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Belstler v. Sheler Augmentation Record Dckt. 37893

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In the Supreme Court of the State of Idaho

LAW CLERK

CHRIS BELSTLER and DANA BELSTLER,)
husband and wife,)

Plaintiffs/Counterdefendants/)
Appellants/Cross-Respondents,)

v.)

KAREN SHELER (CONINE), and HOWARD)
CONINE, husband and wife,)

Defendants/Counterplaintiffs/)
Respondents/Cross-Appellants.)

ORDER GRANTING MOTION TO
AUGMENT

Supreme Court Docket No. 37893-2010
Kootenai County Docket No. 2007-2523

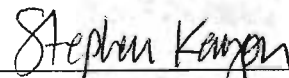
APPELLANTS/CROSS-RESPONDENTS' MOTION TO AUGMENT was filed by counsel for Appellants/Cross-Respondents on February 9, 2011. Thereafter, RESPONDENTS'/CROSS APPELLANTS' STATEMENT OF NO OBJECTION TO MOTION TO AUGMENT was filed by counsel for Respondents/Cross-Appellants on February 11, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that APPELLANTS/CROSS-RESPONDENTS' MOTION TO AUGMENT be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

1. Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider, file-stamped April 21, 2010.

DATED this 14th day of February 2011.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

AUGMENTATION RECORD

ORDER GRANTING MOTION TO AUGMENT – Docket No. 37893-2010

In the Supreme Court of the State of Idaho

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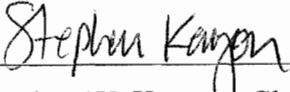
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Stephen W. Kenyon, Clerk

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Exhibit "A"

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED

2010 APR 21 PM 3:04

DISTRICT COURT
Jan. Swedsten

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CHRIS BELSTLER and DANA
BELSTLER, husband and wife,
Plaintiffs,

vs.

KAREN SHELER (CONINE) and HOWARD
CONINE, husband and wife,
Defendants.

CASE NUMBER: CV-07-2523

MEMORANDUM DECISION AND
ORDER RE: PLAINTIFFS' MOTION TO
RECONSIDER

KAREN SHELER CONINE and HOWARD
CONINE, husband and wife,

COUNTER PLAINTIFFS,

vs.

CHRIS BELSTLER and DANA
BELSTLER, husband and wife,
COUNTER DEFENDANTS.

Arthur B. Macomber for Plaintiffs/Counter Defendants

Charles M. Dodson for Defendants/Counter Plaintiffs

I. PROCEDURAL HISTORY

Plaintiffs filed an Amended Notice of Motion For Reconsideration and Amendment of Memorandum Decision, pursuant to I.R.C.P. 52(b), on January 14, 2010, and oral argument was heard on March 16, 2010. The Plaintiffs' motion asked this Court to reconsider or amend a Memorandum Decision and Order for Judgment authored by then Senior District Judge James R. Michaud, and filed on December 30, 2010. Judge Michaud's Memorandum Decision operated as

his Findings of Fact and Conclusions of Law for a four-day court trial presided over by Judge Michaud that had commenced on September 21, 2009.

Judge Michaud's Memorandum Decision found that both the northerly and southerly easements (the subjects of the Plaintiffs' suit to quiet title) are express easements specifically created for the benefit of the Defendants and imposing an encumbrance upon the Plaintiffs' property. The Decision further found that the Defendants had established a prescriptive easement as to the northerly easement, but not as to the southerly easement.

II. STANDARD OF REVIEW

Where the trial court's findings of fact and conclusions of law covered the essential facts and propositions of law introduced in an action ... denial of the motion to amend the findings or to make additional findings was not an abuse of discretion. *Bair v. Barron*, 97 Idaho 26, 539 P.2d 578 (1975). See I.R.C.P. 52(b). "The Idaho Rules of Civil Procedure do not provide for a petition to reconsider a memorandum decision. As such, [a] district court correctly treat[s] an appellant's petition [to reconsider] as a motion to alter or amend [a] judgment pursuant to I.R.C.P. 59(e)." *Obray v. Mitchell*, 98 Idaho 533, 538, 567 P.2d 1284, 1289 (1977). "[The Idaho Supreme Court] reviews an order denying a motion to alter or amend [a] judgment for abuse of discretion. Pursuant to I.R.C.P. 59(e), a district court can correct legal and factual errors occurring in proceedings before it." *Straub v. Smith*, 145 Idaho 65, 71, 175 P.3d 754, 760 (2007) (citation omitted). "A Rule 59(e) motion to amend a judgment is addressed to the discretion of the court. An order denying a motion made under Rule 59(c) to alter or amend a judgment is appealable, but only on the question of whether there has been a manifest abuse of discretion. Rule 59(e) proceedings afford the trial court the opportunity to correct errors both of fact or law that had occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal. Such proceedings must of necessity, therefore, be directed to the status of the case as it existed when the court rendered the decision upon which the judgment is based." *Coeur d'Alene Mining Co. v. First National Bank of North Idaho*, 118 Idaho 812, 800 P.2d 1026 (1990).

III. DISCUSSION

This Court recognizes and appreciates that a Motion to Reconsider or Alter and Amend Findings of Fact and Conclusions of Law is a discretionary matter with the Court and the following is made with that understanding.

A. Express Easements

At trial Defendants based their claims for express easements on a Sale Agreement (Ex. 14), a Mutual Agreement and Easement for Ingress and Egress (Ex. 15), and a Warranty Deed (Ex. 16). Defendants also relied on Ex. O, a writing memorializing a verbal agreement, which Defendants argued was evidence of the predecessor parties intent to create easements benefiting Defendants' property.

The trial judge concluded that Ex. 15 was a collateral stipulation to the Deed in question, and therefore did not merge with the Deed. This conclusion led the trial court to find that express easements for both the northerly and southerly easements had been created.

Plaintiffs' Motion to Reconsider urges this Court to find that the trial judge made an erroneous conclusion of law in concluding that Ex. 15 was a collateral stipulation to the Deed, and therefore did not merge with the Deed. This Court agrees with the Plaintiffs and finds, as a matter of law, that Ex. 15 cannot be concluded to be a collateral stipulation to the Deed. Also, as a matter of law, this Court concludes that Ex. 15 does merge with Ex. 16, and the trial court's conclusion of the existence of express easements for both the northerly and southerly easements was erroneous.

This Court bases its decision on *Jolley v. Idaho Securities, Inc.*, 90 Idaho 373, 414 P.2d 879 (1966). In that case the Idaho Supreme Court re-affirmed the general rule that the acceptance of a deed is considered as a merger of the agreements of an antecedent contract into the terms of a deed. The exception to this rule relates to collateral stipulations, and defined stipulations in real estate sales contracts that are presumed merged include those relating to title, possession and emblements of the land; in other words, those stipulations that inhere to the very subject matter of the deed.

Under the facts before this Court, it is an erroneous conclusion of law that Ex. 15, the Mutual Agreement and Easement for Ingress and Egress, does not constitute a stipulation

relating to title or possession relative to the Deed (Ex. 16). Therefore, this Court grants Plaintiffs' Motion to Reconsider the trial court's conclusion that Defendants possess express easements in the northerly and southerly easements. This Court concludes that no express easements exist imposing an encumbrance upon Plaintiffs' property.

B. Prescriptive Easement in the Northerly Easement

The trial judge found that Defendants had met their burden of proving the elements of a prescriptive easement with respect to the northerly easement.

Plaintiffs urge this Court to find that the trial court erred in concluding that the statutory period for prescriptive use of the disputed property by Defendants' predecessor in interest was five (5) years as opposed to twenty (20) years. Plaintiffs argue that the legislature changed the applicable statutory period from five (5) years to twenty (20) years in 2006, and that Defendants' Counterclaim for prescriptive easement was not filed until August of 2007.

The trial court's conclusions included the findings that the prescriptive easement rights had accrued to the Defendants prior to the legislative change, and made the conclusion of law that the five (5) year statutory period applied under these facts. The conclusion of the trial court was a reasonable conclusion under these facts, and not one that is contrary to any established Idaho case law. Therefore, this Court denies Plaintiffs' Motion to Reconsider on this issue.

IV. CONCLUSION AND ORDER

Based on the foregoing discussion, Plaintiffs' Motion to Reconsider/Amendment of Memorandum Decision is granted in part and denied in part.

IT IS HEREBY ORDERED that no express easements were created with respect to either the northerly or southerly easement. Title is ordered quieted for the Belstlers in the area comprising the southerly easement.

IT IS HEREBY FURTHER ORDERED that the judgment shall reflect that the Conines have established a prescriptive easement upon the northerly easement, but have not established a prescriptive easement as to the southerly easement. The judgment shall specify the nature, length, width and location of the northerly easement over the private drive.

IT IS HEREBY FURTHER ORDERED that the judgment shall reflect that the quiet title claims of the Belstlers are dismissed with respect to the northerly easement, but granted with respect to the southerly easement. The Conines' claim for a southerly easement by prescription is dismissed.

IT IS HEREBY FURTHER ORDERED that the judgment shall deny to the Belstlers any right to change the location of northerly easement to the locations referred to on Exhibit T.

IT IS HEREBY FURTHER ORDERED that considering all claims and defenses presented, including this Memorandum Decision and Order RE: Plaintiffs' Motion to Reconsider, that the Conines are entitled to their costs but not attorney fees as this action was not frivolously or unreasonably pursued nor defended by the Belstlers.

IT IS HEREBY FURTHER ORDERED that the Belstlers prepare a final judgment consistent with this Memorandum Decision and present the same to District Judge Lansing L. Haynes.

Dated this 21 day of April, 2010.

Lansing L. Haynes
Lansing L. Haynes
District Judge

CERTIFICATE OF MAILING/DELIVERY

On this 21 day of April, 2010, a true and correct copy of the foregoing was mailed in the U.S. Mails, postage prepaid, sent via interoffice mail, or sent via facsimile, addressed to the following:

ARTHUR B. MACOMBER, ESQ.
MACOMBER LAW, PLLC
408 E. Sherman Avenue, Ste 215
Coeur d'Alene ID 83814
Facsimile: 208-664-9933 ✓

CHARLES M. DODSON, ESQ.
CHARLES M. DODSON, ATTORNEY AT LAW
1424 Sherman Ave., Ste. 300
Coeur d'Alene, ID 83814
Facsimile: 208-666-9211 ✓

Daniel English
Clerk of the District Court

By: Suzi Seerdster
Deputy Clerk