, p. 4 ¶13 and Answer, p. 3 ¶13).

8. Shortly after the Grantee was deeded Kriegbaum Field by the Grantors, the Grantee took possession of the real estate and constructed an athletic facility on the real estate.

9. The Grantors had seven (7) sons. (HCCSC Designation, pp. 8-9). Anna Kriegbaum died in 1938. (HCCSC Designation, p. 9).

10. Grantor John P. Philip Kriegbaum was subsequently remarried to Stella Kriegbaum. (HCCSC Designation, p. 10). Grantor John P. Kriegbaum died in 1954, and Stella Kriegbaum died in 1956. (HCCSC Designation, pp. 10, Complaint, p. 2 ¶2 and Answer, p. 2 ¶2).

11. Defendant John D. Kriegbaum is an heir under the Last Will and Testament of Charles E. Kriegbaum, who was one of the seven (7) sons of the Grantors. (Defendants' Designation of Evidence, pp. 4-11).

12. All of the other Defendants who have appeared testified that they do not have any information, or that it is "unknown," whether the other six (6) sons of John Philip Kriegbaum either died intestate or had a will. (HCCSC Designation, pp. 73-188).

13. On November 13, 1963, a Final Comprehensive Reorganization Plan for the Reorganization of the School Corporations of Huntington County, Indiana ("the Plan") was adopted. (HCCSC Designation, pp. 33-68;

p. 60). See also *Cooper v. Huntington County Community School Corporation*, 232 N.E.2d 887, 888 (Ind. 1968).

14. The Plan provided for the reorganization and consolidation of the thirteen (13) different school corporations in Huntington County into a new, single county-wide school corporation, the HCCSC. (HCCSC Designation, pp. 11, 43-44, 57-60).

15. After the school consolidation, the Grantee in the 1927 Deed ceased to be a separate or distinct entity. (HCCSC Designation, p. 11).

16. On June 27, 1968, the attorney for HCCSC submitted an affidavit to the Huntington County Auditor advising that “all real estate now in the name of the School City of Huntington, Indiana, would, by virtue of said Act, become the sole and absolute property of the Huntington County Community School Corporation and that all such real estate should be transferred to the name of Huntington County Community School Corporation on the books and records of the Auditor of Huntington County, Indiana.” (HCCSC Designation, pp. 9-12 and 14 (emphasis in original)).

17. The Huntington County Auditor’s records show that the deeded owner to Kriegbaum Field is the “Huntington County Community School Corporation.” (HCCSC Designation, pp. 9 and 15-18).

18. On January 27, 2019, a title search for Kriegbaum Field was performed. This title search went back to 1927 and found that the “Names of Grantees in Last Deed of Record” was the “Huntington County Community School Corporation.” (HCCSC Designation, pp. 70-72).

19. Since the reorganization and consolidation of all the local schools in Huntington County in the 1960s, Kriegbaum Field has been used as an athletic field for HCCSC. (HCCSC Designation, p. 12).

20. Since the 1927 Deed, Kriegbaum Field has also been used for a variety of community uses by parties other than the Grantee, which uses include religious services, community celebrations, concerts, professional events, and events that occurred on Sunday. (HCCSC Designation, pp. 23-24, 30-32).

21. On February 28, 2019, HCCSC filed its Complaint for Quiet Title Action and Declaratory Judgment against the Defendants, seeking to quiet its title to Kriegbaum Field. HCCSC seeks a decree that it is fee simple owner of Kriegbaum Field, free and clear of rights, claims, or interests related to the condition subsequent, including any termination, reverter or forfeiture provisions contained in the 1927 Deed to the Grantee.

22. HCCSC included as defendants’ various descendants of the Grantors in the 1927 Deed (“Defendants”) to answer as to any interest they

may have in the real estate; and on May 7, 2019, Defendants appeared by counsel and filed their Answer to the Complaint.

23. On March 7, 2019, March 14, 2019, and March 21, 2019, HCCSC published its Notice of Suit in the *Herald-Press*, which is a paper of general circulation in Huntington County; however, no additional parties appeared or answered HCCSC's Complaint in response to the published Notice of Suit.

24. On November 15, 2019, HCCSC filed its Motion for Summary Judgment, Brief in Support of its Motion for Summary judgment, and Designation of Evidence in support of its Motion for Summary Judgment.

25. On December 16, 2019, Defendants filed their Brief in Response to HCCSC's Motion for Summary Judgment and Designation of Evidence in support of their response.

26. On December 27, 2019, HCCSC filed its Reply Brief in support of its motion for summary judgment.

27. On January 3, 2020, the Court held a hearing on HCCSC's motion for summary judgment and heard the arguments of counsel.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Undisputed Facts, the Court now enters the following Conclusions of Law:

A. Jurisdiction and Standard of Review.

28. The Court has jurisdiction over the parties and the subject matter of this cause of action.

29. Pursuant to Ind. Trial Rule 56, summary judgment is proper if the designated evidence shows there is no genuine issue as to any fact material to a claim or issue, and the movant is entitled to judgment as a matter of law. *Town of Ellettsville v. DeSpirito*, 111 N.E.3d 987, 990 (Ind. 2018); *Tom-Wat, Inc. v. Fink*, 741 N.E.2d 343, 346 (Ind. 2001).

30. The party moving for summary judgment has the initial burden to set forth evidence demonstrating that no factual issues exist. *Cortez v. Jo-Ann Stores, Inc.*, 827 N.E.2d 1223, 1230 (Ind. Ct. App. 2005). Once this initial burden is met, “the burden shifts to the nonmoving party to produce evidence demonstrating an issue of fact exists.” *Id.*

31. Here, HCCSC and Defendants have stipulated to the undisputed facts, but disagree as to the appropriate legal conclusions arising from these undisputed facts. Therefore, the issue before the Court presents a pure question of law. *Tom-Wat, Inc.*, 741 N.E.2d at 346.

B. Only Defendant John D. Kriegbaum Has Standing to Contest HCCSC'S Quiet Title Action and the Remaining Kriegbaum Defendants Do Not Have Standing.

32. The 1927 Deed provides that only "heirs" of the Grantors have any interest in the condition subsequent and its termination, reverter and forfeiture provisions.

33. An "heir" is defined as "those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will." I.C. § 29-1-1-3(a)(13).

34. The term "heirs of the body" means "such of the issue or offspring as may lawfully inherit." *Waters v. Bishop*, 122 Ind. 516, 520 (1890); *see also Ames v. Conry*, 165 N.E. 435, 438 (Ind. Ct. App. 1927) (noting that, unlike other states, Indiana has not adopted the common-law definition of "heirs," and that in Indiana "an heir is one who succeeds to the estate[.]"). "Heirs" are the persons who are entitled to receive the real and personal property of the decedent. *S.M.V. v. Littlepage*, 443 N.E.2d 103, 108 (Ind. Ct. App. 1982).

35. Since HCCSC made a prima facie case of its legal title to Kriegbaum Field, the burden shifted to Defendants to demonstrate their rights and interest in the real estate as "heirs" under the 1927 Deed. *Price*

v. Merryman, 259 N.E.2d 883, 892 (Ind. Ct. App. 1970), *reh'g denied*, *trans. denied* (1971).

36. Only Defendant John D. Kriegbaum has produced evidence that he is an "heir" entitled to assert an interest under the 1927 Deed.

37. None of the other Defendants have designated any evidence showing that any interest in Kriegbaum Field has ever devolved to them from any of the other six (6) sons of the Grantors.

38. As a matter of law, the other Defendants have failed to designate any genuine issue of material fact that they are "heirs" of the Grantors entitled to assert any interest under the 1927 Deed, and, therefore, they lack standing to contest HCCSC's quiet title action. Only John D. Kriegbaum has standing as an "heir" under the 1927 Deed to contest this quiet title action.

C. The Condition Subsequent in the 1927 Deed Has Been Satisfied and Terminated under the Indiana Supreme Court's Doctrine of Substantial Compliance.

39. The 1927 Deed conveyed a fee simple interest to the Grantee, subject to a condition subsequent that Kriegbaum Field was "for the use of [G]rantee as an athletic field," which could not be used on Sundays or for professional events.

40. The condition subsequent in the 1927 Deed did not have any specific time limitation for how long the real estate had to be used by the Grantee as the Grantee's athletic field.

41. Conditions subsequent are not favored in the law and "are construed strictly because they tend to destroy estates." *Hunt v. Beeson*, 18 Ind. 380, 382 (1862). See also *St. Mary's Med. Ctr., Inc. v. McCarthy*, 829 N.E.2d 1068, 1075-1076 (Ind. Ct. App. 2005) (stating that: "Conditions subsequent are not favored in the law and always receive strict construction."); *Clark v. Holton*, 57 Ind. 564, 567 (Ind. 1877) (holding that "conditions subsequent are not favored in the law, and are construed strictly against the grantor and his heirs, because they tend to destroy estates"); *Jeffersonville, M. & I.T. Co. v. Barbour*, 89 Ind. 375, 378 (1883) (holding that "[g]eneral rules of interpretation require a deed to be construed most strongly against the grantor") (emphasis added).

42. Strict construction has been defined as "a close and conservative adherence to the literal or textual interpretation." *Akers v. Sebren*, 639 N.E.2d 370, 371 (Ind. Ct. App. 1994) (quoting *Lagler v. Bye*, 85 N.E. 36, 37 (Ind. Ct. App. 1908).

43. The Indiana Supreme Court has adopted the doctrine of substantial compliance for conditions subsequent that have no specific time

duration. This doctrine states that if a grantee complies with a condition subsequent that has no specific time duration for a reasonable number of years, then the condition subsequent in the deed is deemed satisfied and terminated, and the grantee's title becomes fee simple absolute. *Hunt*, 18 Ind. at 382-83 (holding that operating a tan yard for twenty-four (24) years fully satisfied the deed's condition subsequent); *Barbour*, 89 Ind. 378-79 (holding that using the land as a depot thirty-three (33) years satisfied the deed's condition subsequent under the doctrine of substantial compliance); *Sumner v. Darnell*, 27 N.E. 162, 165 (Ind. 1891) (finding that where land was deeded to the county for the purpose of establishing the county-seat, and the land was subsequently used as the county-seat for fifty-five (55) years, but was then moved to a different city, there was substantial compliance with the deed's condition and the grantor "received, during his lifetime and while a resident of Wayne county, the substantial benefit of his donation."); *Higbee v. Rodeman*, 28 N.E. 442, 443 (Ind. 1891) (holding by the Indiana Supreme Court that there was substantial compliance with a deed's condition subsequent where the land was conveyed for "common school purposes" and the property was used for school purposes for thirty (30) years); *Sheets v. Vandalia R. Co.*, 127 N.E. 609, 616 (Ind. Ct. App. 1920) (applying the Supreme Court's substantial compliance doctrine and

holding that there was substantial compliance with the deed's condition subsequent where the land was used for the deeded purpose for sixty-five (65) years and the "abandonment of the property for depot purposes forty-three years after the death of grantor will not authorize his heirs to re-enter upon the property."); *Cleveland C., C. & S.L.R. Co. v. Cross*, 162 N.E. 253, 255 (Ind. Ct. App. 1928) (applying the Supreme Court's substantial compliance doctrine and finding that use of the property as a railroad switch for nearly seventy (70) years was substantial compliance with the condition in the deed); *Jordan v. Hendricks*, 173 N.E. 288 (Ind. Ct. App. 1930) (applying the Supreme Court's substantial compliance doctrine and holding that using the land for school purposes for over seventy (70) years "fully complied with" the condition subsequent in the deed); *Cunningham v. N.Y. Cent. R. R. Co.*, 48 N.E.2d 176, 178-179 (Ind. Ct. App. 1943) (applying the Supreme Court's substantial compliance doctrine and finding that in the absence of a provision specifying a term of years or perpetuity, the condition subsequent did not require the operation of a railroad station in perpetuity and the use of the real estate as a railroad station for thirty-two (32) years was substantial compliance with the deed's condition because the grantors received "all the benefits and advantages which they anticipated when they made the conveyance.").

44. The undisputed facts demonstrate that Kriegbaum Field was used as the Grantee's athletic field from 1927 until 1968, when the title of the real estate was then transferred from the Grantee to HCCSC. This forty-one (41) years of use of the real estate by the Grantee as its athletic field satisfied the condition subsequent in the 1927 Deed. "Had the grantors intended that the lot should be occupied by the [grantee] for all time to come for [athletic field] purposes, words suitable to express such intention would have been employed." *Barbour*, 89 Ind. at 379. Moreover, "whatever may have been the inducement to the grantor to cause such a stipulation to be placed in his deed, whether convenience of school, enhancement of the value of his land, or what not, such inducement has long since passed away, and the benefit of the condition has been fully realized." *Jordan*, 173 N.E. at 289.

45. Since the condition subsequent was satisfied by the Grantee's use of the real estate as Grantee's athletic field for over forty (40) years, when Kriegbaum Field was transferred to HCCSC in 1968, HCCSC took title to the real estate free and clear of the 1927 Deed's condition subsequent, including its termination, reverter and forfeiture provisions.

46. Even if the condition subsequent had not been terminated by the Grantee's long compliance with this condition in the 1927 Deed, the

undisputed facts demonstrate that HCCSC has continued to use Kriegbaum Field as an athletic field for an additional fifty-two (52) years after the Grantee discontinued such use - - for a total of ninety-three (93) years. In “the absence of a provision specifying a term of years or perpetuity, a condition subsequent does not require operation in perpetuity, or forever, but is complied with by performance covering a long term of years” for “a period of time nearly equal in duration to the average human life.” *Cunningham*, 48 N.E.2d at 179; *Barbour*, 89 Ind. at 379. HCCSC’s use of Kriegbaum Field as an athletic field for an additional 52 years has further satisfied the condition subsequent in the 1927 Deed and, as a matter of law, this condition subsequent is satisfied and terminated.

47. Defendants cite *Girl Scouts of Southern Illinois v. Vincennes Indiana Girls, Inc.*, 988 N.E.2d 250, 253,256-57 (Ind. 2013) to assert that conditions subsequent with no time limitations last in perpetuity. However, the *Girl Scouts* case is factually distinguishable because the condition subsequent in that case had a specific time duration of forty-nine (49) years and the landowner sought to terminate the condition subsequent prior to the expiration of the 49-year period.

48. Moreover, in *Girl Scouts*, the Supreme Court did not address, distinguish, abrogate, reverse, or even mention its long-standing doctrine of

substantial compliance for conditions subsequent with no time duration. There is no indication that the Supreme Court intended to overrule its prior precedent concerning the substantial compliance doctrine.

49. Finally, the *Girl Scouts* case is also factually distinguishable because the conveyance in that case unequivocally involved a “donation” of land, whereas the 1927 Deed, on its face, states that the conveyance from the Grantors to the Grantee was “for consideration” that was received by the Grantor. Indiana law defines a gift as “a voluntary transfer of property by one to another without any consideration or compensation therefor.” *Michael v. Holland*, 40 N.E.2d 362, 365 (Ind. Ct. App. 1942); *Norman v. Norman*, 169 N.E.2d 414, 419 (Ind. Ct. App. 1960) (stating that a gift is “a voluntary transfer of property by one person to another without consideration”); *Hatfield v. State*, 36 N.E. 664 (Ind. 1894) (stating that since a gift is a transfer without consideration an act cannot be both “a sale and a gift.”). Defendants have failed to designate any evidence to the Court that the transfer of Kriegbaum Field from the Grantors was a pure donation or gift without any consideration. In fact, the opposite is true: the 1927 Deed unambiguously states that the conveyance to the Grantee was “for consideration,” the receipt of which was acknowledged by the Grantors.

50. Under Indiana's doctrine of substantial compliance, the condition subsequent in the 1927 Deed has been satisfied because Kriegbaum Field was used as the Grantee's athletic field for 41 years and has been used by HCCSC as its athletic field for an additional 52 years - - for a cumulative total of 93 years - - longer than the average human life span. The title to Kriegbaum Field should be quieted in favor of HCCSC, in fee simple, free and clear of the 1927 Deed's condition subsequent, termination, reverter and forfeiture clauses.

D. Any Claim or Interest for Termination, Reversion, or Forfeiture under the 1927 Deed is Barred by Indiana's Marketable Title Act.

51. Under Indiana's Marketable Title Act, I.C. § 32-20, *et seq.*, a landowner that has an "unbroken chain of title" in real estate for 50 years or more is deemed to have marketable title to the real estate. I.C. §§ 32-20-2-2; I.C. §§ 32-20-3-1.

52. A claim or interest that is only of record prior to the landowner's "root of title" is void, unless this claim or interest is expressly preserved under the Marketable Title Act by recording a written notice within this 50-year period. I.C. §§ 32-20-2-6; 32-20-3-2; 32-20-3-3; 32-20-4-1; 32-20-4-2. If a claim or interest is not so preserved within this 50-year period following

the effective date of the “root of title,” then the interest or claim is void. I.C. §§ 32-20-3-3.

53. “Root of title” means a “title transaction” in the chain of title that: (a) purports to create the interest claimed by the person; (b) upon which the person relies as a basis for the marketability of the person’s title; and (c) that is the most recent to be recorded as of a date at least fifty (50) years before the time when marketability is being determined. I.C. § 32-20-2-6.

54. A “title transaction” means any transaction affecting title to any interest in land. I.C. § 32-20-2-7.

55. An “unbroken chain of title” means that the “official public records disclose a title transaction of record that occurred at least 50 years before the time the marketability is determined” and the “title transaction purports to create an interest . . . in the person claiming the interest . . . with nothing appearing of record purporting to divest the claimant of the purported interest.” I.C. § 32-20-3-1.

56. “Records” are defined as “all official public records that affect title to land.” I.C. § 32-20-2-5.

57. Under Indiana law, the recorder’s office is not the only public office required to maintain records “that affect title to land.” The records in the offices of the recorder, auditor, assessor, treasurer, sheriff and clerk of

the courts in the county where the real estate is located all “affect title to real estate.” *Worldcom Network Servs. v. Thompson*, 698 N.E.2d 1233, 1240-41 (Ind. Ct. App. 1998).

58. HCCSC’s effective date of “root of title” to Kriegbaum Field was April 27, 1968, when the Affidavit was submitted to the Huntington County Auditor and instructed the Auditor to transfer the title of Kriegbaum Field (along with all of the other real estate owned by the Grantee) from the Grantee to HCCSC on the Auditors’ books and records.

59. Under the Marketable Title Act, the 1968 Affidavit was the official “title transaction” that: (a) created HCCSC’s interest in Kriegbaum Field in the Auditor’s records; (b) upon which HCCSC relies upon for the marketability of HCCSC’s title; and (c) is the most recent transaction that is at least 50 years before the filing of HCCSC’s quiet title action. (HCCSC Designation, pp. 9, 12, 14).

60. The Huntington County Auditor’s records are included in the Marketable Title Act’s definition of “records,” which includes “all public records that affect title to the land.” I.C. § 32-20-2-5. Under Indiana law, the Auditor’s records are “public records that affect title to real estate.”

61. The 1968 Affidavit is the “title transaction” that was recorded in the official public records of the Huntington County Auditor to transfer the

real estate from the Grantee to HCCSC and that serves as HCCSC's "root of title." This is clearly evidenced by both the Huntington County Auditor's records and the title search that was designated to the Court, both of which show that title is held by HCCSC - - and not the Grantee.

62. The effective date of HCCSC's "root of title" is June 27, 1968, when the Affidavit that affected the title to Kriegbaum Field was submitted to the "public records" of the Huntington County Auditor.

63. HCCSC filed this lawsuit on February 28, 2019, seeking to quiet its title against the world, free and clear of all interests, claims or charges. This date is more than 50 years after the 1968 Affidavit.

64. The designated evidence demonstrates that HCCSC has an "unbroken chain of title" because the official public records of the Huntington County Auditor disclose that there was a title transaction changing the title to Kriegbaum Field from the Grantee to HCCSC, and this title transaction occurred more than 50 years before the date HCCSC filed its quiet title action. As demonstrated from the title search designated to the Court, nothing has appeared of record within this 50-year period (i.e., from June 27, 1968 to February 28, 2019) that would divest HCCSC of its interest in or title to Kriegbaum Field.

65. Any claim under the 1927 Deed's termination, reverter, or forfeiture provisions would arise only before the effective date of HCCSC's "root of title," i.e., June 27, 1968. Therefore, the termination, reverter, and forfeiture provisions in the 1927 Deed are void because they are of record only prior to HCCSC's effective date of root of title. See I.C. § 32-20-3-3 (stating that "marketable title is held by its owner . . . free and clear of all interests, claims, or charges whose existence depends upon any act, transaction, event or omission that occurred before the effective date of the root of title" and that all such prior "interests, claims, or charges, however denominated . . . are void.")

66. As a matter of law, the Defendants - - or any heir of the Grantors - - failed to preserve any interest under the 1927 Deed because they failed to record the required written notice under the Marketable Title Act within the 50-year period from June 27, 1968 (the date the 1968 Affidavit was filed with the Huntington County Auditor) to February 28, 2019 (the date HCCSC sought to quiet its title to Kriegbaum Field).

67. HCCSC has marketable title to Kriegbaum Field under the Marketable Title Act and any possible claims for termination, forfeiture or reverter of HCCSC's title under the 1927 Deed are void because they were

not preserved within the 50-year period following HCCSC's effective date of root of title.

E. Any Claim for Termination, Reversion, or Forfeiture under the 1927 Deed is Barred by the Statute of Limitations.

68. I.C. § 32-17-10-3 provides that a person may not commence an action for recovery of any part of real property after June 30, 1998, based on a possibility of reverter for a breach of a condition subsequent if (1) the breach of condition occurred before July 1, 1993; and (2) the possibility of reverter was created before July 1, 1963.

69. The 1927 Deed's condition subsequent provided that: (1) Kriegbaum Field was only for the use of the Grantee as Grantee's athletic field; and (2) no professional games or Sunday games could be played at Kriegbaum Field. (HCCSC Designation, p. 5).

70. Since conditions subsequent are not favored under Indiana law and are strictly construed against the Grantors and the Grantors' heirs, the plain language in the 1927 Deed required Kriegbaum Field to be used only by the Grantee. The real estate was "for the use of grantee as an athletic field," and if "grantee shall discontinue the use of said real estate for the purposes herein set forth or shall fail to comply with said conditions," then "the real estate herein conveyed and the estate granted, shall be

terminated and forfeited and same shall revert to grantor, their heirs or assigns.” (emphasis added) (HCCSC Designation, p. 5, Complaint, p. 4 ¶13 and Answer, p. 3 ¶13). Strictly construed, the plain language of the 1927 Deed did not allow anyone other than the Grantee to use Kriegbaum Field.

71. It is undisputed that the Grantee “discontinue[d]” using Kriegbaum Field as the Grantee’s “athletic field” when the Grantee ceased to exist and the real estate was officially transferred to HCCSC in 1968.

72. Moreover, Kriegbaum Field has been used both as an athletic facility for HCCSC and as a general community facility for all of Huntington County for numerous “non-athletic field” uses unrelated to the Grantee’s use of its athletic field, even while the Grantors were still alive.

73. Under I.C. § 32-17-10-3, no claim can be brought against HCCSC for a reversion or forfeiture of its fee simple title because any breach of the condition subsequent in the 1927 Deed arising from the Grantee “discontinu[ing] the use of” Kriegbaum Field as Grantee’s “athletic field” and the failure “to comply with said conditions” occurred before July 1, 1993.

74. No claim for termination, reverter or forfeiture of the Grantee’s title or HCCSC’s title was brought before June 30, 1998.

75. Since any claim for termination, reverter or forfeiture under the 1927 Deed was not timely brought within the applicable statute of limitations, any claim based on this condition subsequent to seek termination, reversion or forfeiture of HCCSC's title to Kriegbaum Field is forever barred.

SUMMARY JUDGMENT

Based on the foregoing Undisputed Findings of Fact and Conclusions of Law, the Court now enters its **SUMMARY JUDGMENT** in favor of HCCSC, as there is no genuine issue of material fact and HCCSC is entitled to judgment as a matter of law to quiet its title to Kriegbaum Field. Therefore,

IT IS ORDERED, ADJUDGED, AND DECREED THAT Plaintiff, the Huntington County Community School Corporation, has fee simple title to the following described real estate, free and clear of the condition subsequent and the termination, forfeiture, and reverter provisions in the 1927 Deed:

Parcel No. 35-05-10-300-735.500-005
Parcel No. 35-05-10-300-735.700-005

The following described Real Estate in Huntington County, State of Indiana, to-wit: A part of tract number twenty (20) in the Reserve of Ten Sections to John B Richardville, at the Forks of the Wabash River, in township twenty eight (28) north range nine (9) east particularly described as follows; Commencing on the west line of said tract number 20 at a point

where the north line of City Park Addition extended, will intersect said west line; thence north thirty six degrees and forty minutes (36 Degrees 40') west along the west line of said tract 20, six and twenty-five hundredths (6.25) chains to corner marked "f"; thence eastward at right angles to said west line ten and twenty three hundredths (10.23) chains to a corner marked "d"; thence south 36 degrees 40' east eight and thirty one hundredths (8.31) chains to the north line of said City Park Addition and to the center of Warren Street; thence west along said north line of said City Park Addition ten and forty three hundredths (10.43) chains to the place of beginning, containing seven and forty-five hundredths (7.45) acres. Also Lots numbered, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67 in said City Park Addition to the City of Huntington, Indiana.

ALSO:

Vacated Warren Street, as originally platted, 60 feet in width, lying between Lots 67 on the west and Lot 69 on the east, all being in City Park Addition to the City of Huntington, Indiana, as platted and replatted, respectively,

EXCEPTING THEREFROM the following described parcel, to-wit:

Beginning at the southwest corner of Lot 69 in the Replat of Lots 69 to 75 of City Park Addition, as shown on Page 9 of said Plat Book "K" and then proceeding 150 feet northerly along the westerly line of said Lot 69; thence 28.5 feet westerly along the northerly line of said Lot extended to the existing woven wire fence; thence 150 feet southerly along said fence to a point on the southerly line of said Lot 69 extended; thence 26.7 feet easterly, along said extended line, (and along the northerly line of Northcrest Drive (Platted "B" Street), to the point of beginning. All in the City of Huntington, Huntington County, Indiana.

ALSO:

Lots numbered 19, 20, 21, 22, 23, 24, 25, 26 and 27 in City Park Addition to the City of Huntington, Indiana.

("Real Estate")

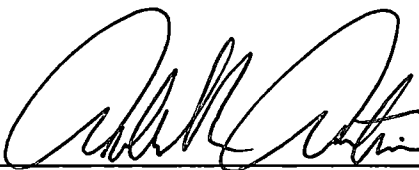
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT the rights of all persons, public and private, including but not limited to all heirs and assigns of the Grantors, the Defendants, and all their heirs, legatees, devisees, and successors and assigns, and all other persons who may claim any title to or an interest in the Real Estate, are hereby foreclosed and quieted in favor of the Huntington County Community School Corporation;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT, pursuant to I.C. § 32-20-3-3, marketable record title to the Real Estate is held by the Huntington County Community School Corporation and its title is free and clear of all interests, claims or charges prior to June 27, 1968, which is the effective date of its root of title, and these prior claims or interests include, but are not limited to, the condition subsequent and its termination, forfeiture and reverter provisions in the 1927 Deed;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT
any claim to recover all or part of the Real Estate from the Huntington
County Community School Corporation based on the condition subsequent
in the 1927 Deed, including but not limited to, its termination, forfeiture and
reverter provisions is forever barred by the statute of limitations in I.C. § 32-
17-10-3.

FINAL JUDGMENT TO PLAINTIFF. COSTS TO DEFENDANTS.

SO ORDERED THIS 27th DAY OF FEBRUARY, 2020.

A handwritten signature in black ink, appearing to read 'Andrew K. Antrim', is written over a horizontal line.

**THE HONORABLE ANDREW K. ANTRIM,
SPECIAL JUDGE, Huntington Superior COURT**

cc: Robert W. Eherenman, Esq.
Williams A. Ramsey, Esq,