

STATE OF INDIANA
FOUNTAIN COUNTY

IN THE FOUNTAIN CIRCUIT COURT
1979

CLIFFORD S. GERDE and
MIRIAM W. GERDE

FILED

JAN 16 1979

vs.

No. 76 C 225

CY GERDE, WINTON GERDE
and KEMLA GERDE

Rachel Mather
CLERK, FOUNTAIN COUNTY

FINDINGS OF FACT, CONCLUSIONS, JUDGMENT
AND DECREE

The Court having heard the evidence, arguments of counsel and being duly advised does now make the following Findings of Fact with respect to all the claims of the plaintiffs and the counter-claims of the defendants.

FINDINGS OF FACT

1. Plaintiffs Clifford and Miriam Gerde (Clifford and Miriam) have been married for many years, and the plaintiff, Clifford S. Gerde, was born in 1911.
2. The plaintiffs had four children: Jerry, born in 1942; Lee, born in 1943; the defendant, Carlyle Gerde (Cy), born approximately 1945; and the defendant, Winton Gerde (Winton), born approximately 1952.
3. Clifford S. Gerde was a career officer in the U. S. Coast Guard, and for a time taught at the Coast Guard Academy and was a member of the U. S. Coast Guard from 1932 to 1959 until his retirement; and after his retirement from the Coast Guard he was employed as a teacher and administrator by Purdue University from 1960 until his retirement from Purdue in June, 1977. He was a teacher and administrator at the Purdue Calumet Campus from 1960 to 1968, and at the main Purdue campus in West Lafayette from 1968 to 1977.
4. During his career in the Coast Guard Clifford and Miriam moved from place to place, but generally owned their homes, and with these homes they generally owned some acreage along with their dwelling house. They owned a small amount of acreage in Maryland, and then moved to Minnesota where they owned a small amount of acreage. Each time they did move, they would sell the same and use the money to purchase a home at their new place of residence.
5. Clifford was the primary breadwinner of the Gerde family; Miriam was a housewife and mother. All of their assets were accumulated through their joint efforts, but the source of money for the family was derived principally from Clifford's income.
6. When Clifford became employed by Purdue University at its Calumet campus, Clifford and Miriam purchased a home with approximately 79 acres near Crown Point, Indiana, using the proceeds from the sale of their home and acreage in Minnesota.
7. Generally Clifford and Miriam have had a small livestock operation consisting of cattle, horses and/or sheep and have maintained a modest farming operation on their acreage. In 1967-68 Clifford was transferred to the main campus of Purdue University at West Lafayette. Clifford and Miriam purchased the following described real estate in 1967 near West Point, Indiana, known as the "North Farm":

The east half of the northeast quarter of Section nineteen (19) in Township twenty-two (22) North, Range five (5) west, containing eighty (80) acres, more or less.

The West half of the Northeast quarter of Section nineteen (19);

Also Ten (10) acres off of the east side of the east half of the northwest quarter of Section nineteen (19), all in Township twenty-two (22) north, Range five (5) west.

Located in Wayne Township, Tippecanoe County, Indiana.

Containing in all one hundred seventy (170) acres, more or less.

Sixteen & 67/100 (16.67) acres, being the North one third of fifty (50) acres of even width off of the west side of the east half of the southeast quarter of Section nineteen (19) in Township twenty-two (22) north, Range five (5) west.

Located in Wayne Township, Tippecanoe County, Indiana.

and subsequently in 1968 purchased additional real estate known as the "East Farm", described as follows:

The Northwest quarter of Section twenty-nine (29) in Township twenty-two (22) North, Range five (5) west, containing one hundred sixty (160) acres, more or less.

Located in Wayne Township, Tippecanoe County, Indiana.

8. These two farms were purchased from the proceeds of the sale of the Crown Point farm and residence together with the income derived from Clifford's Coast Guard pension and his salary from Purdue University and a note and mortgage executed by Clifford and Miriam at the time of the purchase.

9. Clifford and Miriam moved to the "North Farm" shortly after it was purchased and have lived there continuously until the present time. After they moved, they began to refurbish and renovate the buildings on the farm including the dwelling house.

10. Jerry Gerde was educated as a lawyer and is a practicing lawyer in Florida; Lee Gerde is educated as an Ophthalmologist and practices his profession in Galesburg, Illinois; Cy is educated as a lawyer and practices his profession at Lafayette, Indiana; and Winton took some courses following high school at Purdue University, but has generally been self-employed as a farmer since his graduation from high school. Clifford Gerde has been the authoritative head of this family with Miriam being a mother and the housewife, and each of the sons, as they were growing up, have worked on the family residence and farm or in any family venture under the supervision, direction and control of the father, who was a dominating father and a patriarch. Each son graduated from high school and was expected to continue his education in college, and Clifford intended to pay for the college education and expenses of the sons, but each son was expected to help on those expenses and expected to work, and in fact Clifford believed that a farm was the best way to raise sons and to teach them how to set values and to learn to work, and this is the principal reason why Clifford and Miriam purchased acreage along with a residence, and why acreage was purchased in West Point.

11. Clifford did not expect that any of his sons would receive a proprietary interest in any of his property by virtue of their contribution by way of labor to the family ventures. Instead, each son was expected to work as part of the educational process of the son and the father would pay the living expenses but this was not in any sense a payment for services. It was due to the father's belief that he as a father was responsible for those living and educational expenses.

12. This feeling and belief of Clifford's was continued throughout the lives of this family and continues to-day, and in fact when a son would visit Clifford and Miriam after they left home, he and his wife are expected to assist Clifford and Miriam in any work that is necessary to be done on the farm or related ventures, but in no sense has any person expected to be paid for such services, and in no event did Clifford or Miriam expect that any of the sons including Cy and Winton would receive an interest in their property because of that contribution.

13. Cy resided with the plaintiffs from the time of his birth until his marriage on July 4, 1976. He graduated from Crown Point High School in 1963 and from Purdue University in 1967 and from Indiana University School of Law in 1970. As was the family custom, Cy assisted in his educational expenses but generally his expenses were paid by Clifford and Miriam, including an automobile and the expenses of law school, and Cy generally came home on the week-ends to help in the farm operations whenever needed, but at no time did Clifford, Miriam or Cy expect that Cy would receive a proprietary interest in any real estate or property owned by Clifford or Miriam because of that work.

14. Cy did contribute labor to the family farm on the North and East Farms, but said contribution did not exceed the benefits received by Cy from living at home and was in every sense a voluntary contribution of labor just as the living expenses and educational expenses paid by his father and mother were voluntary.

15. Upon his graduation from law school and his entrance into his profession, Clifford and Miriam contributed to the various expenses of setting up a law practice in Lafayette, Indiana, for Cy, and generally he has been a full-time practitioner since 1971; and during that time he has lived at home until his marriage and has helped with the farm operation and other family ventures on week-ends and in his spare time.

16. Winton resided with the plaintiffs from the time of his birth until the time of his marriage in 1975 to the defendant, Kemla. Winton graduated from High School in 1970 and has always had a special interest in farming. His father wanted him to secure a college education, and he went to Purdue for a short time and took some college courses at Purdue University, but generally his interest was in farming and not in any other type of work, and Winton has been engaged in farming since his graduation from high school.

17. The relationship between Clifford and Miriam and their sons was not always harmonious, and in fact as disagreements arose each of said sons was requested or ordered to leave the family home, some of which requests and demands were not serious; but many of such requests were serious. In any event it was always understood by each of the sons including Cy and Winton that Clifford was the boss, and that they would either do things around the family residence and farm the way they were ordered, or they were free to leave at any time. There was never any doubt in any of the sons' minds as to who was running the Gerde Farm or other business ventures.

18. In March of 1973 the "West Farm" was purchased by Cy and is described as follows:

Beginning at the established corner stone at the Southeast corner of Burnett's Reserve, Township twenty-two (22) north, Range six (6) west; thence east one and 39/100 (1.39) chains; thence south three and 84/100 (3.84) chains; thence east thirty and 46/100 (30.46) chains; thence north twenty (20) chains; thence east four and 51/100 (4.51) chains to the center of the Crawfordsville and Lafayette Road, also known as the Pin Hook and West Point Gravel Road; thence northwest along the center of said road seventeen and 23/100 (17.23) chains to the center of the concrete abutment at the south end of the bridge over Flint Creek; thence west one and 59/100 (1.59) chains; thence north three (3) chains to the center of the road above named; thence northwest

along the center of said road nine and 33/100 (9.33) chains; thence west eight and 37/100 (8.37) chains; thence south eighteen (18) degrees west four and 82/100 (4.82) chains; thence west one and 36/100 (1.36) chains to the east line of Burnett's Reserve; thence south eighteen (18) degrees west along said east line of Burnett's Reserve a distance of thirty-six and 19/100 (36.19) chains to the place of beginning, containing one hundred six and 54/100 (106.54) acres, more or less.

EXCEPT THEREFROM a part of the north fraction of Section twenty-four (24), in Township twenty-two (22) north, Range six (6) west, including within the boundaries thereof lots numbered five (5), six (6), seven (7), ten (10), eleven (11) and twelve (12) together with the larger portion of lots numbered eight (8) and nine (9) including also parts of Pearl Street, Washington Street and a twelve (12) foot alley as laid out and made a part of Koons Addition to the Town of Middleton, the said tract being described as follows: Commencing at a point thirty (30) feet north of the northeast corner of lot numbered five (5) of the said Koons Addition the said beginning point being thirty (30) feet west and three hundred thirty-five (335) feet south of the northeast corner of said Koons Addition, the same being identical with the southeast corner of the Town of Middleton, and running thence west five hundred thirty and 3/10 (530.3) feet; thence south twenty-two and one-fourth ($22\frac{1}{4}$) degrees west three hundred eighteen (318) feet; thence north eighty-eight and one-half ($88\frac{1}{2}$) degrees east six hundred sixty (660) feet to a point eighteen and 3/10 (18.3) feet north of the southeast corner of the aforesaid lot numbered eight (8); thence north along the east line of lot numbered eight (8); thence north along the east line of lots numbered seven (7), six (6) and five (5) and with the course thereof two hundred seventy-one and 7/10 (271.7) feet to the place of beginning, containing three and 84/100 (3.84) acres. Located in Wayne Township, Indiana.

Farm" Shortly thereafter Cy purchased what is known as the "Center described as:

The south two-thirds ($2/3$) of a fifty (50) acre tract off of the entire west side of the east half of the southeast quarter of Section nineteen (19), in Township twenty-two (22) north, Range five (5) west, containing in said tract thirty-three and one-third ($33\frac{1}{3}$) acres.

Located in Wayne Township, Tippecanoe County, Indiana.

Farm" Then in 1974 Winton and Cy bought what is known as the "South described as follows:

The south half of the northeast quarter of Section twenty-eight (28), in Township twenty-one (21) north, Range five (5) west, containing eighty (80) acres, more or less.

ALSO

The northeast quarter of the southeast quarter of Section twenty-eight (28) in Township twenty-one (21) north, Range five (5) west, containing forty (40) acres, more or less.

ALSO

Sixty (60) acres off of the north end of the west half of the southeast quarter of Section twenty-eight (28), in Township twenty-one (21) north, Range five (5) west.

EXCEPT

Thirty (30) acres of equal width off of the south side thereof.

Located in Jackson Township, Tippecanoe County, Indiana.

ALSO

Northwest quarter of the northwest quarter of Section twenty-seven (27), Township twenty-one (21) north, Range five (5) west containing forty (40) acres, more or less.

Northeast quarter of the northwest quarter of Section twenty-seven (27) Township twenty-one (21) north Range five (5) west, containing forty (40) acres, more or less.

Southeast quarter of the northwest quarter of Section twenty-seven (27) Township twenty-one (21) north, Range five (5) west, containing forty (40) acres, more or less.

Located in Jackson, Township, Tippecanoe County, Indiana.

19. Although these purchases were discussed with Clifford, generally Clifford did not approve of the purchases and he and Miriam did not directly put any money into any of these farms. Instead, these farms were purchased as a business venture by Cy and Winton, and at this time the defendants, Winton and Kemla, are the owners of 150 acres of the "South Farm" as tenants by the entirety, and the defendants, Cy and Winton, are the owners of the remaining 120 acres of the "South Farm", and Cy is the owner of the "Center Farm" and the "West Farm". The plaintiffs have no interest in these farms.

20. Generally any farming that was done on the "Center Farm", "West" and "South Farms" was done by Winton and Kemla with a small contribution being made by Clifford and Cy.

21. As stated, through the years Clifford had been interested in livestock and farming, and had purchased some farm machinery, and when the move was made to West Point, Indiana, and the purchase was made of the largest farm that Clifford had ever owned, additional machinery was needed and added, and this machinery so purchased was used from 1973 to 1976 on his own farms and also on the farms of Cy, Winton and Kemla. and kept

22. This farm equipment was generally stored on the "North" and "East" farms.

23. The farm machinery owned by Clifford in 1973 was not sufficient to farm the additional farms purchased by Cy, Winton and Kemla or to farm the land which was rented by Winton in his farming operation, and additional machinery was purchased, some of which was purchased from proceeds of the sale of Clifford's machinery and some was purchased through the joint income of Clifford, Winton and Cy and some was purchased from the ~~joint~~ income and resources of Winton.

24. In 1976 all of the parties' farm machinery had an approximate value of \$52,000.

25. Winton claims an interest in all of the farm machinery, and indeed claims that he owns all of the farm machinery by virtue of a Bill of Sale. The Court finds this Bill of Sale was a forgery committed by Winton with the full knowledge and consent of Cy and was an attempt by Winton and Cy to work a fraud upon the plaintiffs.

26. However, Winton did in fact have a proprietary interest in a part of the farm machinery which was removed by Winton in that he did devote his full energies and time to farming plaintiffs' farm and did in fact purchase certain items of farm machinery through his own resources. Winton signed notes totaling \$16,461 for part of this machinery. Moreover, the commingling of the farm machinery between Clifford and Winton was done with the consent of Clifford and with the implied understanding that Winton had a vested economic proprietary interest in some of that machinery. Indeed Clifford expressly believed that Winton had an interest in some of that machinery. However, the extent of that interest is almost impossible to determine although Winton and Clifford did have a "loose" partnership with respect to said machinery. Hence, when Winton removed all of the farm machinery from Clifford's and Miriam's farm, he did in fact own some of this property, and, therefore, did not wrongfully convert the same but he did not own all of that machinery, and hence did unlawfully convert part of the same to his use, the exact extent of which is impossible to determine.

27. After the removal of the machinery Clifford made no demand for its return, nor did he attempt to return it to the "North Farm" even though said equipment was in plain view and, with a few exceptions, was not disguised.

27A. There is no credible evidence that Clifford and Miriam or Cy and Winton intended to operate all their farm lands or their business enterprises jointly as a joint venture. These parties did contemplate the joint use of farm machinery and did assist each other, but in no event did they intend this to be a joint farm operation or a partnership operation with the possible exception of the farm machinery.

28. Clifford and Miriam were the owners of much of the farm machinery that was removed by the defendants, all of said items so removed being listed on Exhibit 7 herein. Cy claims no interest in said farm machinery and has no interest in that machinery. As stated, Winton claims such an interest in said farm machinery, and all of said items were converted to Winton's use or were altered as to render the return of the items owned by the plaintiff in the same condition as when taken an impractical remedy, and indeed plaintiffs have no use for some of such items so taken inasmuch as the plaintiffs have sold the "East Farm", and they do not have the same need for the farm machinery needed prior to its removal.

29. After Winton removed the machinery, the plaintiffs were required to replace certain items of machinery in order to conduct their farming operations, which replacement costs totaled \$20,000. The plaintiffs are entitled to damages for the wrongful conversion of that part of the farm machinery owned by them unlawfully converted by Winton, and Winton should pay for that part of the machinery which he did not own; hence, plaintiffs are entitled to money damages for such conversion and machinery, and that a reasonable sum for such damages is \$20,000 to be paid by Winton.

30. Clifford had maintained a small livestock operation from the year 1957 and maintained such an operation at the time of the move to Crown Point. Generally whatever herd existed was sold at the time of the move to West Point except for one cow. The land at West Point was generally suitable for livestock operation and cattle was purchased by Clifford and thereafter Clifford maintained a livestock operation on the "North Farm". This operation was financed by Clifford and Miriam from his income at Purdue, his Coast Guard pension, farm income and other resources. In 1976 this herd had grown to approximately 120 to 125 head and had a value of \$25,000.

31. Clifford also maintained a small sheep operation which was commenced in 1975 and which was originally purchased out of his income. In the year 1976 an agreement was made by Clifford to sell the sheep to Winton at an agreed price which was paid by Winton.

32. During the years 1970-76, generally Winton was the member of the Gerde family who was primarily a farmer and devoted his full time to farming. Cy was either a student or lawyer and Clifford a college professor. Thus practically all management decisions on the "North" and "East" farms were made by Clifford. Winton was and is subject to the influence of Cy, both as an older brother and as an attorney, and Cy has acted as Winton's attorney in most of his business ventures.

33. Clifford has had an interest in horse-drawn vehicles for many years, and in 1948 he began purchasing small vehicles as a hobby and this interest has increased over the years, and he has purchased horses over the years to pull these vehicles, and from time to time he would purchase these antique vehicles, renovate them, sell them, purchase new ones. This interest in carriages increased to a greater extent after the move to West Point, Indiana. The defendant, Cy, also had an interest in this type of vehicle, and the interest of Cy and Clifford grew into what could be termed a collection of such vehicles, and all the parties took various trips to look at prospective purchases or to attend various conventions of other collectors or sales. Some of these purchases of

carriages would amount to as much as \$16 or \$17,000. This carriage collection grew in value and totaled in 1978 approximately 70 to \$75,000.

34. The bulk of this collection was generally purchased from 1970 through 1977, but that said purchases were made from the financial resources of Clifford and Miriam, and the purchases were not made from the financial resources of either Cy or Winton. Cy claims an interest in these carriages but Winton does not make any such claim, but the claim of Cy is unfounded and rests on a theory that his labor admittedly unskilled and done in his spare time in the renovation of some of these carriages entitles him to a proprietary interest therein, but that such contribution of labor was not performed with any expectation of receiving any such interest, and neither Clifford nor Miriam did not expect to pay Cy in that manner. Such contribution of labor was wholly voluntary.

35. Along with the carriage collection there were various carriage books and miscellaneous carriage accessories which generally have a value but which are unique in their character and no value can be placed thereon.

36. In 1970 difficulty arose between Clifford and his sons, especially Cy; and both sons were requested to leave the family home and property but they refused to do so. Both Clifford and Miriam then began to experience physical difficulties which were related in part to their age, but primarily were due to the tension in their home which existed between them and their sons. This tension increased to the point of the plaintiffs hiring counsel in 1974 to seek the removal of the two sons from the family property and in time led to the filing and trial of this litigation.

37. Defendants claim they and plaintiffs entered into an "annuity agreement" by the terms of which plaintiffs gave their property to defendants in consideration of the right to live in their home on the south farm and an annuity payment payable on Clifford's retirement. Defendants claim plaintiffs hired counsel to enforce this agreement. There is no credible evidence that plaintiffs entered into such an agreement or even considered entering into such an agreement, and no such agreement was ever formalized or made, express or implied. Instead counsel was hired by plaintiffs in an attempt to persuade defendants to leave the farm and home of plaintiffs.

38. Following the employment of an attorney in 1974, the tension between the sons and the parents began to increase, and from 1974 to 1976 and continuing to the date of the trial of this case, the defendants, Winton and Cy, embarked upon a wilful, callous and malicious course of conduct with the express purpose and intention of inflicting emotional stress and anguish upon Clifford and Miriam without regard to their physical well-being. They were successful in that intent and purpose. This conduct included, among other things:

- A. A breaking and entry into the plaintiffs' home in September of 1976 at which time various items of sentimental value in the nature of family keepsakes were taken by the defendants from the plaintiffs' home and either hidden or destroyed.
- B. In August of 1976 the defendants forcibly entered plaintiffs' home after being expressly ordered not to do so, and physically and emotionally assaulted Miriam.
- C. Caused the police to stop the plaintiff and his agents and interfere with Clifford's right to use, enjoy and dispose of his property. This was done by Cy with the express purpose of causing embarrassment and humiliation to the plaintiffs.
- D. Both defendants repeatedly harassed the plaintiffs on the roadways in and about their home with the purpose of causing emotional distress.
- E. Physically abusing and intimidating the plaintiffs and their agents repeatedly.
- F. Continually harassing the plaintiffs and their agents in and around their home.
- G. Removing in 1976 all the farm machinery from the plaintiffs' farm and converting it to the use of Winton.
- H. Removing various items of miscellaneous small tools with a fair market value of \$2,000 and converting them to the use of both Cy and Winton.

- I. Removing the herd of cattle in its entirety and converting it to the use of Cy.
- J. Removing certain lumber of a value of \$1,000 and converting it to the use of Winton and Cy.
- K. Removing certain carriage books and pamphlets and other related carriage items and accessories from the home and farm of plaintiffs and converting them to the use and benefit of Cy.
- L. Converting the crops from the plaintiffs' farm for the years 1975 and 1976 without accounting to the plaintiffs for the proceeds therefrom.
- M. Continually trespassing upon the land of the plaintiffs.

39. By reason of the callous and malicious course of conduct of Cy and Winton, Clifford and Miriam suffered emotional disturbances and physical stress and their health was harmed, and they suffered the aggravation of pre-existing physical conditions and ailments, including but not limited to the asthma of Clifford and the heart condition and migraine headaches of Miriam. Moreover, Clifford's and Miriam's general enjoyment of life was greatly diminished as a result of this extreme and outrageous conduct of these two defendants. The plaintiffs are entitled to recover damages for this emotional and physical stress inflicted by Cy and Winton in the sum of \$10,000.

40. By reason of the repeated trespasses and harrassment, intimidation, threats, etc., Clifford and Miriam expended the sum of approximately \$12,000 for security measures on their own residence to protect himself and Miriam from their own sons.

41. The herd of cattle removed by the defendants was solely the property of Clifford and Miriam. Most of this cattle was sold by Cy, some fraudulently in the name of his wife, and all was converted to the use of Cy. The plaintiffs were damaged in the sum of \$25,000 by reason of the intentional trespass and intentional conversion of said cattle by Cy, and that the sum of \$2,000 is being held at the Boswell Cattle Auction and that Clifford is entitled to said sale proceeds in the approximate amount of \$2,000 so being held; and is also entitled to recover judgment for the balance of \$23,000 from Cy as damages for Cy's conversion of the same.

42. Certain carriages and carriage related items are in the possession of Winton as set out in Exhibit 33 which items are solely the property of Clifford and Miriam, and Winton should be ordered to return the same to the plaintiffs forthwith. Certain carriage books and pamphlets and other carriage related items were removed by Cy from the "North Farm", and these items were solely the property of Clifford and Miriam, and Cy should be ordered to return the same forthwith to the plaintiffs.

43. As heretofore found, there is no credible evidence that any of the defendants had any proprietary interest in any of the carriage collection or carriage related items, and in fact the claim of Cy to a proprietary interest in said carriage and carriage related items is so specious and tenuous as to be another incident of intentional harrassment of the plaintiffs, and that the plaintiffs should be adjudged the owners of said carriages and all carriage-related items.

44. The plaintiffs are entitled to any mementoes or family keepsakes which were wrongfully taken by the defendants, and the defendants should be ordered to return the same forthwith.

45. The lumber, supplies and miscellaneous tools of a value of \$3,000 taken by the defendants were owned solely by the plaintiffs and were intentionally and wrongfully converted by the defendants, and the plaintiffs are entitled to \$3,000 in damages for such property.

46. The plaintiffs are entitled to recover in damages from the defendants the monies laid out and expended for security devices and expenses for the home to protect them from the intentional trespass, assault and harrassment of the defendants, and are entitled to damages in the sum of \$12,000.

47. During 1975 and 1976 Winton did most of the farming of plaintiffs' land against Clifford's and Miriam's wishes and against their specific instructions, and he was assisted by Cy, and both Winton and Cy kept all of the relevant records concerning the crop sales and expenses. Most of these records were kept on the "North Farm" at plaintiffs' home and in September of 1976 these records were unlawfully removed from plaintiffs' home.

48. Through the use of various bank accounts the defendants deliberately and intentionally complicated and confused the expenses and receipts from the farming operations of plaintiffs' farm and commingled those expenses and receipts with the expenses and receipts from the defendants' farms and made it impossible to trace crop income and expense cash flow from the years 1975 and 1976.

49. The defendants wrongfully converted the crop proceeds off of the plaintiffs' farms for the farm years 1975 and 1976. The plaintiffs did receive sums totaling \$21,537, the bulk of which came from the purchase of a carriage in the amount of approximately \$16,000. This carriage was purchased by Clifford and was paid by the defendants. The remainder of the money received by the plaintiffs was done by the defendants paying certain expenses of plaintiffs.

50. The plaintiffs did pay a large part, if not all, of the farm expenses for 1975 and 1976.

51. Although various accountings have been made, most of which coming through this litigation, the Court cannot determine with reasonable certainty the amount of crop income from plaintiffs' land wrongfully converted by the defendants. It does find that such a conversion was made, but it is impossible to determine with reasonable certainty the amount of money so wrongfully converted.

52. The Court finds that a fair rental value of plaintiffs' farm land on a cash rent basis for the years 1975 and 1976 was \$10,000 for each year, and that plaintiffs are entitled to damages for defendants wrongful conversion of their farm income, and that a reasonable amount of damages would be the fair rental value of the farm land for 1975 and 1976; accordingly, the Court finds that the plaintiffs are entitled to money damages in the sum of \$20,000 for said wrongful conversion.

53. The Court further finds that although the plaintiffs did receive the sum of \$21,537 from the farming operation in 1975 and 1976, said sums would be more than offset by the farm expenses paid by the plaintiffs toward the 1975 and 1976 farm operation of plaintiffs' farm, and that, therefore, the defendants are not entitled to any credit for the sum of \$21,537.

54. In 1976 Winton sold grain to the Anderson Grain Elevator at Delphi in the amount of \$4,000 which grain came from the "South Farm" and was solely the property of Winton and Kemla and has been detained by the elevator, and said sum should be paid to the plaintiffs as part payment on the judgment herein.

55. Cy has certain clothing and personal property belonging to him which is situate in the property of the plaintiffs and he is entitled to the same.

56. There is no evidence that the defendant, Kemla, actively participated in anything which makes her responsible for any of the damages set forth above.

Micent [Signature]

Based upon the above Findings of Fact, the Court does now conclude:

1. The law is generally with the plaintiffs and against the defendants.
2. The plaintiffs as husband and wife are the sole owners of the "North" and "East" farms and the defendants have no interest in this real estate.
3. The defendants are the sole owners of the "Center", "South" and "West" farms as set forth above, and the plaintiffs have no interest in this real estate.
4. The plaintiffs are the sole owners of the collection of carriages, horses, horse-drawn vehicles, carriage accessories, lamps, books, pamphlets, catalogs and other paraphernalia related to the carriage collection and the defendants have no interest in said property.
5. The defendants' claim that their monies were used to enrich the plaintiffs is without merit, and the defendants' claim to be entitled to payment for labor or services rendered to the plaintiffs are without merit, and the defendants' claim that there was an annuity agreement between plaintiffs and defendants which entitled the defendants to an interest in plaintiffs' real estate and other property is without merit.
6. The defendant, Winton Gerde, unlawfully converted the interest of the plaintiffs in certain farm machinery, and the plaintiffs are entitled to recover the sum of \$20,000 from Winton Gerde for such unlawful conversion, and upon the payment of said sum in full the defendant, Winton Gerde, is the sole owner of the farm machinery now in his possession.
7. The defendants, Winton Gerde and Cy Gerde, purposely, willfully and callously inflicted emotional and physical stress upon the plaintiffs, and the plaintiffs are entitled to recover the sum of \$10,000 for such damages.
8. The plaintiffs are the sole owners of the herd of cattle and that the defendants had no interest therein and that the defendant, Cy Gerde, wrongfully converted said cattle to his own use, and plaintiffs are entitled to damages from Cy Gerde in the sum of \$25,000 for said conversion.
9. The funds now being held by the Boswell Cattle Auction in the sum of \$2,000 is the property of the plaintiffs, and the defendants have no interest therein and is ordered paid to the plaintiffs as part payment on the damages of \$25,000 for the wrongful conversion of the cattle.
10. The plaintiffs are entitled to recover the sum of \$12,000 for expenses paid for their security as consequential damage for the unlawful trespass on the property by the defendants, Winton and Cy Gerde.
11. The defendants, Winton and Cy Gerde, unlawfully converted certain lumber, supplies and tools to their use, and the plaintiffs are entitled to recover the sum of \$3,000 from said defendants for such conversion.
12. The defendant, Winton Gerde, paid for the sheep in the dispute, and he is the owner thereof, and the plaintiffs have no interest therein.
13. The defendants unlawfully converted income from the crops of the plaintiffs, and the plaintiffs are entitled to recover against the defendants for said unlawful conversion the sum of \$20,000.
14. The plaintiffs are entitled to the money presently being held by Anderson Grain Elevator in the sum of \$4,000 as a credit against the damages for the unlawful conversion of crops.

15. The defendants unlawfully converted certain carriage books, pamphlets, accessories, certain family keepsakes, mementoes and photographs which have a unique and sentimental value and upon which no money value can be placed, and all of said items should be returned by the defendants to the plaintiffs forthwith.

16. The defendant, Cy Gerde, is entitled to his clothing now situate in plaintiffs' residence.

17. The plaintiffs take nothing by way of their claim against Kemla Gerde.

18. Any damages hereinabove set forth were based in a substantial part upon fraud on the part of the defendants and through intentional acts and should in no way be dischargeable in bankruptcy, and the plaintiffs are entitled to an equitable lien against all properties owned by the defendants, Winton and Cy Gerde.

Based upon the above, the Court does now ORDER, ADJUDGE AND DECREE as follows:

1. The plaintiffs are adjudged and decreed to be the sole owners of the "North" and "East" farms, and the defendants are adjudged and decreed to be the sole owners of the "Center", "West" and "South" farms.

2. The plaintiffs are adjudged to be the sole owners of the carriage collection, horses, carriage accessories and paraphernalia.

3. The defendants are ordered forthwith to return all carriage accessories, books, pamphlets, paraphernalia, family keepsakes, mementoes etc. now in their possession or under their control or which were removed by them from the plaintiffs subject to the contempt powers of this Court.

4. The plaintiffs recover a judgment from Winton Gerde in the sum of \$20,000.

5. The plaintiffs recover from Cy Gerde the sum of \$25,000.

6. The plaintiffs recover from Cy and Winton Gerde, jointly and severally, the sum of \$45,000 in damages.

7. The defendant, Cy Gerde, is awarded his clothing to be removed from plaintiffs' residence within 30 days by the plaintiffs delivering the same to the defendant at his place of residence.

8. This judgment shall not be dischargeable in bankruptcy, and the plaintiffs shall have a lien on all of the defendants' property for the payment of this judgment.

Dated this 16th day of January, 1979.

atisfied & released

n 2/4/80.

ifford S. Gerde &

iriam W. Gerde

y Ice Miller Donadio & Ryan

Wallace, Campbell,

unch & Shawbach,

John S. Donadio

FILED

JAN 16 1979

Rachel Mather

CLERK, FOUNTAIN COUNTY

Judge, Fountain Circuit Court

STATE OF INDIANA

VS.

JEFFREY L. GRANDSTAFF

CAUSE NO. 78S49

Due to congestion in court calender, cause continued.

11/10/80