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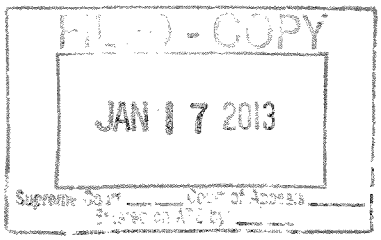
IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN M. HOCH and CAROLE D. HOCH, husband and wife, Plaintiff's-Respondents, vs. ROB VANCE and BECKY VANCE, husband and wife, Defendants-Appellants, and JAKE SWEET and AUDREY SWEET, husband and wife, Defendants.	)	SUPREME COURT DOCKET NO. 39788



RESPONDENTS' BRIEF

Appeal from the District Court of the Second Judicial District
for Nez Perce County

Honorable Jeff Brudie, District Judge Presiding

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PRELIMINARY STATEMENT

The district court did not err in its summary judgment ruling.

The relevant deed language is unambiguous. Jack Cridlebaugh sold "all of his interest," in the property now owned by John and Carol Hoch, to the Hochs. He expressly included in that general grant easement rights he had reserved in earlier conveyances to Rob and Becky Vance and Jake and Audrey Sweet. The easement rights he reserved were rights to ingress and egress over routes providing access to the Vances' property and the Sweets' property from a public right-of-way, as well as all other roads existing on the several properties at the time of conveyance. The language of Cridlebaugh's reservations and subsequent conveyance is unambiguous.

The easements reserved by Cridlebaugh and subsequently transferred to Hochs were appurtenant easements. First, the law presumes the easements to be appurtenant. Second, the nature of these easements is appurtenant—the easements benefit the dominant estate by providing a means of ingress and egress.

Hochs ask that the Court affirm the district court.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

Hochs dispute Vances' description of the breadth of the district court's summary judgment ruling. The sole issue decided at summary judgment was that Hochs held an appurtenant easement over the upper road. The court interpreted the relevant provisions of the transfer instruments and found the easement over the upper road properly reserved by specific reservation language and a catch-all provision. The summary judgment decision reserved all other issues, without limitation, for determination at trial.

B. COURSE OF PROCEEDINGS

Hochs agree with the Vances' description of the Course of Proceedings.

C. STATEMENT OF FACTS

Vances' description of facts relies upon findings issued by the trial court. The trial court's findings of fact were issued over two years after the grant of summary judgment and are the product of the court's review of the evidence and argument submitted during the trial on this matter. Vances, however, have not argued on appeal any error on the part of the trial court. Nor have Vances challenged any of the factual findings of the district court in its summary judgment ruling. Therefore, while many of the findings made by the trial court are identical to those established at the summary judgment hearing,[1] this Court should confine its review of the district court's grant of summary judgment to those facts before it at the time of summary judgment.

The following facts were established at summary judgment:

Jack Cridlebaugh was the owner of 90 acres of real property in the Waha region of Idaho.[2] In 2000, Cridlebaugh subdivided the property into several parcels.[3] Three of the parcels were sold over the course of three years: Rob and Becky Vance purchased 20 acres on October 12, 2000, Jake and Audrey Sweet purchased 40 acres on October 10, 2001, and John and Carole Hoch purchased 20 acres on March 26, 2002 (hereinafter referred to, respectively, as "Vance property", "Sweet property", and "Hoch property").[4] Cridlebaugh made each of these

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[1] One notable exception is that Hochs dispute the trial court's finding that the Hochs did not believe they had acquired an easement over the upper road at the time of conveyance. R. Vol. II, p. 388-89.
[2] R. Vol. II, p. 290.
[3] *Id.*
[4] *Id.*

conveyances by warranty deed (hereinafter referred to, respectively, as "Vance Deed", "Sweet Deed", and "Hoch Deed").[5] Cridlebaugh retained ownership of the remaining 10 acres.[6,7]

In conveying the three parcels, Cridlebaugh granted and reserved several easements over each piece of property. Before proceeding to the language of those easements, it is important the Court understand the roads existing on the property. At all relevant times, the Vance property, the Sweet property and the Hoch property have all been accessible by two access easements, known as the upper road and the lower road.[8] The upper road and the lower road run from Stagecoach Road, a public right-of-way to the Vance property, Sweet property, and Hoch property.[9] On Exhibit 8 of the Clerk's Record ("Plaintiffs' Exhibit #5"), Stagecoach Road can be seen running in a northerly direction on the bottom right-hand corner of the exhibit, thence in a northwesterly direction to the middle of the top edge of the exhibit. Though "upper road" and "lower road" were, at one point, descriptive terms, they have become proper nouns for purposes of this litigation. The lower road intersects with Stagecoach Road near the top of the exhibit and runs to the west. There is no dispute regarding the lower road.

The upper road intersects Stagecoach Road at two points. The upper road runs westerly from an intersection point on the bottom right-hand corner of Plaintiffs' Exhibit #5, through the parcel labeled "Houghton", through the parcel labeled "Weinert", through the ten acres retained by Cridlebaugh, through the Sweet property, across a corner of the Vance Property and to the

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[5] *Id.*
[6] *Id.*
[7] Though much of the detail found in the aerial photographs has been degraded upon photocopying, the Court may be assisted by a review of the aerial photograph used as an illustrative exhibit, found at R. Exh. 3 ("Plaintiffs' Exhibit #1"), and the aerial photograph with a parcel overlay, found at R. Exh. 8 ("Plaintiffs' Exhibit #5").
[8] R. Vol. II, p. 291.
[9] *Id.*

Hoch property.[10] The upper road then comes back in an easterly direction through the Vance property, through the parcel labeled "McKenna" and intersects with Stagecoach Road at an intersection point on the top-middle of Plaintiffs' Exhibit #5.[11] Thus, the upper road makes a loop through the properties.[12] The northern half of that loop (that portion running west from the Hoch property to Stagecoach Road) is what has been referred to by the parties as "Buckboard Lane."[13] The parties agree that Cridlebaugh held an easement over the entire upper road except that portion traversing the McKenna property.

In the Hoch Deed,[14] Cridlebaugh conveyed "all of his interest" in the Hoch property,

> SUBJECT TO AND TOGETHER WITH the rights and responsibilities set forth in the following easements:
>
> * * *
>
> 5) Easement for the purpose of ingress and egress and rights incidental thereto as reserved in a Warranty Deed recorded October 16, 2000 as Instrument No. 657867, records of Nez Perce County, Idaho. [Vance Deed]
>
> 6) Easement for the purpose of ingress and egress and rights incidental thereto as reserved in a Warranty Deed recorded October 10, 2001 as Instrument No. 668025, records of Nez Perce County, Idaho. [Sweet Deed]
>
> * * *

Thus, the Hoch Deed incorporates by reference the easements reserved in the Vance Deed and the Sweet Deed. The language of the easement reservation made by Cridlebaugh in the Vance Deed[15] and Sweet Deed[16] is identical:

> RESERVING UNTO THE GRANTOR, his heirs and assigns, all easements for ingress and egress running from the public right of way to the above described property which are appurtenances to said real property, together with an easement

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[10] *Compare* R. Vol. II, p. 292 *with* R. Exh. 8 ("Plaintiffs' Exhibit #5").
[11] *Id.*
[12] R. Vol. II, p. 292
[13] *Id.*
[14] R. Exh. No. 39 ("Plaintiffs' Exhibit #107").
[15] R. Exh. No. 37 ("Plaintiffs' Exhibit #105").
[16] R. Exh. No. 38 ("Plaintiffs' Exhibit #106").

over and across all roadways presently existing on the property herein being conveyed.

At the summary judgment hearing, the parties agreed that by this language Cridlebaugh reserved, at very least, an easement over the upper road from his retained property to the Hoch property.[17]

The issue before the district court on summary judgment was whether the Hoch Deed effected the transfer from Cridlebaugh to Hochs of an appurtenant easement for ingress and egress across the upper road. The district court found that it did.

ARGUMENT

The district court did not err in its summary judgment ruling that the Hoch Deed unambiguously transferred an access easement to the Hoch property over the upper road. The district court found that Cridlebaugh reserved an easement for ingress and egress over the upper road with a specific reservation over that roadway, followed by a general catch-all reservation over all roadways existing at the time of his reservation. R. Vol. II, p. 295. The district court ruled that Cridlebaugh then transferred that easement right to Hochs when he deeded them "all of his interest" in the Hoch property, explicitly including his reservation across the upper road and all roadways. *Id.*

Vances challenge the district court's finding that the language reserving the easement is unambiguous and the district court's interpretation of the nature of the easements reserved by Cridlebaugh. Vances ask this Court to hold the relevant language of the transfer instrument ambiguous, despite the instrument's use of historic, common and customary language in the practice of real property transfers. Vances invite the Court to speculate as to how Cridlebaugh may have intended common language to hold a different meaning. Vances provide no

[17] R. Vol. II, p. 292.

explanation for how the plain language of Cridlebaugh's reservation could be interpreted in any manner other than to effect a reservation of an easement right across the access roads to the property as well as all roads existing on the property at the time of reservation. Thus, Vances fail to set forth a reasonable interpretation of the Hoch deed that is alternative to that found by the district court. Therefore, the Court should deny Vances' request for reversal on the issue of ambiguity. *See Neider v. Shaw*, 138 Idaho 503, 508, 65 P.3d 525, 530 (2003).

Vances challenge the district court's holding that Cridlebaugh reserved an appurtenant easement over the upper road, and challenge the district court's finding that Cridlebaugh also reserved an easement over all roads existing on the property at the time of reservation. Vances argue that the easement reservation created in gross easements rather than appurtenant easements. To prevail on this argument, Vances must overcome the presumption that easements are appurtenant. *See Hodgins v. Sales*, 139 Idaho 225, 230, 76 P.3d 969, 974 (2003). Vances attempt to support their argument, not by challenging the appurtenant nature of the upper road, but by challenging the appurtenant nature of Buckboard Lane—a road over which the Hochs were adjudicated to hold an easement right at the subsequent trial. Vances claim that because Cridlebaugh could not provide Hochs with legal access over Buckboard Lane all the way to a public right-of-way,[18] the route cannot be held to benefit the dominant estate. Vances fail to provide any legal authority supporting the proposition that an easement for ingress and egress only benefits the dominant estate when it runs all the way to a public right-of-way. Therefore, Vances have failed to present an alternative reasonable interpretation to the language of the Hoch Deed. The judgment of the district court should be affirmed.

[18] As recognized by the trial court, Cridlebaugh could not provide Hochs with an easement over the entirety of Buckboard Lane, only that part of the road which existed on his property at the time of the Vance Deed.

A. STANDARD OF REVIEW

The district court granted summary judgment in favor of Hochs "as to the existence of an appurtenant easement on the upper road." R. Vol. II, p. 297. The court based its judgment, in part, on findings that (1) the relevant transfer instruments were unambiguous with regard to the easement; and (2) there was no genuine issue of material fact regarding the existence of the upper road at all relevant times. "The standard of review on appeal from an order granting summary judgment is the same standard as that used by the district court in ruling on the motion for summary judgment." *Schneider v. Howe*, 142 Idaho 767, 770, 133 P.3d 1232, 1235 (2006).

Summary judgment is proper where the pleadings, depositions, affidavits, and discovery documents before the court show that no genuine issue of material fact exists as to the requested judgment. Idaho R. Civ. P. 56(c); *Baxter v. Craney*, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000). The moving party carries the burden of proving the absence of a genuine issue of material fact. *Baxter*, 135 Idaho at 170, 16 P.3d at 267. Here, Hochs requested the district court find that Hochs held an appurtenant easement over the upper road by way of the deed from Cridlebaugh. In support of their motion, Hochs offered (1) the transfer instruments from Cridlebaugh to Vances, Sweets, and Hochs; (2) Cridlebaugh's deposition testimony regarding the state of his property prior to any of the transfers; and (3) an aerial photograph of the property.

In opposing Hochs' motion, the Vances could "not rest upon the mere allegations or denials of [their] pleadings." Idaho R. Civ. P. 56(e). Once the moving party has shown the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to establish an issue of fact regarding that element. *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 923 P.2d 416 (1996). The Vances were required to respond "by affidavits or as otherwise provided in [Rule 56], . . . set[ting] forth specific facts showing that there is a genuine issue for trial."

Idaho R. Civ. P. 56(e). The Vances offered additional excerpts from the Cridlebaugh deposition and an affidavit of Becky Vance. The district court also had before it an affidavit of Jake Sweet. By these documents, as well as the pleadings on record, Vances sought to show a genuine issue of material fact regarding whether the Hochs held an appurtenant easement over the upper road. However, "[c]reating only a slight doubt as to the facts will not defeat a summary judgment motion; a summary judgment will be granted whenever on the basis of the evidence before the court a directed verdict would be warranted or whenever reasonable minds could not disagree as to the facts." *Snake River Equip. Co. v. Christensen,* 107 Idaho 541, 549, 691 P.2d 787, 795 (1984).

Therefore, this Court must determine whether the trial court erred in finding, based upon the record provided to it by the parties, that reasonable minds could not disagree as to those facts material to a determination on the question of whether Hochs' held an appurtenant easement over the upper road.

B. THE TRIAL COURT DID NOT ERR IN FINDING THE TRANSFER INSTRUMENT UNAMBIGUOUS.

The Court begins the interpretation and construction of a deed by first determining whether the document is ambiguous. *See Phillips Indus., Inc. v. Firkins,* 121 Idaho 693, 697, 827 P.2d 706, 710 (Ct. App. 1992). The answer to this threshold inquiry dictates the proper scope of the Court's inquiry into the parties' intent. *Id.* "If the instrument is unambiguous, its terms are settled as a matter of law using the plain language of the document." *Read v. Harvey,* 141 Idaho 497, 499, 112 P.3d 785, 787 (2005). "Interpretation of an ambiguous deed is a question of fact to be settled by the language in the conveyance instrument and the facts and circumstances of the transaction." *Neider,* 138 Idaho at 508, 65 P.3d at 530. "Whether a

contract is ambiguous is a question of law." *Cannon v. Perry*, 144 Idaho 728, 731, 170 P.3d 393, 396 (2007).

"Ambiguity exists only if language of the conveyance instrument is subject to conflicting interpretations." *Neider*, 138 Idaho at 508, 65 P.3d at 530. Those conflicting interpretations must be reasonable. *See Latham v. Garner*, 105 Idaho 854, 858, 673 P.2d 1048, 1052 (1983). Here, the relevant text includes the Hoch Deed as well as incorporated portions of the Vance Deed and the Sweet Deed.

In the Hoch Deed, Cridlebaugh transferred to Hochs "all interest in the . . . described premises" "TOGETHER WITH the rights and responsibilities set forth in the following easements:"

> 5) Easement for purpose of ingress and egress and rights incidental thereto as set forth in document recorded October 16, 2000 as Instrument No. 657867, records of Nez Perce County, Idaho [Vance Deed].
>
> 6) Easement for purpose of ingress and egress and rights incidental thereto as set forth in a Warranty Deed recorded October 10, 2001 as Instrument No. 668025, records of Nez Perce County, Idaho [Sweet Deed].

R. Exh. No. 39 ("Plaintiffs' Exhibit #107"). The language of the conveyance instrument is unambiguous: Cridlebaugh transferred to Hochs the premises together with the ingress and egress easements he reserved for himself in the Vance Deed and the Sweet Deed. The Vance Deed and the Sweet Deed contain the following easement reservation:

> RESERVING UNTO THE GRANTOR, his heirs and assigns, all easements for ingress and egress running from the public right-of-way to the above described real property which are appurtenances to said real property, together with an easement over and across all roadways presently existing on the property herein being conveyed.

R. Exh. No. 37 ("Plaintiffs' Exhibit #105") & R. Exh. No. 38 ("Plaintiffs' Exhibit #106"). The language of this reservation is unambiguous: Cridlebaugh made a specific easement reservation

over those roads which ran from the public right-of-way to the Vance and Sweet properties, and then made a general reservation over all roadways existing on the Vance and Sweet properties at the time of conveyance.

Vances ask the Court to find ambiguity based upon (1) use of the term "roadways" in the Vance Deed and Sweet Deed; and (2) use of "easement" in the singular in the Hoch Deed. *App. Br. 16-17.*

(1) Vances argue that ambiguity exists because "[i]t is impossible to determine what 'roadways' the grantor was trying to convey an easement across from the documents themselves." *App. Br. 16.* The language of the instruments belies this argument; Cridlebaugh reserved and easement over "all roadways" existing at the time of transfer. There is no reasonable basis for interpreting this language to mean that Cridlebaugh only intended to reserve an easement over certain roadways and was disclaiming any easement over other roadways. Vances base the entirety of their argument upon a factual dispute regarding what roadways were in existence at the relevant time. A factual dispute as to the existence of a roadway does not render ambiguous Cridlebaugh's reservation of an easement across routes providing access to a public right of way, together with any existing roadway.

(2) Vances argue ambiguity exists because Cridlebaugh reserved "all easements for ingress and egress . . . together with an easement over and across all roadways" in the Vance Deed and Sweet Deed, but transferred to Hochs only the "easement" reserved in the respective deeds. *App. Br. 17-18.* Based on this language, Vances contend that an alternative reasonable interpretation of the deed from Cridlebaugh to Hoch is that Cridlebaugh only intended to give an easement over a single road, not all roadways. *Id.* This argument is unpersuasive. An easement is a description of a property right, not a description of the property. *See, e.g., Backman v.*

Lawrence, 147 Idaho 390, 394, 210 P.3d 75, 79 (2009); *Shultz v. Atkins*, 97 Idaho 770, 773, 554 P.2d 948, 951 (1976). Thus, Cridlebaugh could rightly reserve *an* easement over *all* roadways providing access to a public right-of-way and all other roadways existing at the time of conveyance. He could (and did) then transfer that easement *right* to the Hochs. There exists no foundation in the Hoch Deed or the incorporated provisions of the Vance Deed and Sweet Deed supporting an interpretation that Cridlebaugh intended to transfer Hochs anything less than the entirety of the easement right he reserved in the Vance Deed and Sweet Deed.

Vances have confined their challenge to the district court's grant at summary judgment. The question at the summary judgment proceeding was whether the relevant text was ambiguous in its application to the upper road. Prior to the grant of summary judgment, the district court was presented with the following facts:

(a) the upper road existed at all relevant times,[19] R. Vol. II, p. 291-92;

(b) the upper road provided a route for ingress and egress running from Stagecoach Road, a public right-of-way, through the property retained by Cridlebaugh, through the Sweet property, through the Vance property, and to the Hoch property, R. Vol. II, p. 291-92;

(c) Cridlebaugh reserved an easement over the upper road running from his retained property to the Hoch property, R. Vol. II, p. 292, l. 17-20; and

(d) Cridlebaugh transferred his interest in the Hoch property to the Hochs by means of the Hoch Deed, R. Vol. II, p. 291.

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[19] Vances (and Sweets) disputed the nature and existence of the upper road at summary judgment. After a review of the admissible evidence submitted by the parties, the district court ruled that reasonable minds could not disagree as to the fact that the upper road was in existence at all relevant times. *See* R. Vol. II, p. 294. Vances' Opening Brief does not challenge the district court's finding.

Those undisputed facts compelled the court's finding that Hochs held an easement over the upper road. Cridlebaugh retained an easement for ingress and egress in his transfers to Vances and Sweets. In so doing, Cridlebaugh reserved access to the Hoch property over the upper road. Cridlebaugh transferred the entirety of his interest to the Hochs, expressly including the retained easement. Therefore, Hochs obtained an easement over the upper road.

Vances ask the Court to read ambiguity into transfer language that is of a historic, common and customary use in the transfer of real property. Rather than offer a reasonable alternative interpretation to the plain language of the text, Vances invite the Court to speculate as to ways in which the grantor may have misunderstood the effect of the deed. Vances' argument finds no support in the established principles interpreting real property instruments. Transfers in real property are made by instruments in writing. Idaho Code § 9-505 & § 55-601. As a general rule, the Courts assume that the parties mean exactly what they wrote. *Phillips*, 121 Idaho at 697, 827 P.2d at 710. That principle renders instruments reliable to both third parties, as well as to the grantor and grantee. If the language challenged here renders a transfer instrument ambiguous, the parol evidence rule will be relegated to the exception rather than the rule. *See id.* The Court should, therefore, limit inquiry regarding the parties' intent to the four corners of the deed.

C. THE TRIAL COURT DID NOT ERR IN FINDING THE EASEMENTS RESERVED BY CRIDLEBAUGH WERE APPURTENANT EASEMENTS.

Vances argue that the Court erred (1) by not confining the nature of the easement held by Hochs across the upper road to existing for the purpose of ingress and egress, *App. Br. 13*; and (2) by ruling that Cridlebaugh reserved an appurtenant easement rather than an easement in gross, *App. Br. 14*. The district court did not err on either count. First, the limitation of Hochs'

easement to being for the purposes of ingress and egress has never been in dispute. Second, the manner of creation of the easement over the upper road and the purpose of that easement establish its nature as an appurtenant easement. *Hodgins*, 139 Idaho at 230, 76 P.3d at 974.

Vances first ask this Court to reverse the grant of summary judgment because the district court did not limit the Hochs' easement over the upper road to ingress and egress. Vances request for relief on this point is perplexing because (1) the language of the summary judgment ruling makes clear the district court considered Hochs' easement to be for the purposes of ingress and egress,[20] and in any event, the district court expressly reserved ruling on the scope of the easement for trial, R. Vol. II, p. 297; (2) Hochs have never claimed that the easement on the upper road is for anything other than ingress and egress; and (3) the judgment limits the scope of Hochs' easement over the upper road to ingress and egress, R. Vol. II, p. 412. Hochs have never disputed—and do not now dispute—that limitation.

Vances next claim that the district court erred in ruling that Cridlebaugh reserved an appurtenant easement. "There are two general types of easements: easements appurtenant and easements in gross. An appurtenant easement is a right to use a certain parcel, the servient estate, for the benefit of another parcel, the dominant estate." *Hodgins*, 139 Idaho at 230, 76 P.3d at 974. "In contrast, an easement in gross benefits the holder of the easement personally, without connection to the ownership or use of a specific parcel of land." *Id.* "Where the owner of the dominant estate is selling the property to be subjected to the servitude, an express easement may be created by reservation or by exception." *Tower Asset Sub Inc. v. Lawrence*,

[20] The district court concluded "that the upper road easement Mr. Cridlebaugh created and reserved for himself and his heirs and assigns was conveyed to the Hochs . . . where he conveyed ingress and egress easement that he had reserved in the Sweet deed," R. Vol. II, p. 295.

143 Idaho 710, 714, 152 P.3d 581, 585 (2007). Cridlebaugh created the easements he held over the Vance and Sweet properties by reservation:

> RESERVING UNTO THE GRANTOR, his heirs and assigns, all easements for ingress and egress running from the public right-of-way to the above described real property which are appurtenances to said real property, together with an easement over and across all roadways presently existing on the property herein being conveyed.

The district court found that by this reservation Mr. Cridlebaugh created an access easement over the upper road. "He then reserved to himself, his heirs and assigns all existing easements, of which [the access easement] was one." R. Vol. II, p. 295.

There exists no particular form or words necessary for the creation of an appurtenant easement. *See Tower Asset*, 143 Idaho at 714, 152 P.3d at 585. "[W]hether an easement is appurtenant or in gross is to be determined by a fair interpretation of the grant or reservation creating the easement, aided, if necessary, by the situation of the property and the surrounding circumstances." 25 Am. Jur. 2d *Easements and Licenses* § 10 (footnote omitted). "In cases of doubt, Idaho courts presume the easement is appurtenant." *Hodgins*, 139 Idaho at 230, 76 P.3d at 974. Here, both the language and the surrounding circumstances support a finding that Cridlebaugh's reservation of an easement over the upper road was an appurtenant easement.

The language of the reservation supports a finding that Cridlebaugh created an appurtenant easement. Cridlebaugh not only reserved an easement for himself, as grantor, but also for "his heirs and assigns". A reservation in favor of the grantor's heirs and assigns demonstrates the appurtenant nature of the easement because the phrase "'generally comprehends all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law.'" *Boydstun Beach Ass'n v. Allen*, 111

Idaho 370, 375, 723 P.2d 914, 919 (Ct. App. 1986) (quoting Black's Law Dictionary 109 (5th ed. 1979)).

The nature of the easement also supports a finding that the easement over the upper road is appurtenant to the Hoch property. As set forth above, the district court found that reasonable minds could not disagree as to the fact that the upper road was a route for ingress and egress from Stagecoach Road to the Hoch property. A route for access to a public right-of-way is a benefit to the Hoch property. *See also Beckstead v. Price*, 146 Idaho 57, 65, 190 P.3d 876, 884 (2008); *Hadfield v. State ex rel. Burns*, 86 Idaho 561, 566, 388 P.2d 1018, 1021 (1963); *Vill. of Sandpoint v. Doyle*, 14 Idaho 749, 95 P. 945 (1908). As the district court noted, "[i]t cannot be gainsaid that access to one's property enhances one's ability to use it." R. Vol. II, p. 296.

Vances attack the district court's finding that the easement over the upper road is appurtenant by questioning the value of an easement right adjudicated at trial: the easement right over Buckboard Lane. *App. Br. 14.* Though Buckboard Lane runs from the Hoch property to Stagecoach Road, part of the route crosses over onto property owned by a third party, McKenna. Cridlebaugh never owned the McKenna property, and he did not hold an easement right over that portion of Buckboard Lane which runs through the McKenna property. Vances argue on appeal that because Cridlebaugh could not transfer an easement right on Buckboard Lane all the way to a public right-of-way, the Buckboard Lane easement is not a benefit to the Hoch property. Vances argument fails for two reasons. First, the district court did not rule upon Hochs' right to Buckboard Lane in its summary judgment. The sole issue upon which summary judgment was granted was that the Hochs held an appurtenant easement along the upper road from Stagecoach Road to the Hoch property. R. Vol. II, p. 297; *see also* R. Exh. 41 ("Plaintiffs' Exhibit #109"), p. 46. ll. 12-17 (transcript of hearing on a Motion to Show Cause, held six months after grant of

summary judgment, at which the district court reiterated the scope of its summary judgment grant). The inclusion of Buckboard Lane as a route over which Hochs held an appurtenant easement was not adjudicated until trial. R. Vol. II, p. 412-13. Vances have not challenged the trial court's finding of an easement over Buckboard Lane in their Appellants' Brief.[21] Second, the Vances fail to provide any authority for the proposition that an easement for ingress and egress is of no value to the dominant estate unless it provides access all the way to a public right-of-way at the time of granting. "The failure to support an alleged error with argument and authority is deemed a waiver of the issue." *Lewiston Indep. Sch. Dist. No. 1 v. City of Lewiston*, 151 Idaho 800, 808, 264 P.3d 907, 915 (2011).

Vances failed to present evidence rebutting the presumption that the easement rights reserved by Cridlebaugh were appurtenant to the Hoch property. The nature of the easement over the upper road and the language used in its creation support a finding that the easement over the upper road was appurtenant to the property purchased by the Hochs. Therefore, the district court did not err in ruling that Cridlebaugh reserved an appurtenant easement over the upper road. By purchasing the dominant estate, the Hochs obtained the easement. *See* 81 Am. Jur. *Proof of Facts* 3d 199 (2009) ("An appurtenant easement for right of way purposes passes with subsequent conveyances, even if the specific language of the right of way is not repeated in the deed."); *see also Joyce Livestock Co. v. United States*, 144 Idaho 1, 13, 156 P.3d 502, 514 (2007); *Bothwell v. Keefer*, 53 Idaho 658, 27 P.2d 65, 66 (1933). Therefore, the Hochs acquired the easements reserved by Cridlebaugh in the Vance Deed and Sweet Deed.

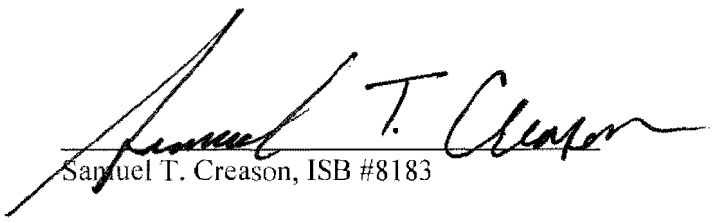
[21] At trial, testimony was provided regarding the particular benefits holding an easement across Buckboard Lane would be to the Hoch property. Hoch testified to the benefit of his easement over Buckboard Lane both as an access route to Stagecoach Road and for ingress and egress even absent the ability to reach Stagecoach Road.

CONCLUSION

Hochs ask this Court to affirm the judgment of the district court.

DATED this 15th day of January, 2013.

CREASON, MOORE, DOKKEN & GEIDL, PLLC



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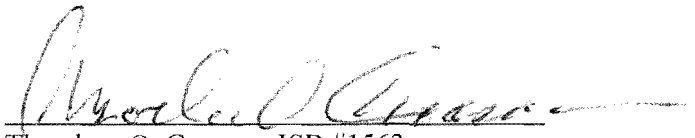

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that two copies of the foregoing RESPONDENTS' BRIEF were served by the method indicated below and addressed to the following:

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1229 Main Street
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_____	FIRST-CLASS MAIL
____x___	HAND DELIVERED
_____	OVERNIGHT MAIL
_____	FAX TRANSMISSION

Dated and certified this 15th day of January, 2013.

Samuel T. Creason, ISB #8183