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IN THE COURT OF APPEALS OF THE OF STATE OF IDAHO

MADISON REAL PROPERTY, LLC, Plaintiff-Respondent, vs. NICHOLAS A. THOMASON, SANDRA K. THOMASON, BYRON T. THOMASON, and MARILYNN THOMASON, Defendants-Appellants.	)	COURT OF APPEALS NO. 36086

RESPONDENT'S BRIEF

Appeal from the District Court of the Seventh Judicial District for Madison County. Honorable Gregory W. Moeller, District Judge, presiding.

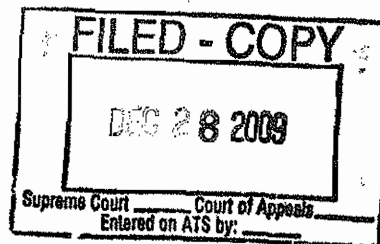
Defendants-Appellants - Pro Se
Byron Thomason
485 North 2nd East (105-273)
Rexburg, Idaho 83440
Pro Se

Marilynn Thomason
485 North 2nd East (105-273)
Rexburg, Idaho 83440
Pro Se

Nicholas A. Thomason
5293 South 4300 West
Rexburg, Idaho 83440
Pro Se

Sandra K. Thomason
5293 South 4300 West
Rexburg, Idaho 83440
Pro Se

Attorney for Plaintiff-Respondent
William R. Forsberg
Troy Evans
Forsberg Law Offices, Chtd.
49 Professional Plaza
Rexburg, ID 83440



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Rexburg, Idaho 83440
Pro Se

Marilynn Thomason
485 North 2nd East (105-273)
Rexburg, Idaho 83440
Pro Se

Nicholas A. Thomason
5293 South 4300 West
Rexburg, Idaho 83440
Pro Se

Sandra K. Thomason
5293 South 4300 West
Rexburg, Idaho 83440
Pro Se

Attorney for Plaintiff-Respondent

William R. Forsberg
Troy Evans
Forsberg Law Offices, Chtd.
49 Professional Plaza
Rexburg, ID 83440

Table of Contents

Table of Contents . . . . i, ii

Table of Cases, Statutes and Authorities iii

Cases . . . . iii, iv

Statutes and Authorities v

I. Statement of the Case 1

1. Nature of the Case 1

2. Identification of Parties 1

3. Course of the Proceedings 1

4. Statement of the Facts 5

II. Additional Issues Presented on Appeal 10

III. Basis for Attorney Fees on Appeal 10

IV. Argument 12

1. Issues not properly raised in the district court or preserved for appeal should not be considered for the first time on appeal 12

2. The district court has subject matter jurisdiction over this case 14

3. Madison Real Property has standing to bring this case 15

4. The district court did not abuse its discretion by finding that the various issues decided by the bankruptcy court in previous litigation involving these parties were res judicata 19

5. The district court did not abuse its discretion when it granted partial summary judgment in favor of Madison Real Property where the Thomasons did not raise any timely objection to the grant of partial summary judgment 26

6. Matters listed as issues in the Thomasons' brief which were not argued by citation to facts in the record or by citation to supporting legal authority should be deemed abandoned 28

7. The district court did not err by awarding Madison Real Property attorney fees when the Thomasons did not object to the award 29

8. The district court did not abuse its discretion when it denied Byron and Marilynn Thomasons' motion for a continuance of the hearing on Madison Real Property's motion for partial summary judgment 30

V. Conclusion 31

CERTIFICATE OF SERVICE 33

Table of Cases, Statutes and Authorities

CASES: Page(s)

Adams v. Anderson, 142 Idaho 208, 127 P.3d 111 (2005) 18

Appel v. LePage, 135 Idaho 133, 15 P.3d 1141 (2000) 31

BHA Investments, Inc. v. State, 138 Idaho 348, 63 P.3d 474 (2003) 12

Barmore v. Barmore, 145 Idaho 340, 179 P.3d 303 (2008) 13

Borah v. McCandless, 147 Idaho 73, 205 P.3d 1209 (2009) 15

City of Kellogg v. Mission Mountain Interests Ltd., Co., 135 Idaho 239, 16 P.3d 915 (2000). 18

Conner v. Drake, 103 Idaho 761, 653 P.2d 1173 (1982) 30

Cramer v. Slater, 146 Idaho 868, 204 P.3d 508 (2009) 11

Hindmarsh v. Mock, 138 Idaho 92, 57 P.3d 803 (2002) 24, 25

KEB Enterprises, L.P. v. Smedley, 140 Idaho 746, 101 P.3d 690 (2004) 13, 18

Kirschner v. Uniden Corp. of Am., 842 F.2d 1074 (9th Cir. 1988) 19

Leavitt v. Swain, 133 Idaho 624, 991 P.2d 349 (1999). 30

Lohman v. Flynn, 139 Idaho 312, 78 P.3d 379 (2003) 25

Lowery v. Board of County Commissioners, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988) . . . 30

Merrill v. Gibson, 142 Idaho 692, 132 P.3d 449 (2006) 13, 17

Michalk v. Michalk, ____ P.3d ____, 2009 WL 3353048 (Idaho 2009) 13, 17, 29

Nelson v. Anderson Lumber Co., 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004) 14

Nelson v. Nelson, 144 Idaho 718, 170 P.3d 375 (2007) 27

Oyama v. Sheehan (In re Sheehan), 253 F.3d 507 (9th Cir. 2001) 19

Richardson v. Ruddy, 15 Idaho 488, 98 P. 842 (1908) 14

Sammis v. Magnetek, Inc., 130 Idaho 342, 941 P.2d 314 (1997) 27

Sierra Life Ins. Co. v. Granata, 99 Idaho 624, 586 P.2d 1068 (1978) 14

Suitts v. Nix, 141 Idaho 706, 117 P.3d 120 (2005) 27

Sun Valley Shopping Ctr., Inc. v. Idaho Power Co., 119 Idaho 87, 803 P.2d 993 (1991) 30

Ticor Title Co. v. Stanion, 144 Idaho 119, 157 P.3d 613 (2007) 25

Troutner v. Kempthorne, 142 Idaho 389, 128 P.3d 926 (2006) 16

Twin Falls County v. Coates, 139 Idaho 442, 80 P.3d 1043 (2003) 27

U.S. v. Rewald, 889 F.2d 836 (9th Cir. 1989) 17

U.S. Bank Natl. Assn. v. Kuenzli, 134 Idaho 222, 999 P.2d 877 (2000) 25

United States v. Walker, 601 F.2d 1051 (9th Cir. 1979) 19

Verbillis v. Dependable Appliance Co., 107 Idaho 335, 689 P.2d 227 (Ct. App. 1984) 28

Vreeken v. Lockwood Engineering, B.V., 148 Idaho 89, 218 P.3d 1150 (2009) 11

Watkins v. Peacock, 145 Idaho 704, 184 P.3d 210 (2008) 22, 24

Wheeler v. Idaho Dept. of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009) 29

STATUTES AND AUTHORITIES: Page(s)

Idaho Code § 6-501 . . . . 14, 15

Idaho Code § 6-545 10

Idaho Code § 12-120 . . . . 10, 11

Idaho Code § 12-121 12

Idaho Code § 54-102 17

Idaho Code § 55-601 16

IRCP 54(d)(6) 29, 30

IRCP Rule 56(c) 26, 30, 31

IRCP Rule 56(f) 27

I.A.R. 35(a)(6) 29

Idaho Const. Art. 5, § 20 15

I. Statement of the Case

1. *Nature of the Case.* This is an appeal from a grant of partial summary judgment in favor of Plaintiff-Respondent in an action for partition of real estate located in Madison County, Idaho pursuant to Idaho Code § 6-501 et. seq., and for an accounting of receipts and disbursements received by Defendants-Appellants on account of said property.

2. *Identification of Parties.* Plaintiff-Respondent, Madison Real Property, LLC, (hereafter referred to as "Madison Real Property") is an Idaho limited liability company and is the owner of a one-third interest in the real estate which is the subject of this action. Defendants-Appellants, Marilynn Thomason and Byron Thomason, husband and wife, are owners of a one-third interest in the real estate which is the subject of this action. Defendants-Appellants, Nicholas Thomason and Sandra Thomason, husband and wife, are owners of a one-third interest in the real estate which is the subject of this action. The appellants will be referred to herein as the "Thomasons" unless fewer than all of them are being referenced.

3. *Course of the Proceedings.*

Madison Real Property filed its complaint for partition and an accounting on April 4, 2008. R. Vol. 1., p. 6. Marilynn Thomason and Byron Thomason were served the summons and complaint on April 4, 2008. R. Vol. 1., p. 6. Nicholas and Sandra Thomason were served the summons and complaint on April 5, 2008. R. Vol. 1., p. 6. Defendants Marilynn Thomson and Byron Thomason filed their answers to Madison Real Property's complaint on April 24, 2008. R.

Vol. 1., p. 6. Defendants Nicholas and Sandra Thomason filed their answers to plaintiff's complaint on April 25, 2008. R. Vol. 1., p. 6.

Defendants Marilynn and Byron Thomason filed a motion to dismiss on May 27, 2008, which was denied by an order of the court on June 16, 2008. R. Vol. 1., p. 6.

On July 7, 2008 Nicholas Thomason filed a Notice of service of his First Request for Production to Plaintiff. R. Vol. 1., p. 6. That same date Byron Thomason filed his Notice of Service of Defendant Byron T. Thomason's First Request for Admissions to the Plaintiff. R. Vol. 1., p. 7. On July 31, 2008 Madison Real Property filed its Notice of Compliance with Defendant Byron T. Thomason's First and Second Requests for Admission, and its Notice of Compliance with Defendant Nicholas A. Thomason's First Request for Production. R. Vol. 1., p. 7. The Thomasons have not served any other discovery requests at any time.

On July 11, 2008, Madison Real Property filed and served on the Thomasons its Motion for Partial Summary Judgment in which it asked the district court to enter judgment on the issue of ownership of the subject real estate, including the respective rights of the parties in the property. That the court order a physical partition of the subject property and appointment of referees and the right of the plaintiff to receive an accounting for all receipts and disbursements received and made on account of said property from October 30, 2001, or for such other use made of the property by defendants. A Notice of Hearing scheduled for August 18, 2008 was

filed and served on the Thomasons. Record of Action, p. 2[1], R, Vol. 2., p. 239-240. Madison Real Property also filed and served an Affidavit in support of its motion and a Brief in support of its motion on July 11, 2008. R. Vol. 1., pp. 7. No objection, briefs, affidavits or other opposition to the motion for summary judgment was filed by the Thomasons. Record of Action, p. 2 and 3. On August 15, 2008, a motion for continuance was filed by Byron and Marilynn Thomason. Record of Action, p. 2. R. Vol. 3., pp. 308, 327. The hearing on Madison Real Property's motion for partial summary judgment was held on August 18, 2008. Record of Action, p. 2. The motion for continuance by Byron and Marilynn Thomason was denied, the district court finding that it was not timely nor supported by argument. R. Vol. 2., p. 243. On August 22, 2008, the district court entered Findings of Fact, Conclusions of Law and Order Granting Partial Summary Judgment. R. Vol. 2., p. 244. On September 8, 2008 the district court entered an Order Appointing Referees. R. Vol. 2., p. 265. On September 16, 2008 the district court entered an Order Awarding Attorneys fees and costs. R. Vol. 2., p. 268.

Thomasons filed a Notice of Appeal on October 1, 2008. R. Vol. 3., p. 284. This appeal was conditionally dismissed by the Supreme Court as untimely on October 16, 2008. On November 20, 2008, this appeal was finally dismissed. R. Vol. 4., pp. 645, 672, 683.

On October 6, 2008, the Thomasons filed a Motion for Stay of Judgment, New Trial/Hearing, to Amend Findings and Conclusions, Amend Judgment and All Other Authority.

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[1]The Register of Action is located in Volume 1. of the Clerk's Record and is not paginated.

Register of Actions, p. 3. Madison Real Property filed its Reply and Objection to the Thomasons' Motions on October 14, 2008. Register of Action, p. 3 and R. Vol. 4., p. 634. A hearing was held on the Thomasons' various motions on October 20, 2008. Record of Actions, p. 4. The district court entered its Order denying Thomasons' motions and granting Madison Real Property attorney fees on October 20, 2008. R. Vol. 4. p. 667.

Pursuant to its findings in its October 20, 2008 Order, the district court issued a Second Order Awarding Attorneys Fees and Costs on November 14, 2008. R. Vol. 2., p. 670.

On December 23, 2008 Byron and Marilynn Thomason filed their Joint Appeal on Order November 14, 2008. R. Vol. 4. 684, 697, 698. Nicholas and Sandra did not file a notice of appeal but have signed the brief with Byron and Marilynn. No other notice of appeal has been filed since the filing of the December 23, 2008 notice of appeal.

The referees filed their report with the district court on December 2, 2008. R. Vol. 4., p. 623. Madison Real Property filed a Motion for Order Confirming the Referees Report and for Judgment on December 19, 2008. R. Vol. 4., p. 794. A hearing was held on the motion on April 27, 2009. R. Vol. 4. p. 700. The district court entered its Memorandum Decision and Order confirming the referees' report on June 12, 2009.

The Thomasons' then filed three motions including (1.) Defendants' Joint Motion for Reconsideration, filed June 26, 2009 by Byron Thomason and Marilynn Thomason. R. Vol. 4, p. 718; (2.) Defendants' Joiner Joint Motion for Reconsideration Fraud Upon the Court, filed July

8, 2009 by Nicholas Thomason, Sandra Thomason, Byron Thomason and Marilynn Thomason. R. Vol. 4., p. 734A; and (3.) Joint Objection and Second Motion for Reconsideration July 15, 2009 Order, filed July 20, 2009 (one such motion from Byron, Marilynn and Nicholas Thomason and an identical one from Sandra Thomason). R. Vol. 4., p. 816. The district court held a hearing on these motions on August 10, 2009. R. Vol. 4., p. 839. The district court entered its Order Denying the Thomasons' Motions for Reconsideration on August 11, 2009. R. Vol. 4., p. 846.

4. *Statement of the facts.*

Prior to partition, Madison Real Property was the owner of a one-third undivided interest in a 75 acre tract of farm ground located in Madison County, Idaho generally referred to as the "Farmstead" by the parties. R. Vol. 1., p. 51-52. Madison Real Property is the successor in interest to William Forsberg who received his one-third undivided interest in the Farmstead by a deed from Greg and Diana Thomason recorded October 30, 2001 and a correction warranty deed recorded March 29, 2002. R. Vol. 1., pp. 85 and 86. Marilynn and Byron Thomason were the owners of a one-third undivided interest in the farmstead property. Nicholas and Sandra Thomason were the owners of a one-third undivided interest in the farmstead property. R. Vol. 2., p. 166.

The Thomasons brought suit against Madison Real Property's predecessor in interest, William Forsberg, in the United States Bankruptcy Court for the District of Idaho, seeking among other things, to quiet title to the Farmstead Property in Thomason Farms, Inc. R. Vol. 1.,

pp. 53, 59, 60, 63, 64. Forsberg answered and counterclaimed denying all of the Thomasons' allegations and requesting that the bankruptcy court quiet title in a one-third undivided interest in the Farmstead property in him. R. Vol. 2., p. 174-180. Following a trial on the merits, in a Memorandum Decision dated June 9, 2006, the Bankruptcy Court found against the Thomasons and in favor of the Forsbergs on all claims. In a final judgment dated October 3, 2006, the bankruptcy court then quieted title to a one-third undivided fee simple interest in the Farmstead Property in William Forsberg subject to any community interest of his spouse. R. Fifth Affidavit of William Forsberg, Exhibit 24, p. 78.[2]

The Thomasons appealed the bankruptcy court's decision against them to the Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals. Their appeal was denied and the bankruptcy court's decision upheld in all respects by Judgment entered August 7, 2007. R. Fifth Affidavit of William Forsberg, Exhibit 25, p. 2 of the Memorandum. No further appeal was taken from this decision. R. Vol. 1., p. 122.

On September 11, 2007, the Thomasons filed a document with the Bankruptcy Court entitled "Joint Affidavits of Nicholas A. Thomason and Byron T. Thomason" which included within it an attached document entitled "Demand for Retrial Fraud Upon the Court." R. Vol. 1., pp. 87-106.

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[2] This affidavit and its exhibits were submitted by the Clerk of the District Court with the Record herein. See R. Vol. 4., second to the last page (Certificate of Exhibits).

On October 26, 2007 Byron Thomason filed an Affidavit of Plaintiff, Byron T. Thomason, Fraud On the Court Bankruptcy Fraud, Exhibits & Claims with a supplement consisting of Exhibits A through I and Exhibits 1 through 3. R. Vol. 3., pp. 361-630. The document purported to detail, among other things, alleged acts and omissions by William Forsberg in concert with Greg and Diana Thomason, the bankruptcy trustee and other defendants which were characterized as fraud, fraud on the court, real estate fraud and crimes, which should have voided the conveyance of the Farmstead property. R. Vol. 3., pp. 386, 391, 395-396.

A hearing was held on the Thomasons' motion for relief from judgment and for a new trial on October 31, 2007. R. Vol. 1., p. 117; Vol. 2., p.153. The bankruptcy court entered its Memorandum Decision and Order on November 26, 2007 in which it denied the Thomasons' motion for relief from the prior judgment and for a new trial. R. Vol. 1., pp. 120-136. The court further ordered that, to the extent the Fraud on the Court document filed by the Thomasons constituted a separate request for relief, it was denied. R. Vol. 1., pp. 137-138. No appeal was taken from the decision of the bankruptcy court. R. Vol. 2., pp. 209-222. (Bankruptcy Court Docket Report reflects that no notice of appeal was filed following the entry of the bankruptcy court's Memorandum Decision and Order Denying Motion for Relief.) The time for filing an appeal has passed and the Thomasons did not appeal the bankruptcy court's November 26, 2007 order.

On September 26, 2008, Appellants Nicholas Thomason and Sandra Thomason, filed a Demand for Retrial and Motion to Dismiss Bankruptcy in the bankruptcy court cases. They were joined in their demand and motion later by Marilynn and Byron Thomason. After a hearing on December 10, 2008, the Honorable Jim D. Pappas entered his Order wherein the Demand for Retrial and Motion to Dismiss Bankruptcy was denied. R. Fifth Affidavit of William Forsberg, Exhibit 25, p. 4 of the Memorandum, lines 2-8. The Thomasons' latest motion in bankruptcy court was again based on their allegation of fraud on the court. R. Fifth Affidavit of William Forsberg, Exhibit 25, p. 4 of the Memorandum, lines 9-16.

On December 19, 2008, the Thomasons filed a notice of appeal of the Bankruptcy Court's Order denying their motion to dismiss bankruptcy. R. Fifth Affidavit of William Forsberg, Exhibit 25, p. 5 of the Memorandum, lines 2-4. On December 22, 2008, the Thomasons filed their Notice of Appeal on the Bankruptcy Court's Order denying their demand for a new trial. R. Fifth Affidavit of William Forsberg, Exhibit 25, p. 5 of the Memorandum, lines 4-6. In their briefs, the Thomasons expanded their issues to include their contention that the bankruptcy court deliberately suppressed previously submitted documents to assist the trustee in obtaining an illegal claim to an asset. The bankruptcy court judge allegedly did this because a member of his former law firm represented one of the parties in the litigation. R. Fifth Affidavit of William Forsberg, Exhibit 25, p. 7 of the Memorandum, lines 25-28; p. 8, lines 1-3.[3]

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[3] In rejecting this argument the appellate court stated, "Even though neither the AP Demand nor the Case Demand refers to bias of the judge, and even though this is not an appeal

On June 26, 2009, the Ninth Circuit Court of Appeals, Bankruptcy Appellate Panel entered its Judgment affirming the Bankruptcy Court's judgment and Order of December 10, 2008. R. Fifth Affidavit of William Forsberg, Exhibit 25 (2nd unnumbered page). The Thomasons have since filed a petition for further review by the Ninth Circuit Court of Appeals, which petition is now pending. Neither the Farmstead property, nor any of the parties to this action are subject to any stay issued by the bankruptcy court. R. Vol. 2. p. 154.

The only persons or entities with any ownership claim in the Farmstead are parties to this action. R. Vol. 2. p. 166. The plaintiff requested by letter that the Thomasons voluntarily negotiate a partition of the Farmstead. They refused to do so. R. Vol. 1., pp. 21-22A. The other interests include the attorney's lien of Jay Kohler which attaches to the ownership interest of the Thomasons and the property tax arrearage owed to Madison County. R. Vol. 1., p. 18.

Since 2001, the farmstead has been farmed by Thomason Farms, Inc., and since 2003 it has been farmed by Double T Farming and Ranching, Inc. without the knowledge or consent of Madison Real Property or its predecessor. R. Vol. 2., p. 154, ¶12. Although Thomason Farms, Inc. and Double T. Farming and Ranching, Inc. have farmed the Farmstead property and received the crops therefrom and farm program payments from the federal government, the property taxes

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of a motion for disqualification or recusal of the judge, the Appellants request that we reverse on these grounds. We will not do so, as these arguments have been raised for the first time on appeal, . . . Moreover, Appellants are requesting us to consider evidence not presented to the bankruptcy court in the context of the AP demand and the Case Demand. . . . Rather they have appended to their opening brief four documents that were not mentioned in the AP Demand or in the Case Demand. . . Because the four documents appended to the Appellants' briefs were not presented to the bankruptcy court in the context of the AP Demand and the Case Demand, we cannot consider them in this appeal." (Citations omitted).

have not been paid and no accounting of the proceeds from the farming of the Farmstead property or the crop program payments has ever been made to Madison Real Property or its predecessor. R. Vol. 2., p. 154, ¶13.

II. Additional Issues Presented on Appeal

Madison Real Property is entitled to an award of attorneys fees and costs against the Thomasons.

III. Basis for Attorney Fees on Appeal

There are several statutory bases for an award of attorney fees for this appeal:

> Idaho Code § 6-545. COSTS OF PARTITION -- APPORTIONMENT TO PARTIES -- LIEN. The costs of partition, *including reasonable counsel fees*, expended by the plaintiff or either of the defendants for the common benefit, fees of referees, and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares and against other property held by the respective parties. *When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.* (Emphasis added.)

This appeal was brought by Byron and Marilynn Thomason and therefore Madison Real Property is entitled to an award of attorney's fees against them as a cost of partition as set forth above.

Madison Real Property is entitled to attorney's fees pursuant to I.C. §§ 12-120(1) and (3).[4]

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[4] Idaho Code § 12-120. ATTORNEY'S FEES IN CIVIL ACTIONS. (1) Except as provided in subsections (3) and (4) of this section, in any action where the amount pleaded is twenty-five thousand dollars ($25,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. . .

"I.C. § 12-120(3) . . . allows recovery for attorney fees by the prevailing party in any commercial transaction." A "commercial transaction" is defined as any transaction, except transactions for personal household purposes. I.C. § 12-120(3).

Madison Real Property's suit against the Thomasons seeks partition as well as an accounting and award of its share of the rents and profits collected by the Thomasons over the years they have exercised sole control of the property. No amount was specified in Madison Real Property's pleadings. The Farmstead is an agricultural property and as such is commercial in nature. The relationships and disputes between the parties are commercial in nature. Madison Real Property is entitled to an award of attorney's fees based upon the amount pleaded being less that $25,000 and the partition and accounting being commercial transactions.

In *Vreeken v. Lockwood Engineering, B.V.*, 148 Idaho 89, 218 P.3d 1150, 1172 (2009) the Supreme Court granted attorneys fees on appeal, reaffirming its prior holdings that "A commercial transaction is defined as any transaction, except transactions for personal household purposes." *Id., Cramer v. Slater,* 146 Idaho 868, 881, 204 P.3d 508, 521 (2009). It went on to hold that an appeal from a judgment on issues arising a dispute over the parties' respective rights

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(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services *and in any commercial transaction unless otherwise provided by law*, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs. (Emphasis added.)

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

over termination of a joint venture, falls under the definition of a "commercial transaction." Here the Thomasons' appeal is from a dispute over co-tenants rights on partition of commercial agricultural property, including Madison Real Property's right to an accounting and to be paid its shares of the rents and profits from the property. This relationship also falls under the definition of a commercial transaction.

Idaho Code § 12-121 "provides that `[i]n any civil action, the judge may award reasonable attorney's fees to the prevailing party. . . .' Such an award is appropriate when this Court has the abiding belief that the appeal was brought or defended frivolously, unreasonably or without foundation." *BHA Investments, Inc. v. State,* 138 Idaho 348, 355, 63 P.3d 474, 481 (2003) (citing I.C. § 12-121).

IV. Argument

1. Issues not properly raised in the district court or preserved for appeal should not be considered for the first time on appeal.

Thomasons have raised a number of issues for the first time in this appeal. In several cases, these issues also have not been identified with sufficient specificity. These issues include:

A. Failure of the conveyance to Madison Real Property because the instrument of conveyance did not include a complete address;

B. Madison Real Property's standing to bring the case;

C. The district court allegedly ignoring the appellants' filings and affidavits against the respondent as well as their evidence and arguments and objections to respondent's motion for summary judgment;

D. Summary judgment should not have been granted where discovery was not complete;

E. The district court abused its discretion when it granted Madison Real Property attorney fees; and,

F. The district court abused its discretion when it appointed referees.

As pointed out previously, Marilynn and Byron Thomason filed the notice of appeal. Nicholas and Sandra Thomason did not file a notice of appeal and should not be included herein.

In *Michalk v. Michalk*, ____ P.3d ____, 2009 WL 3353048 (Idaho 2009), the Supreme Court held, "It is well established that a litigant may not remain silent as to claimed error during a trial and later raise objections for the first time on appeal." *Id., quoting Barmore v. Barmore*, 145 Idaho 340, 343, 179 P.3d 303, 306 (2008). "Additionally, substantive issues will not be considered for the first time on appeal. Accordingly, this Court will not consider any issue on appeal that [the appellant] failed to properly preserve during trial. Because [the appellant] chose to remain silent during the entirety of the trial proceedings, this Court can consider very few, if any, of the issues that [the appellant] raises on appeal." *Michalk*, at p. 3.

In *Merrill v. Gibson*, 142 Idaho 692, 132 P.3d 449 (2006) this court held "[the appellant] has not identified the claimed statutory violation with sufficient specificity to enable us to address it, and even if such specificity were presented, it appears that the issue was not preserved for appeal by presentation to the trial court." Further, that "[appellant] has not raised a single issue on appeal that could be considered 'fairly debatable.'" *Merrill*, 142 Idaho at 697, 132 P.3d at 454. *See also KEB Enterprises, L.P. v. Smedley*, 140 Idaho 746, 754, 101 P.3d 690, 698 (2004)

(issues not raised below will not be considered on appeal); *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 712, 99 P.3d 1092, 1102 (Ct. App. 2004).

Although each of these issues will be discussed herein separately, this court should not consider any of these issues in this appeal because they were not raised before the district court at the appropriate times and preserved for appeal below.

2. The district court has subject matter jurisdiction over this case.

The Thomasons argue that the district court does not have subject matter jurisdiction over this case. They base their argument on two things (1) their allegation that a deed conveying the Farmstead to Madison Real Property did not have a complete address; and (2) their allegation that the conveyance of title from Greg and Diana Thomason to William Forsberg was a fraudulent conveyance and therefore void.

Subject matter jurisdiction is a key requirement for the justiciability of a claim and cannot be waived by consent of the parties. *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 626, 586 P.2d 1068, 1070 (1978). Because of the serious ramifications of a court acting without subject matter jurisdiction, namely that the judgments of that court are void, the concept must be clearly defined. *Id.* Subject matter jurisdiction was first defined in *Richardson v. Ruddy*, a case dealing with the predecessor to Idaho Code section 6-501, the statute in issue here:

> Jurisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some of the inherent facts that exist and may be developed during trial. 15 Idaho 488, 494-95, 98 P. 842, 844 (1908).

The Supreme Court has adopted a presumption that courts of general jurisdiction have subject matter jurisdiction unless a party can show otherwise. *Borah v. McCandless*, 147 Idaho 73, 78, 205 P.3d 1209, 1214 (2009).

The district court in this case had jurisdiction because it is a court of general jurisdiction and there has been no showing that subject matter jurisdiction was lacking. First, Idaho's Constitution provides that "[t]he district court shall have original jurisdiction in all cases, both at law and in equity." Idaho Const. Art. 5, § 20. Second, the relevant statutes, all part of Idaho Code, title 6, chapter 5, entitled "Partition of Real Estate" provide for jurisdiction over both the class of cases presented and over the specific remedy sought. The lawsuit was filed pursuant to Idaho Code section 6-501, which reads:

> **When partition may be had.** When several cotenants hold and are in possession of real property as parceners, joint tenants or tenants in common, in which one (1) or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one (1) or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof, if it appears that a partition cannot be made without great prejudice to the owners.

The statutory and constitutional provisions, when taken together, demonstrate that the district court, as a court of general jurisdiction, had the authority to hear this matter when filed because it was in fact dealing with the partition of real property under the authority granted by Idaho Code section 6-501.

3. Madison Real Property has standing to bring this case.

Thomasons, for the first time, argue in their brief that Madison Real Property did not have standing to bring this action. Standing is a subcategory of justiciability and is "a preliminary

question to be determined by this Court before reaching the merits of the case." *Troutner v. Kempthorne*, 142 Idaho 389, 391, 128 P.3d 926, 928 (2006). Although not fully articulated in their brief, the basis of their argument appears to be that Madison Real Property, LLC has no interest in the Farmstead property because a deed to Madison Real Property did not have a "complete address."[5] They further argue that the district court abused its discretion by ignoring Idaho Code § 55-601. This issue was not raised until the Thomasons filed their brief in this appeal.

The evidence in the record is to the contrary. The address on the deed in question is Madison Real Property, LLC, Rexburg, Idaho 83440. R. Vol. 2. p. 162, 163. The deed had a complete and correct legal description, named Madison Real Property as the grantee at the above address, and was recorded by the Madison County Recorder. First American Title Company issued a litigation guarantee which was in evidence before the court at the time it ruled on the partial summary judgment motion in which First American examined the state of title and issued its finding that fee simple "title to the estate or interest in the [Farmstead property] was vested in Madison Real Property, LLC and Byron Thomason, also shown as Byron T. Thomason, and Nicholas Thomason . . . each as to an undivided one-third interest." R. Vol. 2. p. 166. Idaho law recognizes that the information provided in a title report is *prima facia* evidence of a

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[5] Idaho Code § 55-601 provides that "[a] conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. The name of the grantee and his complete mailing address must appear on such instrument."

conveyance.[6] Further, the Thomasons provide no cite to the record to support their allegation that the address was not complete and this court is not required to scour the record for any such support. *U.S. v. Rewald*, 889 F.2d 836, 853 n.7 (9th Cir. 1989).

Where there was no evidence or argument that the deed did not contain a complete address before the district court at the time it rendered its decision, it was correct in finding that Madison Real Property was an owner of a fee interest in the Farmstead property. In spite of the fact that the Thomasons filed a motion to dismiss for, among other reasons, lack of jurisdiction, they did not argue that Madison Real Property lacked standing and they did not present any evidence or argument that the address on the deed conveying the Farmstead property to Madison Real Property was not a "complete address." The evidence before the district court was uncontradicted that Madison Real Property was a fee owner of the Farmstead property and the evidence before the district court supported its finding and conclusion in its Findings of Fact, Conclusions of Law and Order Granting Partial Summary Judgment that ". . . plaintiff, [Madison] Real Property, LLC is a tenant in common with a one-third undivided fee simple interest in the Farmstead property with the defendants Thomasons." R. Vol. 2., p. 250, 251.

The Thomasons' failure to raise the issue of a conveyance before the district court forecloses this Court from considering it in this appeal. *Michalk*, supra; *Merrill*, supra.

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[6] 54-102. Certificate of abstracter -- Effect. When any abstracter is certified, . . . [it] shall entitle such . . . title report to real estate, certified to or countersigned and issued by such abstracter, to be received in all courts as prima facie evidence of the existence of the record of deeds, mortgages and other instruments, conveyances, or liens, affecting the real estate mentioned in such . . . title report, and that such record is as described in said . . . title report.

Idaho case law recognizes that an address containing sufficient information to identify and locate an addressee is a "complete address" for purposes of conveying real estate. In *Adams v. Anderson*, 142 Idaho 208, 210-211, 127 P.3d 111, 113-114 (2005), the Supreme Court held that a Record of Survey containing the name of the grantee, although the record "does not state outright that Oberbillig is the grantee, a glance at the survey shows he is receiving part of Myers property, making him the grantee. Finally, although Oberbillig's address is not shown, the lot, block, street, county, and city are all shown on the Record of Survey. . . Given the amount of detail provided in the Record of Survey, it would not be difficult to ascertain Oberbillig's street address." *See also City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 16 P.3d 915 (2000) (a conveyance agreement providing only the name of the city contained a sufficient address since the City of Kellogg is a well-known municipality in Idaho).

In *Keb Enterprises, L.P. v. Smedley*, 140 Idaho 746, 101 P.3d 690 (2004), the Supreme Court held that an address on a quitclaim deed consisting of "Carmen, Lemhi County, Idaho" was sufficient to comply with Idaho Code § 55-601. The district court held that even though the grantee may have had a post office box, because Carmen, Idaho, was sparsely populated, the address consisting only of the town and county was sufficient.

The address on the deed before the district court was sufficient to be a complete address under the standards the Supreme Court has applied in similar cases.

The Thomasons are also asking the Court to consider evidence not presented to the district court and not a part of the record. They have included three exhibits in the Appellants'

Joint Appendix that were not presented to the district court or mentioned by the Thomasons as a part of their pleadings and memoranda to the district court.[7] These exhibits should not be considered in this appeal. *Oyama v. Sheehan (In re Sheehan),* 253 F.3d 507, 512 n.5 (9th Cir. 2001) ("Evidence that was not before the lower court will not generally be considered on appeal"). As noted in *Kirschner v. Uniden Corp. of Am.,* 842 F.2d 1074, 1077-78 (9th Cir. 1988), "We are here concerned only with the record before the trial judge *when his decision was made.*" *Kirschner,* 842 F.2d at 1077, *quoting United States v. Walker,* 601 F.2d 1051, 1055 (9th Cir. 1979) (Affidavits that "were not part of the evidence presented" to the trial court would not be considered on appeal.) (emphasis in *Kirschner*). In deciding whether the district court abused its discretion in granting partial summary judgment, this Court should consider only the record before the district court when the decision was made.

4. The district court did not abuse its discretion by finding that the various issues decided by the bankruptcy court in previous litigation involving these parties were res judicata.

Thomasons argue the district court abused its discretion by failing to find that various issues previously litigated in two adversary actions in the bankruptcy court were contested material issues of fact upon which the district court should have denied granting summary judgment. The substance of the previously decided issues raised again in Thomasons' brief is as follows:

[7] Exhibits B, C and D of Appellants' Joint Appendix are not found in the record, although pages B.1-4 appear to be copies of similar deeds that can be found in the record without certification data that appears to have been added October 13, 2009, after the record was filed with the Supreme Court.

A. The district court failed "*sua sponte*" to review and consider all levels of jurisdiction. (Citing a letter and a memorandum of a verbal agreement between Charles, Doralee, Byron, Nicholas and Greg Thomason in December 1984, which the Thomasons assert is an encumbrance on the Farmstead or a trust.) Appellants' Brief, pp. 16 and 17. That Madison Real Property has no greater right than the grantor William Forsberg has when he took title to the Farmstead with actual knowledge that there was a trust. Appellants' Brief, p. 17.

(1) The district court did not abuse its discretion by failing to find that the Farmstead property was encumbered by a trust where the issue had been previously litigated to a final judgment.

The Thomasons now claim it was error that the district court did not undo the final judgment of the bankruptcy court because they now want to claim the property belongs to a trust.

In an earlier pleading in this case, the Thomasons quote the following language from the "trust" in support of their contentions:

> "above property will remain in the direct and equal ownership of Byron, Nicholas, and Greg Thomason, as long as Byron, Nicholas, and/or Greg Thomason continue to farm. In the event of their (Byron, Nicholas or Greg) death or voluntary leaving the farm operation, their individual payout will not exceed the $20,000 . . . and all rights and claims are cancelled for above said property. " R. Vol. 4., p. 745.

It turns out the Thomasons also made much of the "trust" documents in the bankruptcy court adversary action where title was quieted in William Forsberg. Not coincidentally, the bankruptcy court quoted the same language the Thomasons now argue the district court abused its discretion by not finding to be a material issue of fact, and held as follows:

"Plaintiffs Byron, Marilynn, Nicholas and Sandra argue that Greg and Diana did not have the ability to transfer their interest in the property to Mr. Forsberg in 2001 and 2002 because of the terms of an earlier written memorandum of agreement executed by Charles, Doralee, Byron, Nicholas and Greg on August 25, 1991. Ex.1. According to Plaintiffs, that memorandum was executed to document a verbal agreement entered into by the family members in December 1984." The written agreement provides in part:

> This memorandum is to acknowledge a verbal agreement entered into between Charles and Doralee Thomason and their now surviving sons, Byron, Nicholas, and Greg Thomason in December 1984. [sic] In which it was agreed that Charles and Doralee would transfer the following properties . . . [Teton Pastures and Framstead] and cattle to Byron, Nicholas and Greg Thomason. The house and homestead property . . .is to be transferred [sic] solely to Byron Thomason. . . . <u>The above property will remain in the direct and equal ownership of Byron, Nicholas, and Greg Thomason, as long as Byron, Nicholas, and/or Greg Thomason continue to farm.</u> In the event of their (Byron, Nicholas or Greg) death or voluntary leaving the farm operation, their individual payout will not exceed the $20,000 . . . and all rights and claims are cancelled for above said property. Ex. 1 (emphasis added).

The memorandum also provides that "Charles and Doralee could reside in their home as long as either should live, and that after the deaths of both Charles and Doralee, the sons would establish a <u>trust</u> to benefit Roger's two daughters."[8] Emphasis added, R. Fifth Affidavit of William Forsberg, Exhibit 24, p. 54-55.

The court goes on to analyze the document and its effect on Greg and Diana Thomasons' ability to convey the property and concludes:

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[8]It should be noted, although the bankruptcy court did not specifically address the corpus of the trust in its opinion, the memorandum of agreement called for the trust to be composed of $20,000.00 cash and that the annual interest from the trust is to be paid to Roger's children. R. Vol. 1., p. 83.

> The deed given by Greg and Diana Thomason to Mr. Forsberg constituted a valid conveyance of an undivided one-third interest in the Farmstead Property. The memorandum of agreement did not restrict that transfer or interest. Memorandum of Decision, p. 59, *Thomason Farms, Inc. v. Greg Thomason, Diana Thomason, et. al.* Case No. 04-6134, entered June 9, 2006, consisting of 79 pages, reproduced in its entirety in Plaintiffs Exhibit, Fifth Affidavit of William Forsberg, Exhibit 24 (submitted by the Clerk of the District Court with the Record herein).

It is clear that the document the Thomasons are now attempting to characterize as a trust which does not allow the conveyance of the property was in fact considered and thoroughly litigated in the adversary proceeding in the bankruptcy court, and the court found against the Thomasons on this issue. As was held by the court in its decision granting partial summary judgment herein, the doctrine of *res judicata* bars the Thomasons from attempting to relitigate this issue by attempting to characterize it as something it is not. *Watkins v. Peacock*, 145 Idaho 704, 184 P.3d 210 (2008).

The second set of issues raised again in the Thomasons' brief, which issues were also previously decided are:

B. Allegations that amount to an assertion that title to the Farmstead property passed fraudulently, including that Greg and Diana Thomason were insolvent at the time they transferred their interest in the Farmstead property to William Forsberg. Appellants' Brief, p. 19. That various types of fraud, bankruptcy fraud, fraud upon the bankruptcy court were perpetrated by William Forsberg and the other parties opposing the Thomasons in the bankruptcy court litigation, and that Greg and Diana Thomason fraudulently transferred the Farmstead property to William Forsberg. Appellants' Brief, p. 18.

(1) The district court did not err by finding that various allegations of fraud, fraudulent transfer and fraud upon the court were res judicata.

The Thomasons did not pursue the issue of fraudulent transfer in the original trial in the adversary action even though the allegations of fraud were a part of their complaint and all of the allegations they now make would have necessarily been known to them at the time. R. Vol. 1., pp. 60-65.

The Thomasons' allegations that the conveyance of the property in question was fraudulent were also raised and decided in a Rule 60(b) motion they filed in the bankruptcy court after the Ninth Circuit Court of Appeals, Bankruptcy Appellate Panel denied their appeal of the bankruptcy court's original judgment. The Thomasons raised every issue they are alleging in their current appeal regarding what they have referred to as the "Unified Fraudulent Transfer Act," and "Fraud Upon the Court," in their "Demand for Retrial Fraud Upon the Court." R. Vol. 1., pp. 94-118; attached to the "Joint Affidavits of Nicholas A. Thomason and Byron T. Thomason," R. Vol. 1., pp. 87-119; and "Affidavit of Plaintiff Byron T. Thomason, Fraud on the Court, Bankruptcy Fraud, Exhibits and Claims," R. Vol. 4. pp. 361-630. Following a hearing in which evidence, including testimony, was received, the bankruptcy court ruled against the Thomasons on all issues.[9] *See R.* Vol. 1., pp. 120-136 (Memorandum of Decision and Order

[9] In a footnote to its memorandum decision the bankruptcy court had this to say regarding the Thomasons claims, "A postscript is needed here. [Thomasons] have shown they lack discretion in the manner in which they allege others are guilty of serious wrongdoing. From their submission, one might conclude they lack any conscience about the scope and reach of their potentially hurtful, largely baseless, allegations aimed at others. In addition, Plaintiffs' counsel, at least, is guilty of a lack of judgment in enabling his clients, without his prior input or review, to

entered November 26, 2007). The Bankruptcy Court's decision regarding ownership of the subject property and all issues regarding the Thomasons allegations of fraud is final and not subject to further appeal. R. Vol. 2., pp. 209-222 (portion of docket from the bankruptcy court adversary case reflecting that no notice of appeal was filed after the court's decision on November 26, 2007). All of the allegations contained in Thomasons' appeal in this case were decided against them in the adversary case in the bankruptcy court or in their motion for relief from judgment. *See* footnote 5, on p. 17, to the Memorandum Decision of the Bankruptcy Court on Thomasons' Motion for Relief from Judgment and for a New Trial, Exhibit B to the Affidavit of William Forsberg.

The matter of the conveyance of Greg and Diana Thomasons' interest in the Farmstead property to William Forsberg, subject to his wife's community interest and their title in the same is res judicata and not subject to relitigation in this court. *See Watkins v. Peacock*, 145 Idaho 704, 707, 184 P.3d 210, 213 (2008).

Res judicata is comprised of true *res judicata* (claim preclusion) and collateral estoppel (issue preclusion). *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002). Whether claim preclusion or issue preclusion bars the relitigation of issues adjudicated in prior litigation

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file documents purporting to be affidavits on his letterhead with the Court. Those pleadings were not effective nor persuasive. Instead, in them, the individual Plaintiffs lob scurrilous claims at the parties, the trustee, opposing counsel, and on occasion, the Court. Plaintiffs and their attorney risk imposition of attorney fees, costs and perhaps even more severe sanctions when they take this approach to litigation. The Court admonishes them to refrain from such activities in the future." R. Vol. 1., p. 136 (footnote 5).

between the same parties is a question of law over which this Court exercises free review. *Lohman v. Flynn,* 139 Idaho 312, 319, 78 P.3d 379, 386 (2003).

Idaho uses a transactional approach to claim preclusion. *U.S. Bank Natl. Assn. v. Kuenzli,* 134 Idaho 222, 226, 999 P.2d 877, 881 (2000). "The doctrine of claim preclusion bars not only subsequent relitigation of a claim previously asserted, but also subsequent relitigation of any claims relating to the same cause of action which were actually made or which might have been made." *Hindmarsh,* 138 Idaho at 94, 57 P.3d at 805. Claim preclusion has three elements: (1) same parties or their privies; (2) same claim; and (3) final judgment. *Ticor Title Co. v. Stanion,* 144 Idaho 119, 124, 157 P.3d 613, 618 (2007).

Here, Thomasons' claims are barred by claim preclusion. First, as the Forsbergs' successor in interest, Madison Real Property is their privy. *See id.* Second, the issue in *Thomason Farms, Inc. v. Greg Thomason, Diana Thomason, et. al.* was the conveyance of Greg and Diana Thomasons' interest in the Farmstead property to William Forsberg -- the same issue the Thomasons allege was error for the district court not to consider as a contested material fact. Third, the bankruptcy court determined that the Farmstead property had been validly conveyed and quieted title in the Forsbergs, and the Bankruptcy Appellate Panel affirmed the judgment of the bankruptcy court. There was a final judgment on the merits in *Thomason Farms, Inc. v. Greg Thomason, Diana Thomason, et. al.* Therefore, the doctrine of claim preclusion applies here to bar the consideration of Thomasons' claims regarding the validity of the title.

Each of the above issues were raised and decided against the Thomasons by final judgments in an adversary action in the bankruptcy court in which the issue of the ownership of

the Farmstead was tried to a verdict.[10] In that action, the Thomasons initially claimed the Farmstead belonged to a corporation, Thomason Farms, Inc, and later in that case claimed the Farmstead had to remain in the ownership of Byron, Nicholas and Greg Thomason because of the memorandum of agreement they now claim as a trust. All of which claims were rejected when the court quieted title in William Forsberg.

5. The district court did not abuse its discretion when it granted partial summary judgment in favor of Madison Real Property where the Thomasons did not raise any timely objection to the grant of partial summary judgment.

The Thomasons argue that the district court abused its discretion in granting partial summary judgment by "ignoring the appellants' filings and affidavits against the respondent, as well as, the evidence by the appellants, their arguments and objections to the respondent's motion for summary judgment." Appellants' Joint Brief, p. 34. Thomasons further argue that summary judgment should not have been granted where discovery was not complete. Appellants' Joint Brief, p. 29. Neither of these issues were raised in district court.

Initially, it is clear from an examination of the record that it is devoid of any evidence that the Thomasons objected to the entry of summary judgment, argued against summary judgment, provided any evidence in opposition to summary judgment, or requested additional time to complete discovery. IRCP Rule 56(c) states: "If the adverse party desires to serve opposing

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[10] R. Fifth Affidavit of William Forsberg, Exhibit 24 Memorandum of Decision, *Thomason Farms, Inc. v. Greg Thomason, Diana Thomason, et. al.* Case No. 04-6134, entered June 9, 2006, consisting of 79 pages.

affidavits the party must do so at least 14 days prior to the date of the hearing. The adverse party shall also serve an answering brief at least 14 days prior to the date of the hearing." The Thomasons did not to file any affidavits or an answering brief. "Pro se litigants are held to the same standards and rules as those represented by an attorney." *Suitts v. Nix,* 141 Idaho 706, 709, 117 P.3d 120, 123 (2005) (quoting *Twin Falls County v. Coates,* 139 Idaho 442, 445, 80 P.3d 1043, 1046 (2003)). Moreover, "Pro se litigants are not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules." *Nelson v Nelson,* 144 Idaho 718, 170 P.3d 375, 383 (2007) (*citing Sammis v. Magnetek, Inc.* 130 Idaho 342, 346, 941 P.2d 314, 318 (1997)).

The record is also clear that the discovery requested by the Thomasons had been complied with. The Thomasons have not sought any further discovery in the case. It is reasonable to infer that the Thomasons did not seek further discovery because of the ten year history the Thomasons have litigating the issues they want to continue to press in this case. Evidence of this is found in the hundreds of pages of documents the Thomasons have included with their notices of appeal and their motions for reconsideration in this case.

In any event, IRCP, Rule 56(f) provides: "Should it appear from affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may . . . order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had. . ." The Thomasons did not avail themselves of this procedure, and it is reasonable to conclude that they did not do so because they already had all the discovery they thought they needed. Regardless, they did not adhere to the

rules of civil procedure, and they should not be allowed to claim the district court abused its discretion when they had the opportunity to raise those issues with the district court and failed to do so.

As the district court observed in its Order of October 20, 2008 denying Thomasons' motion for reconsideration, a new trial/hearing and other relief from the partial summary judgment, "[T]he Thomasons made no effort—from July 11 to August 18 to reply to Plaintiff's summary judgment motion. As of today, defendants have yet to address the underlying merits of the claims." R. Vol. 4., p. 667. Motions for summary judgment are decided on facts shown, not on facts that might have been shown. *Verbillis v. Dependable Appliance Co.,* 107 Idaho 335, 337, 689 P.2d 227, 229 (Ct. App. 1984). The district court did not abuse its discretion in granting partial summary judgment on the record before it.

6. Matters listed as issues in the Thomasons' brief which were not argued by citation to facts in the record or by citation to supporting legal authority should be deemed abandoned.

The Thomasons have listed as issues that the district court abused its discretion when it appointed referees, when it granted Madison Real Property its attorneys fees based on a summary judgment in violation of the appellants constitutional rights, and based on the appellants filed a motion for a continuance based on the fraudulent agreement by [Madison Real Property's] counsel that he would have the hearing continued, and appellants being tricked into relying on his statement, thus denying the Thomasons due process. The Thomasons did not cite any facts in the record or supporting law for these issues. In the case of the allegation that counsel agreed to

continue the summary judgment hearing, the record directly contradicts the representations of the Thomasons in their brief.[11]

The Supreme Court also held that issues on appeal that are not supported by propositions of law or authority are deemed waived and will not be considered. *Wheeler v. Idaho Dept. of Health & Welfare*, 147 Idaho 257, 207 P.3d 988 (2009); I.A.R. 35(a)(6). "Because [the appellant] failed entirely to support her argument with citations to any evidence in the record or relevant legal authority, this Court declined to review the argument." *Michalk*, at pp. 4-5. The issues raised by the Thomasons are not supported by citations to legal authority or facts in the record should not be reviewed by this court.

7. The district court did not err by awarding Madison Real Property attorney fees when the Thomasons did not object to the award.

The Thomasons claim for the first time in this appeal that the district court should not have awarded attorney fees to Madison Real Property for prevailing on its motion for partial summary judgment. Appellants' Joint Brief, pp. 39-40. Without any citation to the record, they claim that the district court lacked jurisdiction, Madison Real Property and its counsel had unclean hands, and did not prevail on its motion. Again, the Thomasons did not raise these issues with the district court. IRCP 54(d)(6) provides that any party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a

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[11] In a letter to the Thomasons dated July 31, 2008, counsel stated, "After some consideration, I. have elected not to reschedule the hearing scheduled for August 18, 2008. . ." This letter was written in response to letters from the Thomasons. R. Vol. 2., p. 241.

motion to disallow all or part of such costs within fourteen (14) days of service of the memorandum of cost. . . Failure to object to the items in the memorandum of costs shall constitute a waiver of all objections to the costs claimed." The appellate courts in Idaho have held consistently with this rule in several cases. *Conner v. Drake,* 103 Idaho 761, 653 P.2d 1173 (1982); *Lowery v. Board of County Commissioners,* 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988). The Court should not review the Thomasons' attorney fees issue where they did not object to the award in a timely fashion in district court as required by IRCP 54(d)(6) to preserve the issue for appeal.

8. The district court did not abuse its discretion when it denied Byron and Marilynn Thomasons' motion for a continuance of the hearing on Madison Real Property's motion for partial summary judgment.

The Thomasons also argue that the district court abused its discretion by not granting Byron and Marilynn Thomasons' motion for a continuance. I.R.C.P. 56(c) provides that "the court . . . for good cause shown . . . may continue the hearing [on a motion for summary judgment]. [The] standard for review of discretion for abuse requires a three-pronged inquiry to determine whether the district court (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion and consistently with the legal standards applicable to the specific choices before it; and (3) reached its decision by an exercise of reason. *Leavitt v. Swain,* 133 Idaho 624, 631, 991 P.2d 349, 356 (1999); *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.,* 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991). Absent a clear showing of

abuse, a district court's exercise of discretion will not be overturned. *Appel v. LePage*, 135 Idaho 133, 135, 15 P.3d 1141, 1143 (2000).

The record reflects that Byron and Marilynn Thomason did not file any objection, brief, affidavit, deposition or other evidence in opposition to Madison Real Property's motion for partial summary judgment before or since the date of the hearing. The motion for a continuance was filed the Friday before the Monday the hearing was to be held on. That Madison Real Property's attorney did not agree to continue the hearing and opposed it. That none of the Thomasons (including Nicholas and Sandra Thomason who did not move for a continuance) appeared at the hearing. Based upon the record the district court found that the Thomasons had not established good cause to grant a continuance, and therefore denied their motion.

The district court denied the motion, recognizing its discretion to do so under the permissive language of Rule 56(c). The district court acted within its legal boundaries as the facts did not support that there was good cause for a continuance. The district court reached its decision after hearing Madison Real Property's counsel's objection to the continuance and after considering the facts before it. There has been no "clear showing of an abuse of discretion," therefore the Court should affirm the district court's ruling in the continuance.

V. Conclusion

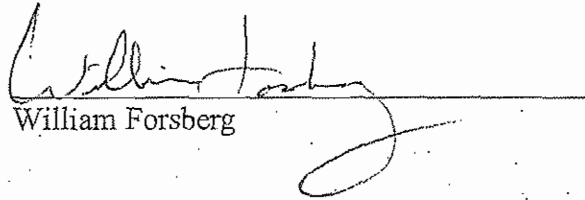
With regards to their complaints of lack of jurisdiction, and fraud, bankruptcy fraud, fraud upon the court and fraudulent transfer, the Thomasons invite the Court of Appeals to engage in a far reaching exploration of ten years of litigation by the Thomasons with which they are not satisfied. With regards to their complaint that Madison Real Property did not have

standing, they are attempting to use documents that were not before the district court and not to be found in the record, to reverse the holding of the district court. The other issues raised by the Thomasons in this appeal were not raised in the district court as required by the law and rules, and were not preserved for appeal. The Thomasons have disregarded the facts in the record, the law, and the rules of civil procedure in their brief.

This appeal is not supported by the facts or the law. The Court should deny the Thomasons' appeal and affirm the judgment and orders of the district court made to date.

Madison Real Property should be awarded its attorney fees and costs for this appeal.

Respectfully submitted this 23rd day of December, 2009.

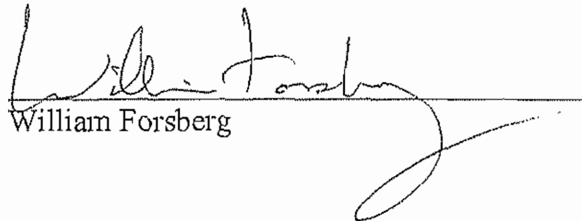


William Forsberg

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Rexburg, Idaho; that I served a copy of the above pleading or document on the attorneys and/or individuals listed below by hand delivery, by mailing with the correct postage thereon, or by facsimile, a true and correct copy thereof on this 23rd day of December, 2009.

Byron Thomason 485 North 2nd East (105-273) Rexburg, Idaho 83440	(X) Mail ( ) Hand Delivery ( ) Facsimile (208) 356-4536 ( ) Personal Service
Marilynn Thomason 485 North 2nd East (105-273) Rexburg, Idaho 83440	(X) Mail ( ) Hand Delivery ( ) Facsimile (208) 356-4536 ( ) Personal Service
Nicholas A. Thomason 5293 South 4300 West Rexburg, Idaho 83440	(X) Mail ( ) Hand Delivery ( ) Facsimile ( ) Personal Service
Sandra K. Thomason 5293 South 4300 West Rexburg, Idaho 83440	(X) Mail ( ) Hand Delivery ( ) Facsimile ( ) Personal Service



William Forsberg